

113<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

# H. R. 2274

---

## AN ACT

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,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Small Business Merg-  
3 ers, Acquisitions, Sales, and Brokerage Simplification Act  
4 of 2014”.

5 **SEC. 2. REGISTRATION EXEMPTION FOR MERGER AND AC-**  
6 **QUISITION BROKERS.**

7 Section 15(b) of the Securities Exchange Act of 1934  
8 (15 U.S.C. 78o(b)) is amended by adding at the end the  
9 following:

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

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

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

19 “(i) Directly or indirectly, in connec-  
20 tion with the transfer of ownership of an  
21 eligible privately held company, receives,  
22 holds, transmits, or has custody of the  
23 funds or securities to be exchanged by the  
24 parties to the transaction.

25 “(ii) Engages on behalf of an issuer in  
26 a public offering of any class of securities

1 that is registered, or is required to be reg-  
2 istered, with the Commission under section  
3 12 or with respect to which the issuer files,  
4 or is required to file, periodic information,  
5 documents, and reports under subsection  
6 (d).

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

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

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

21 “(I) is a director, general part-  
22 ner, member or manager of a limited  
23 liability company, or officer exercising  
24 executive responsibility (or has similar  
25 status or functions);

1           “(II) has the right to vote 20  
2           percent or more of a class of voting  
3           securities or the power to sell or direct  
4           the sale of 20 percent or more of a  
5           class of voting securities; or

6           “(III) in the case of a partner-  
7           ship or limited liability company, has  
8           the right to receive upon dissolution,  
9           or has contributed, 20 percent or  
10          more of the capital.

11          “(ii) ELIGIBLE PRIVATELY HELD  
12          COMPANY.—The term ‘eligible privately  
13          held company’ means a company that  
14          meets both of the following conditions:

15               “(I) The company does not have  
16               any class of securities registered, or  
17               required to be registered, with the  
18               Commission under section 12 or with  
19               respect to which the company files, or  
20               is required to file, periodic informa-  
21               tion, documents, and reports under  
22               subsection (d).

23               “(II) In the fiscal year ending  
24               immediately before the fiscal year in  
25               which the services of the M&A broker

1 are initially engaged with respect to  
2 the securities transaction, the com-  
3 pany meets either or both of the fol-  
4 lowing conditions (determined in ac-  
5 cordance with the historical financial  
6 accounting records of the company):

7 “(aa) The earnings of the  
8 company before interest, taxes,  
9 depreciation, and amortization  
10 are less than \$25,000,000.

11 “(bb) The gross revenues of  
12 the company are less than  
13 \$250,000,000.

14 “(iii) M&A BROKER.—The term ‘M&A  
15 broker’ means a broker, and any person  
16 associated with a broker, engaged in the  
17 business of effecting securities transactions  
18 solely in connection with the transfer of  
19 ownership of an eligible privately held com-  
20 pany, regardless of whether the broker acts  
21 on behalf of a seller or buyer, through the  
22 purchase, sale, exchange, issuance, repur-  
23 chase, or redemption of, or a business com-  
24 bination involving, securities or assets of

1 the eligible privately held company, if the  
2 broker reasonably believes that—

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

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

1 dited, the related report of the inde-  
2 pendent auditor, a balance sheet  
3 dated not more than 120 days before  
4 the date of the offer, and information  
5 pertaining to the management, busi-  
6 ness, results of operations for the pe-  
7 riod covered by the foregoing financial  
8 statements, and material loss contin-  
9 gencies of the issuer.

10 “(E) INFLATION ADJUSTMENT.—

11 “(i) IN GENERAL.—On the date that  
12 is 5 years after the date of the enactment  
13 of the Small Business Mergers, Acquisi-  
14 tions, Sales, and Brokerage Simplification  
15 Act of 2014, and every 5 years thereafter,  
16 each dollar amount in subparagraph  
17 (D)(ii)(II) shall be adjusted by—

18 “(I) dividing the annual value of  
19 the Employment Cost Index For  
20 Wages and Salaries, Private Industry  
21 Workers (or any successor index), as  
22 published by the Bureau of Labor  
23 Statistics, for the calendar year pre-  
24 ceding the calendar year in which the  
25 adjustment is being made by the an-

1           nual value of such index (or suc-  
2           cessor) for the calendar year ending  
3           December 31, 2012; and

4                   “(II) multiplying such dollar  
5           amount by the quotient obtained  
6           under subclause (I).

7                   “(ii)     ROUNDING.—Each     dollar  
8           amount determined under clause (i) shall  
9           be rounded to the nearest multiple of  
10          \$100,000.”.

11 **SEC. 3. EFFECTIVE DATE.**

12          This Act and any amendment made by this Act shall  
13 take effect on the date that is 90 days after the date of  
14 the enactment of this Act.

        Passed the House of Representatives January 14,  
2014.

Attest:

*Clerk.*



113<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

**H. R. 2274**

---

**AN ACT**

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.