

MintzTech Connect: Section 4(a)(7): More Than a Codification of Section “4(a)(1½)”

April 19, 2019 | Article |

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One of the conundrums investors face when they purchase stock of private companies is how to effect a resale of that stock in compliance with the securities laws. As most everyone knows, shares of stock can be sold in the United States only pursuant to a registered offering or an exemption therefrom. When an investor purchases private stock, it is almost always done under an exemption from registration and, accordingly, the stock remains “restricted.”

In late 2015, Congress amended Section 4 of the Securities Act of 1933 to add new Section 4(a)(7), which permits resales of private, restricted stock after 90 days without requiring a registration with the SEC. The intent was to promote liquidity of private shares and thus help bolster the ecosystem of investing in emerging companies. While the intent of the legislation was noteworthy, the conditions of compliance for resale have proven burdensome and thus we have seen relatively limited activity of resales under Section 4(a)(7). In particular, Section 4(a)(7) requires no general solicitation for resales. With this limitation, it is challenging to find a buyer and most online platforms for resale are ineligible. We urge Congress to consider amending Section 4(a)(7) to permit resales using general solicitation as now permitted under Rule 506(c) under Regulation D.

Even with its inherent limitations, we believe Section 4(a)(7) is a useful tool to effect resales of private, restricted stock and we believe more investors should use this exemption to effect a resale.

[Read an article here](#) by [Sam Effron](#) and [Cliff Silverman](#) regarding Section 4(a)(7) that we originally published shortly after the legislation was passed.

Authors

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