

## Job Creation and Economic Growth (JOBS Act)

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June 28, 2012

On April 5, 2012, the Jumpstart Our Business Startups Act of 2012 (the Act) was signed into law by President Obama. The principal goal of the Act is to increase job creation and economic growth by improving access to the public capital markets for emerging growth companies, whether these companies seek to go public or desire to remain private. To this end, the Act amends a number of federal laws and regulations to (i) make it easier for emerging companies to raise public capital privately and defer going public, and (ii) remove impediments to raising capital for emerging public companies by easing the requirements for going public and reducing the regulatory burdens on newly public companies.

### Overview of Key Provisions

Aside from the new crowdfunding exemption described below, the Act:

- **Emerging Growth Companies.** Title I of the Act reduces the costs and regulatory burdens of going public for “emerging growth companies” (**EGC**) (generally defined as companies with less than \$1 billion of annual revenue) by creating an “IPO on-ramp” that phases in certain SEC compliance measures over a period of time following an IPO. To qualify as an EGC, a company must not have priced its IPO prior to December 9, 2011.
- **Eliminating Prohibition Against General Solicitation and Advertising in Certain Rule 506 Offerings.** Rule 506 of Regulation D, a long-standing and popular exemption from securities registration, currently permits issuers to sell securities to sophisticated investors provided that such issuers do not engage in general solicitation or advertisement. Title II of the Act expands Rule 506 by allowing general solicitation and advertisement in a Rule 506 offering so long as the ultimate purchasers of the securities are accredited investors.
- **Regulation A Offering of Up to \$50 Million.** Regulation A offerings, also called “mini-registrations,” allow companies to offer up to \$5 million dollars of securities in a 12-month period if they comply with certain limited disclosure requirements. Regulation A offerings, however, have not been widely used in part because of the \$5 million offering limit. Title IV of the Act directs the SEC to amend Regulation A or to adopt a new, similar regulation to exempt securities offerings of up to \$50 million, subject to certain conditions.
- **Increase of Exchange Act Threshold from 500 to 2,000 Persons.** Under existing law, if a company has total assets exceeding \$10 million and a class of equity securities held by 500 or more persons, it is required to register that class of security under the Exchange Act. The Act amends the Exchange Act to require an issuer to register when it has total assets exceeding \$10 million and a class of equity securities held by either (i) 2,000 persons in total or (ii) 500 persons who are not accredited investors.

### The Crowdfunding Exemption

Title III of the Act relates to crowdfunding, and it amends Section 4 of the Securities Act of 1933 to add a new registration exemption intended to allow companies to raise capital from a large number of people in relatively small amounts, typically through the Internet. In particular, the exemption allows private companies to raise up to \$1 million over a 12-month period from an unlimited number of investors, including unsophisticated investors. The key provisions of the crowdfunding exemption are as follows:

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- **\$1,000,000 Annual Limit.** The aggregate amount sold to all investors during any 12-month period in reliance on this exemption cannot exceed \$1 million.
- **Investor Limits.** The aggregate amount sold to one investor during any 12-month period cannot exceed: (a) for investors with either an annual income or net worth of less than \$100,000, the greater of \$2,000 or 5% of the annual income or net worth of such investor; and (b) for investors with either an annual income or net worth of \$100,000 or more, 10% percent of the annual income or net worth of such investor (up to a maximum aggregate amount sold of \$100,000).
- **Broker or Funding Portal.** The transaction must be conducted through a broker or funding portal registered with the SEC and an applicable self-regulatory organization. These intermediaries must, in part, provide certain disclosures to investors regarding the level of risk of the offering and comply with other SEC rules and regulations.
- **Disclosure Requirements.** Issuers must file with the SEC and provide to investors and intermediaries certain information about themselves, including a description of their business and anticipated business plan, financial statements and capital structure. Following the offering, at least once a year, issuers must provide financial statements and reports to investors and the SEC.
- Within 270 days after the enactment of the Act, the SEC is required to issue rules it determines necessary or appropriate for the protection of investors to carry out certain provisions of the crowdfunding amendment. Before this time, the exemption is not available.

### Final Thought

The ultimate success of the Act in improving access to the public capital markets for emerging growth companies will depend on the decisions made by the SEC in crafting rules and regulations to implement the Act. Stay tuned.

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