



## The JOBS Act

On March 22, 2012 the Senate passed an amended version of the Jump Start our Business Start-ups Bill (the “**JOBS Bill**”) which had been passed by the House with broad bi-partisan support on March 8. The bill is expected to be signed into law by the President. The law is meant to ease the regulatory burden on smaller companies and facilitate the capital formation process. The Act includes a number of measures including (i) a transitional “on-ramp” for emerging growth companies to encourage them to pursue IPO’s by phasing in compliance measures over time after they go public; (ii) amending the 1933 Act to permit companies to conduct offerings to raise up to \$50 million under a mini-registration process similar to Reg. A; (iii) raises the limit on the number of shareholders a private company can effectively have from 500 to 2,000, (iv) provides a venue for small companies to raise up to \$1 million through the use of “crowd-funding”, and (v) eliminates the prohibition on general solicitation under Reg. D. The following is a brief synopsis of the contents of the legislation:

### Crowd-funding

Crowd-funding is a type of capital raising where individual investors pool their money to achieve a goal. The current prohibition on general solicitation and 500 shareholder limit has prevented companies from utilizing crowd-funding other than to solicit donations or pre-sell their products. The Act would allow companies like Kickstarter! to accept non-accredited equity investors by creating an exemption under 4(6) of the 1933 Act for transactions where (a) less than \$1 million of securities are sold during the prior 12 months (\$2m if the issuer provides investors with audited financials) and (b) the aggregate amount sold to any investor within 12 months does not exceed the lesser of \$10,000 or 10% of such investor’s annual income.

### Raising the limit on private shareholders from 500 to 2000

Currently, private companies with over 500 shareholders and more than \$10m in assets encounter a number of requirements that essentially compel them to go public. Start-ups using stock options to attract talent quickly push the up on this limit. The Act raises this limit to 2000 so long as no more than 499 investors are non-accredited.

### Elimination general solicitation prohibition

Currently companies raising capital under the exemption from registration provided by Rule 506 of Reg D may not offer securities through a general solicitation or advertising. A company seeking to raise capital under Rule 506 may only contact prospective investors with whom they have a pre-existing relationship. The Act directs the SEC to revise Rule 506 to make the prohibition against general solicitations inapplicable to Rule 506 offerings provided that all purchasers in the offering are accredited investors and that the issuer has taken “reasonable steps” to verify that such is the case.

### Emerging Growth Company

The Act establishes a new category of issuer called an “emerging growth company” for which certain disclosures and other requirements will be phased in over time. An emerging growth company is defined as an issuer with total gross revenues of less than \$1 billion during the most recent 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 non-convertible debt in any three-year period.



Specifically, emerging growth companies (a) would be exempt from the attestation requirements of Section 404(b) of Sarbanes-Oxley, (b) would only have to present two years of audited financial data and selected financial information in a registration statement for an IPO and (c) would be exempt from certain other disclosure requirements including selected disclosures relating to executive compensation.