



U.S. House of Representatives Passes Entrepreneur Access to Capital Act

Raising capital may get quite a bit easier for small businesses. If the U.S. Senate passes and the President signs the Entrepreneur Access to Capital Act, small businesses would be exempt from registering securities sold to non-accredited investors under certain circumstances.

A New Exemption to Registering Securities (Section 4(6) of the Securities Act of 1933)

Generally, the sale of securities requires registration with the Securities Exchange Commission (“SEC”) unless an exemption exists. The Entrepreneur Access to Capital Act proposes a new exemption for offerings of up to \$2 million¹ to essentially an unlimited number of accredited investors² and non-accredited investors.³ Investors may invest up to \$10,000 or 10% of their annual income, whichever is less. Shares purchased under this exemption cannot be resold for at least a year unless the investor is an accredited investor or the issuer. Perhaps most significant about this exemption is that issuers may engage in general solicitation, including through the internet.

Requirements under the New Exemption

Section 4(6) requires that certain disclosures be made to investors, including a warning to investors of the speculative nature generally applicable to investments in startups, emerging businesses, and small issuers and the restricted nature of the shares. If the offering is made through an intermediary, the intermediary must provide such disclosure as well as carry out a background check on the issuer’s principals.

The issuer must state a target offering amount and only after 60% of such an amount is raised can the capital be made available to the issuer. Also required is the appointment of a third party for cash management.

Even though such an offering would not need be registered, the issuer or intermediary must provide the SEC with basic notice of the offering, up-to-date information about the issuer and its principals, and investor-level access to the issuer’s website.

¹ The offering is limited to \$1 million if the issuer does not provide investors with audited financial statements.

² Accredited investors are considered by the SEC to have a higher level of understanding when it comes to investing in securities. Accredited investors include institutional investors, corporations, and partnerships with at least \$5 million in assets as well as individuals with at least \$1 million in assets (excluding their primary residence) or at least \$200,000 in annual income.

³ The number of non-accredited investors who may participate in an offering is generally limited under other exemptions, such as Regulation D, Rules 505 and 506.

Conclusion

The Entrepreneur Access to Capital Act, if enacted as currently passed by the House, provides an easy way for small businesses to raise capital by avoiding the expense and intricacies of registering securities. While there is a somewhat restrictive limitation on the amount each investor may invest, the ability to solicit and use the internet provides an avenue to reach a greater number of investors.

The legislation is currently under the consideration of the U.S. Senate. A vote has not yet been scheduled.

Schuchat, Herzog & Brenman lawyers closely follow Colorado and Congressional securities legislation and are well versed in understanding how the relevant statutes operate. Our lawyers represent small businesses impacted by such legislation.

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