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DODD-FRANK REFORM BILL INCREASES ACCESS TO CAPITAL

President Trump signed the Economic Growth, Regulatory Relief and Consumer Protection Act ([the “Act”](#)) into law on May 24, 2018. The Act amends and eliminates certain provisions set forth in the Dodd-Frank Wall Street Reform and Consumer Protection Act (the “Dodd-Frank Act”) and is the first major financial services reform bill since 2010. In addition to rolling back the requirements of the Dodd-Frank Act, the Act also improves access to capital and expands the exemption for venture capital funds.

Increased Access to Capital

Regulation A (“Regulation A”) under the Securities Act of 1933 (the “Securities Act”) provides an exemption from the Securities Act registration requirements for companies that are not subject to the reporting requirements of the Exchange Act of 1934 (the “Exchange Act”) and are selling up to \$50 million of securities in a 12-month period, provided they comply with the disclosure and reporting requirements of Regulation A. Section 508 of the Act directs the Securities and Exchange Commission (the “SEC”) to amend Regulation A. The SEC must remove the requirement that companies relying on Regulation A may not be subject to the Exchange Act. In addition, the SEC is required to amend Regulation A to provide that the periodic and current reporting requirements of Regulation A will be deemed to be satisfied if an Exchange Act reporting company satisfies the reporting requirements of Section 13 of the Exchange Act. In other words, once the SEC amends Regulation A, Exchange Act reporting companies may rely on the Regulation A exemption to conduct securities offerings without having to file additional periodic reports. Exchange Act companies will need to wait until the SEC adopts final rules to amend Regulation A prior to commencing a Regulation A offering.

Expanded Exemption for Venture Capital Funds

Under the Investment Company Act of 1940 (the “Investment Company Act”), certain entities deemed investment companies are required to register with the SEC and file periodic reports, unless an exemption from the definition of investment company applies. Section 3(c)(1) of the Investment Company Act (“Section 3(c)(1)”) provides such an exemption for companies with not more than 100 beneficial owners. Section 504 of the Act amends the exemption in Section 3(c)(1) to permit a “qualifying venture capital fund” to have up to 250 beneficial owners. A “qualifying venture capital fund” means a venture capital fund that has not more than \$10,000,000 in aggregate capital contributions and uncalled committed capital. This amended exemption for qualifying venture capital funds is currently available.

Conclusion

The amendments to Regulation A will be beneficial to smaller companies that are not eligible to use the streamlined shelf registration statement on Form S-3 while the expanded exemption under the Investment Company Act provides regulatory relief to small venture capital funds.

If you would like more information regarding the Economic Growth, Regulatory Relief and Consumer Protection Act and how it will apply to your company, please contact a member of Harter Secrest & Emery LLP's Securities and Capital Markets Group. For more information, visit www.hselaw.com.

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