H.R. 2357—Accelerating Access to Capital Act of 2015 (Rep. Wagner, R-MO)

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FLOOR SCHEDULE:

Expected to be considered on September 8, 2016 under a structured rule.

TOPLINE SUMMARY:

H.R. 2357 would amend the Securities and Exchange Commission's (SEC) Form S-3 registration statement for small reporting companies that have a class of common equity securities registered and listed on a national exchange. The Form S-3 registration statement is a simplified form for certain companies that have met prior reporting requirements.

This bill also includes text for H.R. 4850, which amends the Securities Act of 1933 to exempt certain transactions involving micro-offerings from registration requirements, and H.R. 4852, which amends the filing requirements of Regulation D, which provides exemptions from securities regulations requirements.

COST:

The Congressional Budget Office (CBO) estimates that implementing H.R. 2357 would cost $1 million to complete the rulemaking process, but that the net cost to the SEC would be negligible. The CBO estimates "that implementing H.R. 4850 would have no significant effect on the agency's costs to update, monitor, and enforce regulations." The CBO also estimates that implementing H.R. 4852 would have no significant effect on the SEC's costs.

CONSERVATIVE CONCERNS:

There are no substantive concerns.

- **Expand the Size and Scope of the Federal Government?** No.
- **Encroach into State or Local Authority?** No.
- **Delegate Any Legislative Authority to the Executive Branch?** No.
- **Contain Earmarks/Limited Tax Benefits/Limited Tariff Benefits?** No.

DETAILED SUMMARY AND ANALYSIS:

Under Title I, the SEC would be required to expand the availability of Form S-3 to allow smaller companies to benefit. Under an S-3 registration, also known as a shelf registration, firms are allowed to make "off the shelf" offerings of stock with similar rights to the firms already publicly traded equity. The expansion would allow small companies to register their primary securities offerings in excess of 1/3 of the aggregate market value of common equity held by the registrant's non-affiliates. Because the cost of registering securities typically affects smaller companies disproportionately, overregulation has led to the decline of smaller enterprises. It would also allow small reporting companies that do not hold common equity securities on any national securities exchange to register up to 1/3 of their public float in primary securities.

A Committee Report can be found here.

Title II would provide a technical change to the Securities Act to define a non-public offering exemption. It would enable small businesses and startups to grow, without the threat of onerous regulations and legal red tape. This title would amend the Securities Act of 1933 to provide safe harbor for small businesses meeting certain requirements, providing them with exemptions from registration requirements when making non-public securities offerings. Each qualifying small business must meet requirements including: (1) each purchaser must have a substantive, pre-existing relationship with an officer of the issuer, director of the issuer, or shareholder of the issuer that has 10% or more of the issuer's shares; (2) there must not be, or the issuer must reasonably believe that, no more than 35 securities purchasers are sold securities in reliance on the exemption within a 12-month period prior to the transaction; and (3) the total combined amount of the securities sold by the issuer must be a small amount, not to exceed $500,000 within a 12-month period. This title would also prevent bad actors from being involved in micro-offerings.

Title III would revise Regulation D as it pertains to rules for exemption from securities registration requirements for certain securities sales. Historically under Rule 506, firms are able to sell their securities without registration so long as they do not do so through advertising or general solicitation. In the JOBS Act, Congress intended to extend this exemption to sales conducted through general solicitations by small firms, so long as the sales were to accredited investors. However, Rule 506 contains several regulatory burdens that impede small businesses in establishing themselves and raising capital. Title III would specifically: (1) eliminate the need to file a Form D, which is a notice including information on the company, the size of offering, and date of sale, as a prerequisite to safe harbor under Rule 506, which provides the safe harbor protection for a private offering of exemption in the Securities Act; (2) require the SEC to make the information contained in the Form Ds available to state securities commissions; (3) prevent the SEC from placing conditions on the availability of exemptions under Rule 506 because of their filing of a Form D or a similar report; (4) prohibit the SEC from requiring issuers conducting offerings under Rule 506(c) to file general solicitation materials; (5) exempt private funds from Rule 156 requirements regarding information in sales literature; and (6) revise the definition of "accredited investor" under Rule 501(c) to include knowledgeable employees of private funds.

A section-by-section can be found here.

AMENDMENTS:

1. Rep. DeSantis (R-FL) – This amendment would require companies to publically disclose if they engage in business with Iran.
2. Rep. Hinojosa (D-TX) – This amendment would limit unaccredited investor purchasers to 35, and the amount they could invest to $5 thousand. Issuers of exempted securities would be required to submit updated disclosure documents to purchasers.

OUTSIDE GROUPS IN SUPPORT

National Taxpayers Union

COMMITTEE ACTION:

H.R. 2357 was introduced on May 15, 2015, and was referred to the House Committee on Financial Services, where it was reported by the yeas and nays, 33-24, on May 20, 2015.

ADMINISTRATION POSITION:

A Statement of Administration Policy can be found here.

CONSTITUTIONAL AUTHORITY:

Congress has the power to enact this legislation pursuant to the following: Article I, Section 8, Clause 3.

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