



Small Businesses: How the Jumpstart Our Business Startups (JOBS) Act Affects You

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On April 5, 2012, President Obama signed into law the Jumpstart Our Business Startups Act (the "JOBS Act"). This legislation is the culmination of significant efforts to amend several aspects of the federal securities laws that impact capital formation in the private and public markets by small businesses. This advisory highlights certain key provisions of the JOBS Act that affect smaller companies which seek to remain private.

■ **General Solicitation and Advertising Allowed.** Smaller companies that need to raise capital often rely on Rule 506 of Regulation D, a "private offering" exemption from the requirement to register securities offerings with the Securities and Exchange Commission ("SEC") and state securities agencies. Prior to the JOBS Act, no issuer could engage in any form of general solicitation or advertising with respect to the securities being offered. The JOBS Act eliminates this ban under Rule 506, provided the issuer takes steps to ensure that all purchasers are "accredited investors."

■ **Crowdfunding Exemption.** "Crowdfunding" is a way of describing a capital-raising strategy in which groups of people pool their capital, often composed of small individual contributions, to support a particular goal or organization. The JOBS Act creates a new exemption to allow private companies to raise up to \$1 million within any 12-month period, with each investor being allowed to invest up to a certain amount. Numerous conditions apply, including a requirement that a crowdfunding transaction be conducted through a broker or a "funding portal" registered with the SEC, and that participating brokers and funding portals provide certain investor education materials.

Issuers relying on this exemption must also register with the SEC and provide certain information at the time of the offering as well as annual financial statements following the offering.

■ **Higher Shareholder Thresholds for Public Reporting.** Prior to the JOBS Act, any company with more than \$10 million in assets was required to register as a public company with the SEC if any class of its equity securities was held by 500 or more persons. The JOBS Act raises this threshold to 2,000 shareholders, so long as no more than 499 shareholders are not "accredited investors." (Slightly different thresholds apply for banks and bank holding companies.) For purposes of this calculation, employee-shareholders who received their securities in an exempt transaction pursuant to an employee compensation plan are excluded. Upon the SEC's adoption of rules to implement the crowdfunding exemption described above, holders of crowdfunded securities also will be excluded.

■ **Expanded Mini-Registration under Regulation A.** Regulation A is a scaled-back form of registration (or "mini-registration") with less disclosure and regulatory requirements than a full registered offering under federal law. Prior to the JOBS Act, private companies could raise up to \$5 million under Regulation A. The JOBS Act requires the SEC to amend Regulation A (or create a new exemption similar to Regulation A) to allow private companies to raise up to \$50 million within any 12-month period, provided the issuer files audited financial statements with the SEC annually and complies with certain other conditions (the full extent of which will be confirmed

in the SEC's new rules). However, unless the securities are offered and sold on a national securities exchange or to "qualified purchasers," this provides an exemption under federal law only, so many issuers must still comply with (or find a suitable exemption from) registration requirements under state securities laws.

The JOBS Act amended other aspects of the federal securities laws, including those pertaining to accessing public markets via an IPO and phasing-in certain disclosure requirements applicable to public companies for qualifying businesses. Contact your Varnum attorney for more information.