

114TH CONGRESS
1ST SESSION

S. 1010

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

APRIL 20, 2015

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 2015”.

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 “(iii) Engages on behalf of any party
4 in a transaction involving a public shell
5 company.

6 “(C) DISQUALIFICATIONS.—An M&A
7 broker is not exempt from registration under
8 this paragraph if such broker is subject to—

9 “(i) suspension or revocation of reg-
10 istration under paragraph (4);

11 “(ii) a statutory disqualification de-
12 scribed in section 3(a)(39);

13 “(iii) a disqualification under the
14 rules adopted by the Commission under
15 section 926 of the Investor Protection and
16 Securities Reform Act of 2010 (15 U.S.C.
17 77d note); or

18 “(iv) a final order described in para-
19 graph (4)(H).

20 “(D) RULE OF CONSTRUCTION.—Nothing
21 in this paragraph shall be construed to limit
22 any other authority of the Commission to ex-
23 empt any person, or any class of persons, from
24 any provision of this title, or from any provision
25 of any rule or regulation thereunder.

1 “(E) 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 20
15 percent or more of a class of voting
16 securities or the power to sell or direct
17 the sale of 20 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, 20 percent or
23 more of the capital.

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

1 held company' means a privately held com-
2 pany that meets both of the following con-
3 ditions:

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

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

21 “(aa) The earnings of the
22 company before interest, taxes,
23 depreciation, and amortization
24 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, and any person
6 associated with a broker, engaged in the
7 business of effecting securities transactions
8 solely in connection with the transfer of
9 ownership of an eligible privately held com-
10 pany, regardless of whether the broker acts
11 on behalf of a seller or buyer, through the
12 purchase, sale, exchange, issuance, repur-
13 chase, or redemption of, or a business com-
14 bination involving, securities or assets of
15 the eligible privately held company, if the
16 broker reasonably believes that—

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

1 with the assets of the eligible privately
2 held company; and

3 “(II) if any person is offered se-
4 curities in exchange for securities or
5 assets of the eligible privately held
6 company, such person will, prior to
7 becoming legally bound to consum-
8 mate the transaction, receive or have
9 reasonable access to the most recent
10 fiscal year-end financial statements of
11 the issuer of the securities as custom-
12 arily prepared by the management of
13 the issuer in the normal course of op-
14 erations and, if the financial state-
15 ments of the issuer are audited, re-
16 viewed, or compiled, any related state-
17 ment by the independent accountant,
18 a balance sheet dated not more than
19 120 days before the date of the offer,
20 and information pertaining to the
21 management, business, results of op-
22 erations for the period covered by the
23 foregoing financial statements, and
24 material loss contingencies of the
25 issuer.

“(iv) PUBLIC SHELL COMPANY.—The term ‘public shell company’ is a company that at the time of a transaction with an eligible privately held company—

“(I) has any class of securities registered, or required to be registered, with the Commission under section 12 or that is required to file reports pursuant to subsection (d);

“(II) has no or nominal operations; and

“(III) has—

“(aa) no or nominal assets;

“(bb) assets consisting solely of cash and cash equivalents; or

“(cc) assets consisting of any amount of cash and cash equivalents and nominal other assets.

“(F) INFLATION ADJUSTMENT.—

“(i) IN GENERAL.—On the date that is 5 years after the date of the enactment of the Small Business Mergers, Acquisitions, Sales, and Brokerage Simplification Act of 2015, and every 5 years thereafter,

each dollar amount in subparagraph
(E)(ii)(II) shall be adjusted by—

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

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

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

SEC. 3. EFFECTIVE DATE.

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

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