

117TH CONGRESS
2D SESSION

S. 4292

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

MAY 24, 2022

Mr. COTTON (for himself and Ms. SINEMA) 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 2022”.

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-

1 tion under section 17 of the Com-
2 modity Exchange Act (7 U.S.C. 21);

3 “(ii) subject to an order of the Com-
4 mission, other appropriate regulatory agen-
5 cy, or foreign financial regulatory authority
6 denying, suspending, or revoking the reg-
7 istration of the broker or dealer as a regu-
8 lated entity;

9 “(iii) subject to an order of the Com-
10 modity Futures Trading Commission, or
11 other appropriate regulatory entity, deny-
12 ing, suspending, or revoking the registra-
13 tion of the broker or dealer under the
14 Commodity Exchange Act (7 U.S.C. 1 et
15 seq.) or the authority of the broker or deal-
16 er to engage in any transaction; or

17 “(iv) subject to a restraining order en-
18 tered by a court.

19 “(6) NON-CUSTODY BROKER OR DEALER.—The
20 term ‘non-custody broker or dealer’ means a broker
21 or dealer (as those terms are defined in section 3(a)
22 of the Securities Exchange Act of 1934 (15 U.S.C.
23 78c(a))), as applicable, that—

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

1 “(i) has not less than 1 and not more
2 than 150 persons registered with an asso-
3 ciation that is registered as a national se-
4 curities 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 adviser that—

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

15 “(II) acts as a custodian for cus-
16 tomer assets;

17 “(B) with respect to the average of the 3
18 most recently completed fiscal years of the
19 broker or dealer, has gross revenue that enables
20 the broker or dealer to qualify as a small busi-
21 ness concern for the purposes of a program ad-
22 ministered by the Small Business Administra-
23 tion; and

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

1 “(i) does not, as a matter of ordinary
 2 business practice in connection with the ac-
 3 tivities of the broker or dealer, receive cus-
 4 tomer checks, drafts, or other evidence of
 5 indebtedness made payable to the broker
 6 or dealer;

7 “(ii) if required under section 3(a)(2)
 8 of the Securities Investor Protection Act of
 9 1970 (15 U.S.C. 78ccc(a)(2)), is a member
 10 of the Securities Investor Protection Cor-
 11 poration; and

12 “(iii) either—

13 “(I) if the broker or dealer is
 14 subject to section 240.15c3–3 of title
 15 17, Code of Federal Regulations, or
 16 any successor regulation, is in compli-
 17 ance with that section; or

18 “(II) is not subject to such sec-
 19 tion 240.15c3–3, or any successor
 20 regulation, because the broker or deal-
 21 er does not maintain custody over cus-
 22 tomer securities or cash.

23 “(7) PRIVATELY HELD.—The term ‘privately
 24 held’ means, with respect to a broker or dealer (as
 25 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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