Impact on Public Companies

The JOBS Act would create a new type of public issuer under the Securities Act of 1933 called an "emerging growth company," which would be defined as any company with less than $1 billion of annual gross revenues in the immediately preceding fiscal year at the time of registration. Emerging growth companies would benefit from relaxed IPO and continuous disclosure requirements, which would permit an emerging growth company to, among other things:

- Avoid certain mandatory shareholder votes regarding executive compensation under the Dodd-Frank Act;
- Disclose only two years of audited financial statements in a registration statement (as opposed to three);
- Exclude selected financial data and the management's discussion and analysis thereof from the IPO registration; and
- Communicate with qualified institutional investors and accredited investors more liberally during the pre- and post-filing periods.

The JOBS Act would also reduce disclosure burdens of public companies by:

- Increasing the threshold of shareholders of record triggering registration under Section 12(g) of the Securities Exchange Act of 1934 as well as the "going dark" floor; and
- Excluding from the shareholder of record calculation certain employees and those who purchased securities through the newly-created crowdfunding exemption.

[1] Crowdfunding would allow investors to obtain equity for a very small investment in a company and could harness the power of the internet to solicit investors. Companies utilizing the crowdfunding exemption would still be required to comply with certain investor protection requirements.
[2] The SEC would be required to adopt final rules to implement this provision of the JOBS Act.