

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.

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## 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

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## 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.

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

5           “(I) has any class of securities  
6 registered, or required to be reg-  
7 istered, with the Commission under  
8 section 12 or that is required to file  
9 reports pursuant to subsection (d);

10           “(II) has no or nominal oper-  
11 ations; and

12           “(III) has—

13           “(aa) no or nominal assets;

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

16           “(cc) assets consisting of  
17 any amount of cash and cash  
18 equivalents and nominal other as-  
19 sets.

20           “(F) INFLATION ADJUSTMENT.—

21           “(i) IN GENERAL.—On the date that  
22 is 5 years after the date of the enactment  
23 of the Small Business Mergers, Acquisi-  
24 tions, Sales, and Brokerage Simplification  
25 Act of 2015, and every 5 years thereafter,



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

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

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

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

21 **SEC. 3. EFFECTIVE DATE.**

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

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