

Union Calendar No. 303

114TH CONGRESS
2^D SESSION

H. R. 686

[Report No. 114-400]

To amend the Securities Exchange Act of 1934 to exempt from registration brokers performing services in connection with the transfer of ownership of smaller privately held companies.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 3, 2015

Mr. HUIZENGA of Michigan (for himself, Mr. HIGGINS, and Mr. POSEY) introduced the following bill; which was referred to the Committee on Financial Services

JANUARY 28, 2016

Additional sponsors: Mr. CURBELO of Florida, Ms. LOFGREN, Mr. LUCAS, Mr. JOLLY, Ms. KUSTER, Mr. EMMER of Minnesota, Mr. ROSS, and Mr. BRADY of Texas

JANUARY 28, 2016

Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

A BILL

To amend the Securities Exchange Act of 1934 to exempt from registration brokers performing services in connection with the transfer of ownership of smaller privately held companies.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Small Business Merg-
5 ers, Acquisitions, Sales, and Brokerage Simplification Act
6 of 2015”.

7 **SEC. 2. REGISTRATION EXEMPTION FOR MERGER AND AC-**
8 **QUISITION BROKERS.**

9 Section 15(b) of the Securities Exchange Act of 1934
10 (15 U.S.C. 78o(b)) is amended by adding at the end the
11 following:

12 “(13) REGISTRATION EXEMPTION FOR MERGER
13 AND ACQUISITION BROKERS.—

14 “(A) IN GENERAL.—Except as provided in
15 subparagraph (B), an M&A broker shall be ex-
16 empt from registration under this section.

17 “(B) EXCLUDED ACTIVITIES.—An M&A
18 broker is not exempt from registration under
19 this paragraph if such broker does any of the
20 following:

21 “(i) Directly or indirectly, in connec-
22 tion with the transfer of ownership of an
23 eligible privately held company, receives,
24 holds, transmits, or has custody of the

1 funds or securities to be exchanged by the
2 parties to the transaction.

3 “(ii) Engages on behalf of an issuer in
4 a public offering of any class of securities
5 that is registered, or is required to be reg-
6 istered, with the Commission under section
7 12 or with respect to which the issuer files,
8 or is required to file, periodic information,
9 documents, and reports under subsection
10 (d).

11 “(C) RULE OF CONSTRUCTION.—Nothing
12 in this paragraph shall be construed to limit
13 any other authority of the Commission to ex-
14 empt any person, or any class of persons, from
15 any provision of this title, or from any provision
16 of any rule or regulation thereunder.

17 “(D) DEFINITIONS.—In this paragraph:

18 “(i) CONTROL.—The term ‘control’
19 means the power, directly or indirectly, to
20 direct the management or policies of a
21 company, whether through ownership of
22 securities, by contract, or otherwise. There
23 is a presumption of control for any person
24 who—

1 “(I) is a director, general part-
2 ner, member or manager of a limited
3 liability company, or officer exercising
4 executive responsibility (or has similar
5 status or functions);

6 “(II) has the right to vote 20
7 percent or more of a class of voting
8 securities or the power to sell or direct
9 the sale of 20 percent or more of a
10 class of voting securities; or

11 “(III) in the case of a partner-
12 ship or limited liability company, has
13 the right to receive upon dissolution,
14 or has contributed, 20 percent or
15 more of the capital.

16 “(ii) ELIGIBLE PRIVATELY HELD
17 COMPANY.—The term ‘eligible privately
18 held company’ means a company that
19 meets both of the following conditions:

20 “(I) The company does not have
21 any class of securities registered, or
22 required to be registered, with the
23 Commission under section 12 or with
24 respect to which the company files, or
25 is required to file, periodic informa-

1 tion, documents, and reports under
2 subsection (d).

3 “(II) In the fiscal year ending
4 immediately before the fiscal year in
5 which the services of the M&A broker
6 are initially engaged with respect to
7 the securities transaction, the com-
8 pany meets either or both of the fol-
9 lowing conditions (determined in ac-
10 cordance with the historical financial
11 accounting records of the company):

12 “(aa) The earnings of the
13 company before interest, taxes,
14 depreciation, and amortization
15 are less than \$25,000,000.

16 “(bb) The gross revenues of
17 the company are less than
18 \$250,000,000.

19 “(iii) M&A BROKER.—The term ‘M&A
20 broker’ means a broker, and any person
21 associated with a broker, engaged in the
22 business of effecting securities transactions
23 solely in connection with the transfer of
24 ownership of an eligible privately held com-
25 pany, regardless of whether the broker acts

1 on behalf of a seller or buyer, through the
2 purchase, sale, exchange, issuance, repur-
3 chase, or redemption of, or a business com-
4 bination involving, securities or assets of
5 the eligible privately held company, if the
6 broker reasonably believes that—

7 “(I) upon consummation of the
8 transaction, any person acquiring se-
9 curities or assets of the eligible pri-
10 vately held company, acting alone or
11 in concert, will control and, directly or
12 indirectly, will be active in the man-
13 agement of the eligible privately held
14 company or the business conducted
15 with the assets of the eligible privately
16 held company; and

17 “(II) if any person is offered se-
18 curities in exchange for securities or
19 assets of the eligible privately held
20 company, such person will, prior to
21 becoming legally bound to consum-
22 mate the transaction, receive or have
23 reasonable access to the most recent
24 year-end balance sheet, income state-
25 ment, statement of changes in finan-

1 cial position, and statement of owner’s
2 equity of the issuer of the securities
3 offered in exchange, and, if the finan-
4 cial statements of the issuer are au-
5 dited, the related report of the inde-
6 pendent auditor, a balance sheet
7 dated not more than 120 days before
8 the date of the offer, and information
9 pertaining to the management, busi-
10 ness, results of operations for the pe-
11 riod covered by the foregoing financial
12 statements, and material loss contin-
13 gencies of the issuer.

14 “(E) INFLATION ADJUSTMENT.—

15 “(i) IN GENERAL.—On the date that
16 is 5 years after the date of the enactment
17 of the Small Business Mergers, Acquisi-
18 tions, Sales, and Brokerage Simplification
19 Act of 2015, and every 5 years thereafter,
20 each dollar amount in subparagraph
21 (D)(ii)(II) shall be adjusted by—

22 “(I) dividing the annual value of
23 the Employment Cost Index For
24 Wages and Salaries, Private Industry
25 Workers (or any successor index), as

1 published by the Bureau of Labor
2 Statistics, for the calendar year pre-
3 ceding the calendar year in which the
4 adjustment is being made by the an-
5 nual value of such index (or suc-
6 cessor) for the calendar year ending
7 December 31, 2012; and

8 “(II) multiplying such dollar
9 amount by the quotient obtained
10 under subclause (I).

11 “(ii) ROUNDING.—Each dollar
12 amount determined under clause (i) shall
13 be rounded to the nearest multiple of
14 \$100,000.”.

15 **SEC. 3. EFFECTIVE DATE.**

16 This Act and any amendment made by this Act shall
17 take effect on the date that is 90 days after the date of
18 the enactment of this Act.

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