

Corporate & Financial Weekly Digest

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Senate Passes Revised Version of JOBS Bill

H.R. 3606, the Jump-Start Our Business Start-ups Bill (the JOBS Bill), passed the House of Representatives with broad bipartisan support on March 8. The JOBS Bill includes significant reforms intended to facilitate capital raising by small businesses.

It includes, among other things:

- A new category of issuer, the "emerging growth company", which includes companies with revenue of less than \$1 billion in the most recently completed fiscal year, until the company becomes a large accelerated filer, reaches the fifth anniversary of its initial public offering of equity securities, or issues more than \$1 billion in nonconvertible debt in any three year period. Emerging growth companies (a) would be exempt from the attestation requirements of Section 404(b) of the Sarbanes-Oxley Act of 2002, (b) would only have to present two years of audited financial data and selected financial information in a registration statement for an initial public offering, and (c) would be exempt from certain other disclosure requirements including selected disclosures relating to executive compensation;
- A repeal of the ban on general solicitation or general advertising in Regulation D offerings and Rule 144A offerings, so long as the issuer or seller took reasonable steps to ensure that all purchasers were accredited investors or qualified institutional buyers, as applicable;
- An increase in the maximum amount of proceeds that can be raised pursuant to Regulation A from \$5 million to \$50 million;
- An increase in the number of shareholders of record that would trigger registration under the Securities Exchange Act of 1934 from 500 to 2000, so long as not more than 499 holders were nonaccredited investors; and
- New Section 4(6) of the Securities Act of 1933 (the so-called "crowdfunding" provision), which would permit issuers to raise up to \$2 million from nonaccredited investors without registering under the Securities Act of 1933,

subject to financial statement and other disclosure requirements and limitations on how much can be raised from any individual investor.

On March 22, the Senate passed an amended version of the JOBS Bill and sent it back to the House of Representatives to be reconciled with the original version. The Senate amendments principally consist of amendments to Section 4(6) requiring the SEC to report to Congress every two years on its findings on whether use of Section 4(6) has resulted in excessive fraud (and, if not, to make an affirmative statement to Congress that "the amount of fraud related to issuances made pursuant to section 4(6) of the Securities Act of 1933, as amended by this title, was not excessive during the reporting period."). The remaining provisions of H.R. 3606 were adopted in their entirety. Katten will publish a full Client Advisory when the JOBS Bill is signed into law.

The text of the amendments can be found [here](#).

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