

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.

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

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.

○