

116TH CONGRESS
1ST SESSION

S. 2724

To amend the Sarbanes-Oxley Act of 2002 to exclude the audits of privately held, non-custody brokers and dealers that are in good standing from certain requirements under title I of that Act, and for other purposes.

IN THE SENATE OF THE UNITED STATES

OCTOBER 29, 2019

Mr. COTTON (for himself, Ms. SINEMA, Mr. TILLIS, and Mr. JONES) introduced the following bill; which was read twice and referred to the Committee on Banking, Housing, and Urban Affairs

A BILL

To amend the Sarbanes-Oxley Act of 2002 to exclude the audits of privately held, non-custody brokers and dealers that are in good standing from certain requirements under title I of that Act, and for other purposes.

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 Audit
5 Correction Act of 2019”.

1 **SEC. 2. EXEMPTION.**

2 (a) AMENDMENTS TO THE SARBANES-OXLEY ACT OF
3 2002.—Section 110 of the Sarbanes-Oxley Act of 2002
4 (15 U.S.C. 7220) is amended—

5 (1) in paragraph (3), by inserting “, except that
6 the term does not include a non-custody broker or
7 dealer that is privately held and in good standing”
8 after “registered public accounting firm”;

9 (2) in paragraph (4), by inserting “, except that
10 the term does not include a non-custody broker or
11 dealer that is privately held and in good standing”
12 after “registered public accounting firm”;

13 (3) by redesignating paragraphs (5) and (6) as
14 paragraphs (8) and (9), respectively; and

15 (4) by inserting after paragraph (4) the fol-
16 lowing:

17 “(5) IN GOOD STANDING.—The term ‘in good
18 standing’ means, with respect to a broker or dealer
19 (as those terms are defined in section 3(a) of the Se-
20 curities Exchange Act of 1934 (15 U.S.C. 78c(a))),
21 that, as of the last day of the most recently com-
22 pleted fiscal year of the broker or dealer, as applica-
23 ble, the broker or dealer—

24 “(A) is registered with the Commission;

25 “(B) is a member of an association that is
26 registered as a national securities association

1 under section 15A of the Securities Exchange
2 Act of 1934 (15 U.S.C. 78o–3);

3 “(C) is compliant with the minimum dollar
4 net capital requirements under section
5 240.15c3–1 of title 17, Code of Federal Regula-
6 tions, or any successor regulation;

7 “(D) has not, during the 10-year period
8 preceding that date, been convicted of a felony
9 under Federal or State law;

10 “(E) does not have a person associated
11 with the broker or dealer, as defined in section
12 3(a) of the Securities Exchange Act of 1934
13 (15 U.S.C. 78c(a)), that, during the 10-year pe-
14 riod preceding that date, has been convicted of
15 a felony for fraudulent conduct under Federal
16 or State law; and

17 “(F) is not subject to statutory disquali-
18 fication by reason of being—

19 “(i) expelled or suspended from—

20 “(I) an association that is reg-
21 istered as described in subparagraph
22 (B); or

23 “(II) an association that is reg-
24 istered as a registered futures associa-

tion under section 17 of the Commodity Exchange Act (7 U.S.C. 21);

“(ii) subject to an order of the Commission, other appropriate regulatory agency, or foreign financial regulatory authority denying, suspending, or revoking the registration of the broker or dealer as a regulated entity;

“(iii) subject to an order of the Commodity Futures Trading Commission, or other appropriate regulatory entity, denying, suspending, or revoking the registration of the broker or dealer under the Commodity Exchange Act (7 U.S.C. 1 et seq.) or the authority of the broker or dealer to engage in any transaction; or

“(iv) subject to a restraining order entered by a court.

“(6) NON-CUSTODY BROKER OR DEALER.—The term ‘non-custody broker or dealer’ means a broker or dealer (as those terms are defined in section 3(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a))), as applicable, that—

“(A) as of the last day of the most recently completed fiscal year of the broker or dealer—

1 “(i) has not less than one and not
2 more than 150 persons registered with an
3 association that is registered as a national
4 securities association under section 15A of
5 the Securities Exchange Act of 1934 (15
6 U.S.C. 78o–3);

7 “(ii) is not a high frequency trading
8 broker or dealer, as that term is defined by
9 the Commission with respect to a par-
10 ticular registered firm type; and

11 “(iii) is not affiliated with an invest-
12 ment advisor that—

13 “(I) is registered with the Com-
14 mission or a State entity; and

15 “(II) acts as the custodian for
16 customer assets;

17 “(B) with respect to the average of the
18 three most recently completed fiscal years of
19 the broker or dealer, has gross revenue that en-
20 ables the broker or dealer to qualify as a small
21 business concern for the purposes of a program
22 administered by the Small Business Adminis-
23 tration; and

24 “(C) throughout the most recently com-
25 pleted fiscal year of the broker or dealer—

“(i) does not, as a matter of ordinary business practice in connection with the activities of the broker or dealer, receive customer checks, drafts, or other evidence of indebtedness made payable to the broker or dealer;

“(ii) if required under section 3(a)(2) of the Securities Investor Protection Act of 1970 (15 U.S.C. 78ccc(a)(2)), is a member of the Securities Investor Protection Corporation; and

“(iii) either—

“(I) if the broker or dealer is subject to section 240.15c3–3 of title 17, Code of Federal Regulations, or any successor regulation, is in compliance with that section; or

“(II) is not subject to such section 240.15c3–3, or any successor regulation, because the broker or dealer does not maintain custody over any customer securities or cash.

“(7) PRIVATELY HELD.—The term ‘privately held’ means, with respect to a broker or dealer (as those terms are defined in section 3(a) of the Securi-

1 ties Exchange Act of 1934 (15 U.S.C. 78c(a))), that
 2 the broker or dealer, as applicable, is not an
 3 issuer.”.

4 (b) AMENDMENTS TO REGULATIONS.—

5 (1) DEFINITIONS.—In this subsection, the
 6 terms “in good standing”, “non-custody broker or
 7 dealer”, and “privately held” have the meanings
 8 given the terms in section 110 of the Sarbanes-Oxley
 9 Act of 2002 (15 U.S.C. 7220), as amended by sub-
 10 section (a).

11 (2) AMENDMENTS.—Not later than 180 days
 12 after the date of enactment of this Act, the Securi-
 13 ties and Exchange Commission shall make any nec-
 14 essary amendments to regulations of the Commis-
 15 sion that are in effect as of the date of enactment
 16 of this Act in order to—

17 (A) carry out this Act and the amend-
 18 ments made by this Act; and

19 (B) exclude the auditors of non-custody
 20 brokers or dealers that are privately held and in
 21 good standing from the audit requirements of
 22 the Public Company Accounting Oversight
 23 Board.

1 (c) EFFECTIVE DATE.—This Act, and the amend-
2 ments made by this Act, shall take effect on the date that
3 is 180 days after the date of enactment of this Act.

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