

JOBS Act Expands Registration Exception for Private Companies and Employee Stock Plans

April 16, 2012

Prior to the JOBS Act, Section 12(g) of the Securities Exchange Act of 1934 required companies with total assets of more than \$10 million and a class of equity securities held of record by 500 or more persons to register that class of equity security. The JOBS Act expands the exception for private companies by amending Section 12(g)(1)(A) of the Exchange Act to increase the number of holders of records to (i) 2,000 persons, or (ii) 500 persons who are not accredited investors. More significantly, with respect to compensatory employee stock plans, the JOBS Act amended Section 12(g)(5) of the Exchange Act by excluding for purposes of determining any holders of record, any persons who received the securities pursuant to an employee compensation plan in transactions exempted from the registration requirements of Section 5 of the Securities Act of 1933. The JOBS Act also requires the SEC to adopt safe harbor provisions that companies can follow when determining whether holders of their securities received the securities pursuant to an employee compensation plan in transactions that were exempt from the registration requirements of Section 5 of the Securities Act.