

114TH CONGRESS  
2D SESSION

# H. R. 2357

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IN THE SENATE OF THE UNITED STATES

SEPTEMBER 12, 2016

Received; read twice and referred to the Committee on Banking, Housing, and  
Urban Affairs

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## AN ACT

To direct the Securities and Exchange Commission to revise Form S-3 so as to add listing and registration of a class of common equity securities on a national securities exchange as an additional basis for satisfying the requirements of General Instruction I.B.1. of such form and to remove such listing and registration as a requirement of General Instruction I.B.6. of such form.

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 “Accelerating Access  
5 to Capital Act of 2016”.

6 **TITLE I—ACCELERATING**  
7 **ACCESS TO CAPITAL**

8 **SEC. 101. EXPANDED ELIGIBILITY FOR USE OF FORM S-3.**

9 Not later than 45 days after the date of the enact-  
10 ment of this Act, the Securities and Exchange Commission  
11 shall revise Form S-3—

12 (1) so as to permit securities to be registered  
13 pursuant to General Instruction I.B.1. of such form  
14 provided that either—

15 (A) the aggregate market value of the vot-  
16 ing and non-voting common equity held by non-  
17 affiliates of the registrant is \$75,000,000 or  
18 more; or

19 (B) the registrant has at least one class of  
20 common equity securities listed and registered  
21 on a national securities exchange; and

22 (2) so as to remove the requirement of para-  
23 graph (c) from General Instruction I.B.6. of such  
24 form.

1           **TITLE II—MICRO-OFFERING**  
2                           **SAFE HARBOR**

3   **SEC. 201. EXEMPTIONS FOR MICRO-OFFERINGS.**

4           (a) IN GENERAL.—Section 4 of the Securities Act of  
5 1933 (15 U.S.C. 77d) is amended—

6                   (1) in subsection (a), by adding at the end the  
7 following:

8                           “(8) transactions meeting the requirements of  
9 subsection (f).”; and

10                   (2) by adding at the end the following:

11           “(f) CERTAIN MICRO-OFFERINGS.—

12                   “(1) IN GENERAL.—Except as provided in para-  
13 graph (2), the transactions referred to in subsection  
14 (a)(8) are transactions involving the sale of securi-  
15 ties by an issuer (including all entities controlled by  
16 or under common control with the issuer) that meet  
17 all of the following requirements:

18                           “(A) PRE-EXISTING RELATIONSHIP.—Each  
19 purchaser has a substantive pre-existing rela-  
20 tionship with an officer of the issuer, a director  
21 of the issuer, or a shareholder holding 10 per-  
22 cent or more of the shares of the issuer.

23                           “(B) 35 OR FEWER PURCHASERS.—There  
24 are no more than, or the issuer reasonably be-  
25 lieves that there are no more than, 35 pur-

1 chasers of securities from the issuer that are  
2 sold in reliance on the exemption provided  
3 under subsection (a)(8) during the 12-month  
4 period preceding such transaction.

5 “(C) SMALL OFFERING AMOUNT.—The ag-  
6 gregate amount of all securities sold by the  
7 issuer, including any amount sold in reliance on  
8 the exemption provided under subsection (a)(8),  
9 during the 12-month period preceding such  
10 transaction, does not exceed \$500,000.

11 “(2) DISQUALIFICATION.—

12 “(A) IN GENERAL.—The exemption pro-  
13 vided under subsection (a)(8) shall not be avail-  
14 able for a transaction involving a sale of securi-  
15 ties if any person described in subparagraph  
16 (B) would have triggered disqualification pursu-  
17 ant to section 230.506(d) of title 17, Code of  
18 Federal Regulations.

19 “(B) PERSONS DESCRIBED.—The persons  
20 described in this subparagraph are the fol-  
21 lowing:

22 “(i) The issuer.

23 “(ii) Any predecessor of the issuer.

24 “(iii) Any affiliated issuer.

1           “(iv) Any director, executive officer,  
2           other officer participating in the offering,  
3           general partner, or managing member of  
4           the issuer.

5           “(v) Any beneficial owner of 20 per-  
6           cent or more of the issuer’s outstanding  
7           voting equity securities, calculated on the  
8           basis of voting power.

9           “(vi) Any promoter connected with  
10          the issuer in any capacity at the time of  
11          such sale.

12          “(vii) Any investment manager of an  
13          issuer that is a pooled investment fund.

14          “(viii) Any person that has been or  
15          will be paid (directly or indirectly) remu-  
16          neration for solicitation of purchasers in  
17          connection with such sale of securities.

18          “(ix) Any general partner or man-  
19          aging member of any such investment  
20          manager or solicitor.

21          “(x) Any director, executive officer, or  
22          other officer participating in the offering of  
23          any such investment manager or solicitor  
24          or general partner or managing member of  
25          such investment manager or solicitor.”.

1 (b) EXEMPTION UNDER STATE REGULATIONS.—Sec-  
 2 tion 18(b)(4) of the Securities Act of 1933 (15 U.S.C.  
 3 77r(b)(4)) is amended—

4 (1) in subparagraph (F), by striking “or” at  
 5 the end;

6 (2) in subparagraph (G), by striking the period  
 7 and inserting “; or”; and

8 (3) by adding at the end the following:

9 “(H) section 4(a)(8).”.

## 10 **TITLE III—PRIVATE PLACEMENT** 11 **IMPROVEMENT**

### 12 **SEC. 301. REVISIONS TO SEC REGULATION D.**

13 Not later than 45 days following the date of the en-  
 14 actment of this Act, the Securities and Exchange Commis-  
 15 sion shall revise Regulation D (17 CFR 501 et seq.) in  
 16 accordance with the following:

17 (1) The Commission shall revise Form D filing  
 18 requirements to require an issuer offering or selling  
 19 securities in reliance on an exemption provided  
 20 under Rule 506 of Regulation D to file with the  
 21 Commission a single notice of sales containing the  
 22 information required by Form D for each new offer-  
 23 ing of securities no earlier than 15 days after the  
 24 date of the first sale of securities in the offering.  
 25 The Commission shall not require such an issuer to

1 file any notice of sales containing the information re-  
2 quired by Form D except for the single notice de-  
3 scribed in the previous sentence.

4 (2) The Commission shall make the information  
5 contained in each Form D filing available to the se-  
6 curities commission (or any agency or office per-  
7 forming like functions) of each State and territory of  
8 the United States and the District of Columbia.

9 (3) The Commission shall not condition the  
10 availability of any exemption for an issuer under  
11 Rule 506 of Regulation D (17 CFR 230.506) on the  
12 issuer's or any other person's filing with the Com-  
13 mission of a Form D or any similar report.

14 (4) The Commission shall not require issuers to  
15 submit written general solicitation materials to the  
16 Commission in connection with a Rule 506(c) offer-  
17 ing, except when the Commission requests such ma-  
18 terials pursuant to the Commission's authority  
19 under section 8A or section 20 of the Securities Act  
20 of 1933 (15 U.S.C. 77h-1 or 77t) or section 9,  
21 10(b), 21A, 21B, or 21C of the Securities Exchange  
22 Act of 1934 (15 U.S.C. 78i, 78j(b), 78u-1, 78u-2,  
23 or 78u-3).

24 (5) The Commission shall not extend the re-  
25 quirements contained in Rule 156 to private funds.

1           (6) The Commission shall revise Rule 501(a) of  
2 Regulation D to provide that a person who is a  
3 “knowledgeable employee” of a private fund or the  
4 fund’s investment adviser, as defined in Rule 3c-  
5 5(a)(4) (17 CFR 270.3c-5(a)(4)), shall be an ac-  
6 credited investor for purposes of a Rule 506 offering  
7 of a private fund with respect to which the person  
8 is a knowledgeable employee.

Passed the House of Representatives September 8,  
2016.

Attest:

KAREN L. HAAS,

*Clerk.*