



## Virginia Business Lawyers

### The JOBS Act – Jammin’ On Business Startups

By: Thomas L. Bowden, Sr. Friday, May 18th, 2012

Will the new Reg A “Lively Up” America’s **Entrepreneurs**? President **Obama** signed the **JOBS Act** into law last month. The Act is not named after the late entrepreneur, but had he lived to see its passage, I think Steve might have approved. In this case JOBS stands for Jumpstart Our Business Startups. This is potentially very good news for entrepreneurs. One of the biggest struggles facing entrepreneurs is the difficulty in raising adequate capital to see their business through the startup phase. The JOBS Act aims to dramatically expand the opportunities for companies to tap into capital from large numbers of small **investors**. Prior to the JOBS Act, an entrepreneur could raise capital from private investors by relying on one or more of the exemptions from the Registration requirement, but each exemption had its own limitations, and the net effect has been to make capital raising more expensive than it needed to be.

The JOBS Act has the potential to dramatically change this equation. Here’s how it works. Securities laws include statutory exemptions from costly registration requirements that otherwise generally apply to any sale of **securities**. The principal exemptions are found in Section 3 and Section 4 of the **Securities Act**. Under Section 4, the SEC created **Regulation D**, which permits the sale of securities without registration provided that the Company does not use any public media to solicit investors. For the last 30 years, Regulation D has been the principal tool for entrepreneurs raising capital prior to an IPO. The problem with Regulation D has been finding qualified investors given the prohibition on public solicitation. Securities sold under Regulation D were also considered “restricted” and therefore not easily resold. This tended to make investors much more cautious and thereby limited the market for company seeking capital.

In contrast, **Regulation A**, created by the SEC under Section 3 of the Securities Act, has always allowed public solicitation of investors, and does not restrict resale, but requires the preparation and filing of a simplified **registration statement** prior to sale of any securities. However, under Regulation A, prior to the JOBS Act, a company was limited to selling no more than \$5 million of securities every 12 months.

The problem with Regulation A was that, even with the reduced regulatory burden, the \$5 million limitation made compliance with Regulation A too costly in relation to the amount of money available.

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Now, under the JOBS Act, the \$5 million limit imposed by Section 3 has been expanded to \$50 million. That's a big change.

Under Section 3, as revised by the JOBS Act, entrepreneurs now have an exemption with the following characteristics:

- (1) \$50 million maximum offering size,
- (2) simplified registration statements,
- (3) public solicitations of interest to "test the waters"
- (4) no restrictions on resale of securities, and
- (5) no requirement for audited financial statements prior to the offering.

In short, Reg A has a whole new beat. We Jammin?

See video url: [http://www.youtube.com/watch?feature=player\\_embedded&v=TR5Qo4Pnc94](http://www.youtube.com/watch?feature=player_embedded&v=TR5Qo4Pnc94)

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