

112TH CONGRESS
1ST SESSION

S. 1824

To amend the securities laws to establish certain thresholds for shareholder registration under that Act, and for other purposes.

IN THE SENATE OF THE UNITED STATES

NOVEMBER 8, 2011

Mr. TOOMEY (for himself, Mr. CARPER, Mr. WARNER, and Mr. JOHANNIS) 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 laws to establish certain thresholds for shareholder registration under 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 “Private Company
5 Flexibility and Growth Act”.

6 **SEC. 2. THRESHOLD FOR REGISTRATION.**

7 Section 12(g)(1) of the Securities Exchange Act of
8 1934 (15 U.S.C. 78l(g)(1)) is amended by striking
9 “shall—” and all that follows through “register such” and

1 inserting “shall, not later than 120 days after the last day
2 of its first fiscal year ended, on which the issuer has total
3 assets exceeding \$10,000,000 and a class of equity secu-
4 rity (other than an exempted security) held of record by
5 2,000 persons, register such”.

6 **SEC. 3. TREATMENT OF EMPLOYEE SECURITIES.**

7 Section 12(g)(5) of the Securities Exchange Act of
8 1934 (15 U.S.C. 78l(g)(5)) is amended by adding at the
9 end the following: “For purposes of determining whether
10 an issuer is required to register a security with the Com-
11 mission pursuant to paragraph (1), the definition of the
12 term ‘held of record’ shall not include securities that are
13 held by persons who received the securities pursuant to
14 an employee compensation plan in transactions exempted
15 from the registration requirements of section 5 of the Se-
16 curities Act of 1933.”.

17 **SEC. 4. COMMISSION RULEMAKING.**

18 The Securities and Exchange Commission shall, not
19 later than one year after the date of enactment of this
20 Act—

21 (1) revise the definition of the term “held of
22 record” pursuant to section 12(g)(5) of the Securi-
23 ties Exchange Act of 1934 (15 U.S.C. 78l(g)(5)) to
24 implement the amendments made by section 3; and

1 (2) adopt safe harbor provisions that issuers
2 can follow when determining whether holders of
3 their securities received the securities pursuant to an
4 employee compensation plan in transactions that
5 were exempt from the registration requirements of
6 section 5 of the Securities Act of 1933.

7 **SEC. 5. SHAREHOLDER REGISTRATION THRESHOLD.**

8 (a) AMENDMENT TO SECTION 12 OF THE SECURI-
9 TIES EXCHANGE ACT OF 1934.—Section 12(g)(4) of the
10 Securities Exchange Act of 1934 (15 U.S.C. 78l(g)(4)) is
11 amended by striking “three hundred” and inserting “300
12 persons, or, in the case of a bank, as such term is defined
13 in section 3(a)(6), or a bank holding company, as such
14 term is defined in section 2 of the Bank Holding Company
15 Act of 1956 (12 U.S.C. 1841), 1200”.

16 (b) AMENDMENT TO SECTION 15 OF THE SECURI-
17 TIES EXCHANGE ACT OF 1934.—Section 15(d) of the Se-
18 curities Exchange Act of 1934 (15 U.S.C. 78o(d)) is
19 amended, in the third sentence, by striking “three hun-
20 dred” and inserting “300 persons, or, in the case of a
21 bank, as such term is defined in section 3(a)(6), or a bank
22 holding company, as such term is defined in section 2 of
23 the Bank Holding Company Act of 1956 (12 U.S.C.
24 1841), 1200”.

1 **SEC. 6. BANK EXEMPTION FROM MUNICIPAL ADVISOR REG-**
2 **ISTRATION.**

3 Section 15B(e)(4) of the Securities Exchange Act of
4 1934 (15 U.S.C. 78o-4(e)(4)) is amended—

5 (1) in subparagraph (A), by striking “(who is
6 not a municipal entity, or an employee of a munic-
7 ipal entity)” and inserting “(who is not a municipal
8 entity, or an employee of a municipal entity, or a
9 person appointed to or volunteering on a board,
10 commission, committee, or similar function of a mu-
11 nicipal entity)”; and

12 (2) in subparagraph (C), by inserting after “in-
13 clude” the following: “a bank (as defined in section
14 (3)(a)(6)) or an agency or branch of a foreign bank
15 (as defined in paragraphs (1) and (3), respectively,
16 of section 1(b) of the International Banking Act of
17 1978) (12 U.S.C. 3101),”.

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