

113TH CONGRESS  
1ST SESSION

# H. R. 2274

To amend the Securities Exchange Act of 1934 to provide for a notice-filing registration procedure for brokers performing services in connection with the transfer of ownership of smaller privately held companies and to provide for regulation appropriate to the limited scope of the activities of such brokers.

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## IN THE HOUSE OF REPRESENTATIVES

JUNE 6, 2013

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

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## A BILL

To amend the Securities Exchange Act of 1934 to provide for a notice-filing registration procedure for brokers performing services in connection with the transfer of ownership of smaller privately held companies and to provide for regulation appropriate to the limited scope of the activities of such brokers.

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 2013”.

5 **SEC. 2. MERGER AND ACQUISITION BROKERS.**

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

9 “(13) MERGER AND ACQUISITION BROKERS.—

10 “(A) REGISTRATION BY NOTICE-FILING.—

11 Notwithstanding paragraphs (1) and (2), an  
12 M&A broker may register for purposes of this  
13 section by filing with the Commission an elec-  
14 tronic notice in such form and containing such  
15 information concerning the M&A broker and  
16 any persons associated with the M&A broker as  
17 the Commission may by rule prescribe as nec-  
18 essary or appropriate in the public interest or  
19 for the protection of investors.

20 “(B) EFFECTIVENESS OF REGISTRA-  
21 TION.—

22 “(i) IMMEDIATE.—Except as provided  
23 in clause (ii), the registration of an M&A  
24 broker under subparagraph (A) shall be-  
25 come effective upon receipt by the Com-  
26 mission of a properly completed notice

1 from the M&A broker under such subpara-  
2 graph.

3 “(ii) COMMISSION APPROVAL RE-  
4 QUIRED.—The registration of an M&A  
5 broker under subparagraph (A) shall not  
6 become effective without approval by the  
7 Commission if the M&A broker or a person  
8 associated with the M&A broker is subject  
9 to—

10 “(I) suspension or revocation of  
11 registration under paragraph (4);

12 “(II) a statutory disqualification  
13 (except that the date of the filing of  
14 the notice under subparagraph (A)  
15 shall be substituted for the date re-  
16 ferred to in section 3(a)(39)(F)); or

17 “(III) disqualification under the  
18 rules adopted by the Commission  
19 under section 926 of the Dodd-Frank  
20 Wall Street Reform and Consumer  
21 Protection Act (15 U.S.C. 77d note)  
22 (except that the date of the filing of  
23 the notice under subparagraph (A)  
24 shall be substituted for the date re-

1                   ferred to in paragraph (2)(A)(ii) of  
2                   such section).

3                   “(C) UPDATED INFORMATION.—If the in-  
4                   formation contained in a notice filed under sub-  
5                   paragraph (A) becomes inaccurate or incom-  
6                   plete in any material respect, the M&A broker  
7                   shall update such information in a form and  
8                   manner to be specified by the Commission.

9                   “(D) PUBLIC AVAILABILITY.—The Com-  
10                  mission shall make publicly available on the  
11                  website of the Commission the information pro-  
12                  vided in a notice filed under subparagraph (A),  
13                  as updated under subparagraph (C).

14                 “(E) DISCLOSURE TO CLIENTS.—The  
15                  Commission may require an M&A broker reg-  
16                  istered under subparagraph (A) to deliver to  
17                  the clients of the M&A broker a disclosure doc-  
18                  ument describing the M&A broker and the af-  
19                  filiates, associated persons, services, and fees of  
20                  the M&A broker, any conflicts of interest of the  
21                  M&A broker, and such other information as the  
22                  Commission considers necessary or appropriate  
23                  in the public interest or for the protection of in-  
24                  vestors.

1           “(F) EXEMPTIONS FOR M&A BROKERS.—  
2           To the extent that the activities of an M&A  
3           broker registered under subparagraph (A) are  
4           within the scope of the activities described in  
5           subparagraph (K)(iii), the M&A broker (and  
6           any persons associated with the M&A broker)  
7           shall be exempt from—

8                   “(i) except as provided in subpara-  
9                   graph (G), the requirements of this Act  
10                  that apply to a broker registered, or re-  
11                  quired to be registered, under this sub-  
12                  section (or to any persons associated with  
13                  such a broker, as the case may be); and

14                   “(ii) the Securities Investor Protection  
15                  Act of 1970 (15 U.S.C. 78aaa et seq.).

16           “(G) PROVISIONS APPLICABLE TO M&A  
17           BROKERS.—

18                   “(i) IN GENERAL.—The following pro-  
19                  visions shall apply to an M&A broker reg-  
20                  istered under subparagraph (A) (or to any  
21                  persons associated with the M&A broker,  
22                  as the case may be):

23                   “(I) This paragraph and para-  
24                  graphs (4), (5), (6), and (7).

1                   “(II) Subsection (a), paragraphs  
2                   (1)(A) and (3)(A) of subsection (c),  
3                   and subsection (g).

4                   “(III) Subsections (a)(1) and  
5                   (b)(1) of section 17.

6                   “(ii) TAILORED APPLICATION.—In ap-  
7                   plying subsection (c)(3)(A) of this section  
8                   and subsections (a)(1) and (b)(1) of sec-  
9                   tion 17 to M&A brokers, the Commission  
10                  shall take into account the nature of the  
11                  transactions in which M&A brokers are in-  
12                  volved, the involvement of the parties to  
13                  such transactions in such transactions, and  
14                  the limited scope of the activities of M&A  
15                  brokers under subparagraph (K)(iii), in-  
16                  cluding that M&A brokers do not have cus-  
17                  tody of the funds or securities to be ex-  
18                  changed by the parties to such trans-  
19                  actions.

20                  “(iii) STATE LAW PREEMPTION.—  
21                  Subsection (i)(1) shall govern the relation-  
22                  ship between the requirements applicable  
23                  to M&A brokers under this Act and the re-  
24                  quirements applicable to M&A brokers  
25                  under the law of a State or a political sub-

1 division of a State. Except as provided in  
2 such subsection, this paragraph shall not  
3 preempt the law of a State or a political  
4 subdivision of a State applicable to M&A  
5 brokers.

6 “(H) EXCLUDED ACTIVITIES.—An M&A  
7 broker may not in reliance on this paragraph do  
8 any of the following:

9 “(i) Directly or indirectly, in connec-  
10 tion with the transfer of ownership of an  
11 eligible privately held company, receive,  
12 hold, transmit, or have custody of the  
13 funds or securities to be exchanged by the  
14 parties to the transaction.

15 “(ii) Engage on behalf of an issuer in  
16 a public offering of any class of securities  
17 that is registered, or is required to be reg-  
18 istered, with the Commission under section  
19 12 or with respect to which the issuer files,  
20 or is required to file, periodic information,  
21 documents, and reports under section  
22 15(d).

23 “(I) COORDINATION WITH THE STATES.—  
24 In establishing appropriate uniform and con-  
25 sistent standards of training, experience, com-

1           petence, and other qualifications under para-  
2           graph (7) for persons associated with an M&A  
3           broker, and in prescribing the form and content  
4           of the notice described in subparagraph (A), the  
5           Commission shall cooperate, coordinate, and  
6           share information with any association com-  
7           posed of duly constituted representatives of  
8           State governments the primary assignment of  
9           which is the regulation of the securities busi-  
10          ness within such States.

11           “(J) REGULATIONS.—Not later than 180  
12          days after the date of the enactment of this  
13          paragraph, the Commission shall promulgate  
14          regulations to—

15                   “(i) implement and enforce this para-  
16                   graph; and

17                   “(ii) codify the interpretative guidance  
18                   issued by the staff of the Commission in  
19                   the no-action letter to International Busi-  
20                   ness Exchange Corporation dated Decem-  
21                   ber 12, 1986, and in the no-action letter to  
22                   Country Business, Inc., dated November 8,  
23                   2006, with respect to circumstances under  
24                   which registration as a broker under this  
25                   section is not required.



1 “(K) DEFINITIONS.—In this paragraph:

2 “(i) CONTROL.—The term ‘control’  
3 means the power, directly or indirectly, to  
4 direct the management or policies of a  
5 company, whether through ownership of  
6 securities, by contract, or otherwise. There  
7 is a presumption of control for any person  
8 who—

9 “(I) is a director, general part-  
10 ner, member or manager of a limited  
11 liability company, or officer exercising  
12 executive responsibility (or has similar  
13 status or functions);

14 “(II) has the right to vote 25  
15 percent or more of a class of voting  
16 securities or the power to sell or direct  
17 the sale of 25 percent or more of a  
18 class of voting securities; or

19 “(III) in the case of a partner-  
20 ship or limited liability company, has  
21 the right to receive upon dissolution,  
22 or has contributed, 25 percent or  
23 more of the capital.

24 “(ii) ELIGIBLE PRIVATELY HELD  
25 COMPANY.—The term ‘eligible privately

1 held company’ means a company that  
2 meets both of the following conditions:

3 “(I) The company does not have  
4 any class of securities registered, or  
5 required to be registered, with the  
6 Commission under section 12 or with  
7 respect to which the company files, or  
8 is required to file, periodic informa-  
9 tion, documents, and reports under  
10 section 15(d).

11 “(II) In the fiscal year ending  
12 immediately before the fiscal year in  
13 which the services of the M&A broker  
14 are initially engaged with respect to  
15 the securities transaction, the com-  
16 pany meets either or both of the fol-  
17 lowing conditions (determined in ac-  
18 cordance with the historical financial  
19 accounting records of the company):

20 “(aa) The earnings of the  
21 company before interest, taxes,  
22 depreciation, and amortization  
23 are less than \$25,000,000.

1                   “(bb) The gross revenues of  
2                   the company are less than  
3                   \$250,000,000.

4                   “(iii) M&A BROKER.—The term ‘M&A  
5                   broker’ means a broker engaged in the  
6                   business of effecting the transfer of owner-  
7                   ship of an eligible privately held company,  
8                   regardless of whether the broker acts on  
9                   behalf of a seller or buyer, through the  
10                  purchase, sale, exchange, issuance, repur-  
11                  chase, or redemption of, or a business com-  
12                  bination involving, securities or assets of  
13                  the eligible privately held company, if the  
14                  broker reasonably believes that—

15                  “(I) upon consummation of the  
16                  transaction, any person acquiring se-  
17                  curities or assets of the eligible pri-  
18                  vately held company, acting alone or  
19                  in concert, will control and, directly or  
20                  indirectly, will be active in the man-  
21                  agement of the eligible privately held  
22                  company or the business conducted  
23                  with the assets of the eligible privately  
24                  held company; and

1           “(II) if any person is offered se-  
2           curities in exchange for securities or  
3           assets of the eligible privately held  
4           company, such person will, prior to  
5           becoming legally bound to consum-  
6           mate the transaction, receive or have  
7           reasonable access to the most recent  
8           year-end balance sheet, income state-  
9           ment, statement of changes in finan-  
10          cial position, and statement of owner’s  
11          equity of the issuer of the securities  
12          offered in exchange, and, if the finan-  
13          cial statements of the issuer are au-  
14          dited, the related report of the inde-  
15          pendent auditor, a balance sheet  
16          dated not more than 120 days before  
17          the date of the offer, and information  
18          pertaining to the management, busi-  
19          ness, results of operations for the pe-  
20          riod covered by the foregoing financial  
21          statements, and material loss contin-  
22          gencies of the issuer.

23           “(L) INFLATION ADJUSTMENT.—

24           “(i) IN GENERAL.—On the date that  
25          is 5 years after the Commission first pro-

1 mulgates final regulations under subpara-  
2 graph (J), and every 5 years thereafter,  
3 each dollar amount in subparagraph  
4 (K)(ii)(II) shall be adjusted by—

5 “(I) dividing the annual value of  
6 the Employment Cost Index For  
7 Wages and Salaries, Private Industry  
8 Workers (or any successor index), as  
9 published by the Bureau of Labor  
10 Statistics, for the calendar year pre-  
11 ceding the calendar year in which the  
12 adjustment is being made by the an-  
13 nual value of such index (or suc-  
14 cessor) for the calendar year ending  
15 December 31, 2012; and

16 “(II) multiplying such dollar  
17 amount by the quotient obtained  
18 under subclause (I).

19 “(ii) ROUNDING.—Each dollar  
20 amount determined under clause (i) shall  
21 be rounded to the nearest multiple of  
22 \$100,000.”.

23 (b) EFFECTIVE DATE.—Paragraph (13) of section  
24 15(b) of the Securities Exchange Act of 1934, as added  
25 by subsection (a), except subparagraph (J) of such para-

- 1 graph, shall take effect on the date that is 180 days after
- 2 the date of the enactment of this Act.

○