

April 5, 2012

## An Overview of the New JOBS Act

On April 5, 2012, President Obama signed into law the Jumpstart Our Business Startups Act (the "JOBS Act"). The JOBS Act contains a number of provisions designed to assist small businesses and growing companies in obtaining capital, including modifying restrictions on making general solicitations when making a private offering, creating a new exemption from registration for "crowdfunding," relaxing certain requirements for initial public offerings, and increasing the number of shareholders a company is permitted to have before it must register with the Securities and Exchange Commission (the "SEC").

### Rule 506 Revisions

- The JOBS Act requires the SEC to revise Rule 506 of Regulation D within 90 days in order to permit general solicitation or general advertising in offerings exempt from registration under Rule 506, provided that all purchasers in the offering are "accredited investors" as defined in Regulation D.
- The rules to be issued in connection with these revisions will require issuers to take "reasonable steps" to confirm that all purchasers in such offerings are accredited investors. It is not yet known what requirements the SEC will place on issuers in order to confirm accredited investor status.
- Until the SEC revises Rule 506 in accordance with the JOBS Act, general solicitation and general advertising will continue to be prohibited, even if all purchasers of securities sold in a Rule 506 offering are accredited investors.

### New Crowdfunding Exemption

- The JOBS Act creates a new exemption, Section 4(6) of the Securities Act of 1933 (the "Securities Act"), whereby securities may be sold in small amounts to large numbers of investors through a method known as "crowdfunding."
- Under the new law, the total amount of securities that may be sold to all investors by an issuer, including any amount sold in reliance on the new Section 4(6) exemption during the previous 12-month period, is \$1 million.
- If an investor has a net worth or annual income of less than \$100,000, then the amount sold to such investor in any 12-month period is limited to the greater of \$2,000 or 5 percent of such investor's net worth or annual income.
- If an investor has a net worth or annual income equal to or greater than \$100,000, then the amount sold to such investor in any 12-month period may not exceed 10 percent of the net worth or annual income of such investor, subject to an investment cap of \$100,000.
- To qualify for an exemption from registration under new Section 4(6) of the Securities Act, the securities must be sold through a broker or funding portal that complies with the requirements of newly created Section 4A(a) of the Securities Act.

- The terms of a Section 4(6) offering may not be advertised except by directing investors to the appropriate broker or funding portal through which the securities are sold.

### **IPO Changes for Emerging Growth Companies**

- The JOBS Act creates a new category of issuer under both the Securities Act and the Securities and Exchange Act of 1934 (the “Exchange Act”) called an “emerging growth company.” An emerging growth company is any entity that had less than \$1 billion in annual revenue during its most recently completed fiscal year.
- Under the new law, emerging growth companies would be allowed to file for an initial public offering under less burdensome regulations than non-emerging growth companies are subject to, such as the ability to file the registration statement confidentially with the SEC until 21 days prior to the start of a road show, only including two years of audited financial statements (instead of the usual three years), and being permitted to omit certain disclosures otherwise required by Sarbanes-Oxley and Dodd-Frank.
- After registering with the SEC, an emerging growth company will not be subject to full compliance with SEC reporting requirements until the first to occur of:
  - achieving \$1 billion or more in annual revenue;
  - being deemed a large accelerated filer by having at least \$700 million in public float;
  - raising in excess of \$1 billion in non-convertible debt over a three-year period; or
  - the last day of the fiscal year in which the fifth anniversary of the pricing date of the IPO falls.

### **Number of Shareholders Permitted Before Registration is Required**

- The Exchange Act previously required companies with at least 500 shareholders and total assets in excess of \$10 million to register with the SEC. The JOBS Act increases the number of shareholders a company is permitted to have prior to being required to register to 2,000 total shareholders or 500 shareholders who are not accredited investors. In addition, certain types of shareholders are excluded from the calculation.

### **Summary of Significant Changes**

	<b>Old</b>	<b>New</b>
<b>Rule 506</b>	<ul style="list-style-type: none"> <li>• No public advertising or solicitation permitted.</li> </ul>	<ul style="list-style-type: none"> <li>• Public advertising or solicitation permitted; provided that all purchasers in the offering are accredited investors.</li> </ul>
<b>Crowdfunding</b>	<ul style="list-style-type: none"> <li>• Would have to rely on another exemption or undertake the expense of registering with the SEC.</li> </ul>	<ul style="list-style-type: none"> <li>• New exemption permits fundraising from a large number of small investors, provided that all purchases are made through a registered broker or funding portal.</li> <li>• Investors may only invest limited amounts, which vary according to annual income or net worth of the investor.</li> </ul>

	<b>Old</b>	<b>New</b>
<b>IPOs for Emerging Growth Companies</b>	<ul style="list-style-type: none"> <li>Initial filing of the registration statement is immediately available to the public.</li> <li>Must provide 3 years of audited financial statements.</li> <li>No phase-in period for compliance with reporting requirements.</li> </ul>	<ul style="list-style-type: none"> <li>Emerging growth companies may file registration statement confidentially until 21 days prior to the road show.</li> <li>Emerging growth companies only need to provide 2 years of audited financial statements in the initial registration statement.</li> <li>Emerging growth companies have up to five years before full compliance with reporting requirements is required.</li> </ul>
<b>Number of Shareholders</b>	<ul style="list-style-type: none"> <li>A company is required to register with the SEC if it has at least 500 shareholders and \$10 million in assets.</li> </ul>	<ul style="list-style-type: none"> <li>A company is required to register with the SEC if it has at least \$10 million in assets and 2,000 total shareholders, or 500 shareholders who are not accredited investors.</li> </ul>

Haynes and Boone, LLP will provide more detailed information regarding each of these changes in the coming weeks.

If you have any questions about this topic, please contact a member of our [Venture Capital/Emerging Company](#) or [Capital Markets and Securities Practice Groups](#).