

114TH CONGRESS
2^D SESSION

H. R. 2357

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) remun-
16 eration 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:

Clerk.

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