

113TH CONGRESS
2D SESSION

S. 1923

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 SENATE OF THE UNITED STATES

JANUARY 14, 2014

Mr. MANCHIN (for himself and Mr. VITTER) introduced the following bill; which was read twice and referred to the Committee on Banking, Housing, and Urban Affairs

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 2014”.

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

3 Section 15(b) of the Securities Exchange Act of 1934
 4 (15 U.S.C. 78o(b)) is amended by adding at the end the
 5 following:

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

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

11 “(B) EXCLUDED ACTIVITIES.—An M&A
 12 broker is not exempt from registration under
 13 this paragraph if such broker does any of the
 14 following:

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

21 “(ii) Engages on behalf of an issuer in
 22 a public offering of any class of securities
 23 that is registered, or is required to be reg-
 24 istered, with the Commission under section
 25 12 or with respect to which the issuer files,
 26 or is required to file, periodic information,

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

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

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

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

17 “(I) is a director, general part-
18 ner, member or manager of a limited
19 liability company, or officer exercising
20 executive responsibility (or has similar
21 status or functions);

22 “(II) has the right to vote 20
23 percent or more of a class of voting
24 securities or the power to sell or direct

1 the sale of 20 percent or more of a
2 class of voting securities; or

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

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

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

20 “(II) In the fiscal year ending
21 immediately before the fiscal year in
22 which the services of the M&A broker
23 are initially engaged with respect to
24 the securities transaction, the com-
25 pany meets either or both of the fol-

1 lowing conditions (determined in ac-
2 cordance with the historical financial
3 accounting records of the company):

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

8 “(bb) The gross revenues of
9 the company are less than
10 \$250,000,000.

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

24 “(I) upon consummation of the
25 transaction, any person acquiring se-

1 securities or assets of the eligible pri-
2 vately held company, acting alone or
3 in concert, will control and, directly or
4 indirectly, will be active in the man-
5 agement of the eligible privately held
6 company or the business conducted
7 with the assets of the eligible privately
8 held company; and

9 “(II) if any person is offered se-
10 curities in exchange for securities or
11 assets of the eligible privately held
12 company, such person will, prior to
13 becoming legally bound to consum-
14 mate the transaction, receive or have
15 reasonable access to the most recent
16 year-end balance sheet, income state-
17 ment, statement of changes in finan-
18 cial position, and statement of owner’s
19 equity of the issuer of the securities
20 offered in exchange, and, if the finan-
21 cial statements of the issuer are au-
22 dited, the related report of the inde-
23 pendent auditor, a balance sheet
24 dated not more than 120 days before
25 the date of the offer, and information

1 pertaining to the management, busi-
 2 ness, results of operations for the pe-
 3 riod covered by the foregoing financial
 4 statements, and material loss contin-
 5 gencies of the issuer.

6 “(E) INFLATION ADJUSTMENT.—

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

14 “(I) dividing the annual value of
 15 the Employment Cost Index For
 16 Wages and Salaries, Private Industry
 17 Workers (or any successor index), as
 18 published by the Bureau of Labor
 19 Statistics, for the calendar year pre-
 20 ceding the calendar year in which the
 21 adjustment is being made by the an-
 22 nual value of such index (or suc-
 23 cessor) for the calendar year ending
 24 December 31, 2012; and

1 “(II) multiplying such dollar
2 amount by the quotient obtained
3 under subclause (I).

4 “(ii) ROUNDING.—Each dollar
5 amount determined under clause (i) shall
6 be rounded to the nearest multiple of
7 \$100,000.’’.

8 **SEC. 3. EFFECTIVE DATE.**

9 This Act and any amendment made by this Act shall
10 take effect on the date that is 90 days after the date of
11 the enactment of this Act.

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