

115TH CONGRESS
2D SESSION

S. 3004

To amend the Sarbanes-Oxley Act of 2002 to exclude 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

JUNE 6, 2018

Mr. COTTON (for himself 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 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 2018”.

1 **SEC. 2. EXEMPTION.**

2 (a) AMENDMENTS TO THE SARBANES-OXLEY ACT OF
3 2002.—Title I of the Sarbanes-Oxley Act of 2002 (15
4 U.S.C. 7211 et seq.) is amended—

5 (1) in section 101(e)(1) (15 U.S.C. 7211(e)(1)),
6 by striking “brokers, and dealers” and inserting
7 “brokers, dealers, and non-custody brokers or deal-
8 ers that are privately held and in good standing”;
9 and

10 (2) in section 110 (15 U.S.C. 7220)—

11 (A) in paragraph (3)—

12 (i) by striking “The term” and insert-
13 ing “Except as otherwise expressly pro-
14 vided, the term”; and

15 (ii) by inserting “, except that the
16 term does not include a non-custody broker
17 or dealer that is privately held and in good
18 standing” after “registered public account-
19 ing firm”;

20 (B) in paragraph (4)—

21 (i) by striking “The term” and insert-
22 ing “Except as otherwise expressly pro-
23 vided, the term”; and

24 (ii) by inserting “, except that the
25 term does not include a non-custody broker
26 or dealer that is privately held and in good

1 standing” after “registered public account-
2 ing firm”;

3 (C) by redesignating paragraphs (5) and
4 (6) as paragraphs (8) and (9), respectively; and

5 (D) by inserting after paragraph (4) the
6 following:

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

14 “(A) was registered with the Commission;

15 “(B) was licensed by, and registered with,
16 the Financial Industry Regulatory Authority or
17 a national securities exchange that is registered
18 with the Commission under section 6 of the Se-
19 curities Exchange Act of 1934 (15 U.S.C. 78f);

20 “(C) was compliant with the minimum dol-
21 lar net capital requirements under section
22 240.15c3–1 of title 17, Code of Federal Regula-
23 tions, or any successor regulation;

1 “(D) had not, during the 10-year period
2 preceding that date, been convicted of a felony
3 under Federal or State law; and

4 “(E) was not barred from registering, or
5 had not been expelled from registration, with
6 the Commission, the Financial Industry Regu-
7 latory Authority, the Commodity Futures Trad-
8 ing Commission, or any State regulatory agen-
9 cy, without regard to whether the broker or
10 dealer had, as of that date, filed an appeal chal-
11 lenging such a bar or expulsion, as applicable.

12 “(6) NON-CUSTODY BROKER OR DEALER.—The
13 term ‘non-custody broker or dealer’ means a broker
14 or dealer (as those terms are defined in section 3(a)
15 of the Securities Exchange Act of 1934 (15 U.S.C.
16 78c(a))), as applicable, that—

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

19 “(i) had not less than 1 and not more
20 than 150 registered persons holding a se-
21 curities license registered with the broker
22 or dealer;

23 “(ii) cleared each eligible transaction
24 with and for a consumer on a fully dis-
25 closed basis with a clearing broker or deal-

1 er or a member of a national securities ex-
2 change that is registered with the Commis-
3 sion under section 6 of the Securities Ex-
4 change Act of 1934 (15 U.S.C. 78f);

5 “(iii) did not, as a matter of ordinary
6 business practice in connection with the ac-
7 tivities of the broker or dealer, elect to re-
8 ceive customer checks, drafts, or other evi-
9 dence of indebtedness made payable to the
10 broker or dealer or a person other than the
11 requisite registered broker or dealer car-
12 rying the account of a customer, escrow
13 agent, issuer, underwriter, sponsor, or
14 other distributor of securities;

15 “(iv) did not otherwise hold funds or
16 securities for customers; and

17 “(v) if required under section 3(a)(2)
18 of the Securities Investor Protection Act of
19 1970 (15 U.S.C. 78ccc(a)(2)), was a mem-
20 ber of the Securities Investor Protection
21 Corporation; and

22 “(B) during the most recently completed
23 fiscal year of the broker or dealer, claimed ex-
24 emption from section 240.15c3-3 of title 17,

1 Code of Federal Regulations, or any successor
2 regulation.

3 “(7) PRIVATELY HELD.—The term ‘privately
4 held’ means, with respect to a broker or dealer (as
5 those terms are defined in section 3(a) of the Securi-
6 ties Exchange Act of 1934 (15 U.S.C. 78c(a))), that
7 the broker or dealer, as applicable, is not an
8 issuer.”.

9 (b) AMENDMENTS TO REGULATIONS.—Not later
10 than 60 days after the date of enactment of this Act, the
11 Securities and Exchange Commission shall make any nec-
12 essary amendments to regulations of the Commission that
13 are in effect as of the date of enactment of this Act in
14 order to carry out this Act and the amendments made by
15 this Act.

16 (c) EFFECTIVE DATE.—This Act, and the amend-
17 ments made by this Act, shall take effect on the date that
18 is 60 days after the date of enactment of this Act.

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