

116TH CONGRESS
2D SESSION

H. R. 5851

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 HOUSE OF REPRESENTATIVES

FEBRUARY 11, 2020

Mr. HIGGINS of New York (for himself and Mr. KELLY of Pennsylvania) introduced the following bill; which was referred to the Committee on Ways and Means

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 “2019 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-

1 change Act of 1934 (15 U.S.C.
2 78m or 78o(d)),

3 “(bb) is subject to the re-
4 porting requirements of section
5 230.257 of title 17, Code of Fed-
6 eral Regulations, or

7 “(cc) is exempt from such
8 requirements under section
9 240.12g3–2(b) of title 17, Code
10 of Federal Regulations, and

11 has published all information which is
12 required by such Act or Rule, as ap-
13 plicable, to be publicly available.”.

14 (b) CONFORMING AMENDMENT.—Subparagraph (G)
15 of section 401(a)(35) of the Internal Revenue Code of
16 1986 is amended by striking clause (v) and by redesign-
17 ating clause (vi) as clause (v).

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

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