

President Signs the JOBS Act

Legislation Eases Regulations Governing Private and Initial Public Offerings

Today, the President signed into law the Jumpstart Our Business Startups Act, H.R. 3606, as amended (the “JOBS Act”). The law offers relief for smaller companies in pre-IPO stages as well as new capital raising options.

Emerging Growth Companies

The JOBS Act creates a new class of companies known as Emerging Growth Companies or EGCs. Generally, an EGC must have \$1 billion or less in revenue during its most recently completed fiscal year and cannot have sold any common equity securities pursuant to an effective registration statement before December 9, 2011. The JOBS Act permits EGCs to avoid certain disclosures in its common equity securities registration statement and ongoing filings during the first 5 years after the company’s IPO of common equity securities or until the Company becomes a large accelerated filer.

Encouraging IPOs and Other Offerings. The JOBS Acts allows EGCs to:

- *test the waters* by discussing a potential IPO with qualified institutional buyers or accredited investors before filing with the Securities and Exchange Commission (“SEC”);
- file a *confidential registration statement* with the SEC, provided that the registration statement is filed publicly at least 21 days before the date on which the issuer conducts a road show; and
- file *two years of audited financial statements*, rather than three years.

Disclosure Relief. For up to five years after an IPO, an EGC will be:

- exempt from internal control audits required under Sarbanes-Oxley;
- exempt from full-length executive compensation disclosure;
- exempt from say-on-pay, say-on-frequency and say-on-golden parachute votes;
- subject to longer phase-in periods for new GAAP requirements (the same as if the EGC were a private company); and
- exempt from new PCAOB rules mandating auditor rotation or the auditor discussion and analysis.

Relaxing Restrictions on Research and Communication with Research Analysts. The Jobs Act:

- allows investment banks to publish research about an EGC even if the investment bank is participating in an offering by the EGC;
- requires the elimination of the FINRA rules which restrict the publishing of research about an EGC after an offering or the expiration or waiver of a lockup; and
- prohibits rules that restrict research analysts from communicating with management and investors.

Removal of General Solicitation Prohibition under Regulation D and Rule 144A

The JOBS Act directs the SEC to revise Rule 506 of Regulation D and Rule 144A to eliminate the prohibition against general solicitation or general advertising as applied to offers and sales of securities under Rule 506 and Rule 144A, provided that all purchasers are “accredited investors,” or “qualified institutional buyers,” respectively. All issuers may take advantage of this change, however, the SEC has 90 days to revise Rule 506 and Rule 144A and the current rules will remain in effect until revised.

Crowdfunding

In an attempt to allow small companies to raise capital by targeting a wider base of investors, the JOBS Act permits “crowdfunding,” including advertising an investment over the internet and through social media. To take advantage of the new crowdsourcing exemption, companies may not sell more than \$1 million in securities during the preceding 12 months, including any amount sold in reliance on the crowdsourcing exemption. The amount an investor may invest is capped, and the maximum amount depends on the investor’s annual income or net worth. The JOBS Act adds a new Section 4A to the Securities Act of 1933, which details the requirements for crowdfunding, including that any intermediary (such as an internet website) must register as a broker with the SEC and the issuer must provide scaled financial information depending on the target size of the offering.

Increase in Equityholder Threshold for Public Reporting

In addition to eliminating the prohibition on general solicitation for funds exempt from public reporting, the JOBS Act also increases the equityholder threshold for companies required to register under the Exchange Act. Under the existing framework, a company that has at least 500 shareholders of record and more than \$10 million in assets is required to register under Section 12(g)(1)(A) of the Exchange Act. Once a company has registered under Section 12(g), all of the reporting requirements under the Exchange Act apply, including the need to file annual, quarterly, and current reports, proxy statements, and certain transaction reports.

The JOBS Act amends Section 12(g)(1)(A) of the Exchange Act to require that an issuer must register its securities with the SEC when it has total assets exceeding \$10 million and a class of equity security that is held of record by either (i) 2,000 persons or (ii) 500 persons who are not accredited investors. Section 502 of the JOBS Act further amends Section 12(g)(5) to provide that the definition of “held of record” does not include securities held by persons who received such securities under employee compensation plans.

Small Company Capital Formation

The JOBS Act creates a new exemption from registration for small public offerings up to \$50 million in equity, debt, and convertible debt securities within a 12-month period. The issuer may solicit interest in the offering prior to filing any offering statement, but must file audited financial statements with the SEC annually.

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