

117TH CONGRESS
1ST SESSION

S. 1559

To amend the Internal Revenue Code of 1986 to allow certain qualified over-the-counter securities to be treated as readily traded on an established securities market for the purpose of diversification requirements for employee stock ownership plans.

IN THE SENATE OF THE UNITED STATES

MAY 11, 2021

Mr. TILLIS (for himself and Mr. PETERS) introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To amend the Internal Revenue Code of 1986 to allow certain qualified over-the-counter securities to be treated as readily traded on an established securities market for the purpose of diversification requirements for employee stock ownership plans.

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 “2021 ESOP Fairness
5 Act”.

1 **SEC. 2. CERTAIN SECURITIES TREATED AS PUBLICLY**
 2 **TRADED.**

3 (a) IN GENERAL.—Paragraph (35) of section 401(a)
 4 of the Internal Revenue Code of 1986 is amended by add-
 5 ing at the end the following new subparagraph:

6 “(I) RULES RELATING TO PUBLICLY TRAD-
 7 ED SECURITIES.—For purposes of this para-
 8 graph—

9 “(i) IN GENERAL.—The term ‘publicly
 10 traded employer securities’ means em-
 11 ployer securities which are readily tradable
 12 on an established securities market.

13 “(ii) SPECIAL RULE.—A security shall
 14 be treated as described in clause (i) if the
 15 security—

16 “(I) is the subject of priced
 17 quotations by at least 2 dealers, pub-
 18 lished and made continuously avail-
 19 able on an interdealer quotation sys-
 20 tem (as such term is used in section
 21 13 of the Securities Exchange Act of
 22 1934) which has made the request de-
 23 scribed in section 6(j) of such Act to
 24 be treated as an alternative trading
 25 system,

1 “(II) is not a penny stock (as de-
2 fined by section 3(a)(51) of such Act),

3 “(III) is issued by a company
4 which is not a shell company (as such
5 term is used in section 4(d)(6) of the
6 Securities Act of 1933) or a blank
7 check company (as defined in section
8 7(b)(3) of such Act), and is not sub-
9 ject to bankruptcy proceedings,

10 “(IV) in the case of a security
11 issued by a company incorporated in
12 the United States, the issuer pub-
13 lishes, not less frequently than annu-
14 ally, financial statements audited by
15 an independent auditor registered
16 with the Public Company Accounting
17 Oversight Board established under the
18 Sarbanes-Oxley Act of 2002, and

19 “(V) in the case of a security
20 issued by a company incorporated out-
21 side of the United States, the issuer—

22 “(aa) is subject to the re-
23 porting requirements of sections
24 13 or 15(d) of the Securities Ex-
25 change Act of 1934,

1 “(bb) is subject to the re-
 2 porting requirements of section
 3 230.257 of title 17, Code of Fed-
 4 eral Regulations, or

5 “(cc) is exempt from such
 6 requirements under section
 7 240.12g3–2(b) of title 17, Code
 8 of Federal Regulations, and
 9 has published all information which is
 10 required by such Act or Rule, as ap-
 11 plicable, to be publicly available.”.

12 (b) CONFORMING AMENDMENT.—Subparagraph (G)
 13 of section 401(a)(35) of the Internal Revenue Code of
 14 1986 is amended by striking clause (v) and by redesign-
 15 ating clause (vi) as clause (v).

16 (c) EFFECTIVE DATE.—The amendments made by
 17 this section shall apply to plan years beginning after the
 18 date of the enactment of this Act.

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