



JOBS Act Summary

In addition to Crowdfunding, the JOBS Act eases some existing securities laws and creates a new category of issuer, the "emerging growth company" (EGC) that is exempt from certain requirements generally applicable to public companies. A summary of the important aspects of the JOBS Act follows:

Private Placements

The JOBS Act permits general solicitation and general advertising for offers and sales of securities made pursuant to Rule 506, provided that all purchasers of such securities are accredited investors. This was previously prohibited. Similarly, the JOBS Act permits general solicitation and general advertising for offers and sales of securities made pursuant to Rule 144A, provided such securities are only sold to persons the issuer reasonably believes to be a qualified institutional buyer. The SEC is required to revise Rule 506 and Rule 144A within 90 days of the enactment of the JOBS Act in order to implement these changes.

Shareholder Threshold for Registration

The JOBS Act changes the shareholder threshold for public company reporting requirements under the Exchange Act. Now, a company is required to file a registration statement with the SEC with respect to the sale of securities within 120 days after the last day of the end of the first fiscal year when the company has total assets exceeding \$10,000,000 **and** a class of stock (other than an exempted security) held of record by either (i) 2,000 persons or (ii) 500 persons who are not accredited investors. Prior to the enactment of the JOBS Act, companies with total assets exceeding \$10,000,000 and a class of stock held of record by 500 or more persons were required to register as public companies with the SEC.

Exemption for Offerings of Less than \$50 Million

The JOBS Act requires the SEC to establish an exempt class of securities under Regulation A for offerings with an aggregate amount of up to \$50 million, increased from the previously prescribed \$5 million offering amount, offered and sold within a 12-month period. This exemption will only apply to equity securities, debt securities and debt securities convertible into or exchangeable for equity interests, including any guarantees of such securities. Securities meeting these requirements will be permitted to be offered and sold publicly and will not constitute restricted securities within the meaning of the Federal securities laws. The JOBS Act requires the SEC to adopt rules implementing these provisions, although no time frame is established.

Emerging Growth Companies

The JOBS Act will have an impact on IPOs in the United States because the majority of issuers conducting IPOs will qualify as Emerging Growth Companies (EGCs), and thus become eligible for various exemptions and relaxed regulatory requirements. An EGC is any issuer of publicly-traded securities that had total annual gross revenues of less than \$1 billion (adjusted for inflation every five years) during its most recently completed fiscal year.

EGCs will be allowed to:

- Submit a draft registration statement for confidential nonpublic review, provided that the submission must be publicly filed with the SEC not later than 21 days before the date on which the issuer conducts a road show;
- Engage in oral or written communications, either before or after the filing of a registration statement, with accredited investors or qualified institutional buyers;
- Present two years, rather than the previously required three years, of audited financial statements in the issuer's IPO registration statement;
- Exclude from the issuer's IPO registration statement selected financial data for any period prior to the earliest audited period presented in its IPO registration statement; and
- Comply with the executive compensation disclosures applicable to smaller reporting companies.

In addition, EGCs are exempted from compensation-related disclosure requirements that are otherwise applicable to public companies such as:

- **Say-on-Pay:** EGCs do not have to hold any say-on-pay, say-on-frequency, or say-on-golden-parachute shareholder votes.
- **Pay versus Performance:** An EGC does not have to disclose information in its annual proxy statement that shows the relationship between executive compensation actually paid and the financial performance of the EGC.
- **Pay Ratio:** EGCs do not have to disclose in certain public filings the ratio of the median annual total compensation for all of the EGC's employees, other than its chief executive officer (CEO), to the annual total compensation of the EGC's CEO.
- **Scaled Disclosure for Smaller Reporting Companies:** EGCs will be treated as "smaller reporting companies" (i.e., companies with a public float of less than \$75 million) for purposes of the executive compensation disclosure requirements.

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