



JUMPSTART OUR BUSINESS STARTUPS ACT “JOBS ACT” IMPACT FOR EMERGING GROWTH COMPANIES

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Today's Presenter



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- Victor focuses on corporate, securities and transactional matters
- Serves as securities counsel for public companies and represents pre-public start ups and emerging growth companies in capital raising and governance matters
- Has assisted in closing 144A placements, syndicated debt, bridge & serial funding, subordinated debt, asset securitizations, equity kickers and M&A due diligence matters
- Victor's full bio can be viewed at <http://www.walkersecuritieslaw.com/Resources.html>



Highlights of JOBS Act 2012

(Jumpstart Our Business Startups Act)

- What is the Jobs Act and purpose
- Six Title Provisions of the Act (6 separate bills)
- IPO Ramp On and emerging growth companies (EGC) Classification
- Ban on general solicitation and advertizing in connection raising capital through the issuance of securities under Rule 506 of Reg. D and 144A
- Crowdfunding exemptions and internet portal requirements funding rules
- Securities Act amendment (Regulation A+: a mini-registration process)
- Higher triggering thresholds for SEC reporting obligations
- Rules legislation & recent amendment



What Is The JOBS Act

Purpose and What Does It Provide For

- On **April 5, 2012**, President Obama signed into law the Jumpstart Our Business Startup Act) a bipartisan congressional bill that targeted small and micro-cap companies and focused on cheaper capital raising
- An attempt to increase American job creation and economic growth by improving access to public capital markets for EGSs.
- Its goal was to make it easier for smaller companies to raise money and lessen their regulatory burden while doing so.
- The JOBS Act mandates the Securities and Exchange Commission (SEC) to revise certain existing Regulations and create new Regulations to exempt smaller business from certain, disclosure, reporting, financial and shareholder threshold requirements.
- To give Startups more flexibility in determining when they decide to go public (a greater opportunity to mature before making SEC filings)
- SEC given a **9 Month grace period** to implement changes made by the JOBS Act. (Does **NOT** decrease issuer liability for false statements)



Overview of the Six Title Provisions of the JOBS Act

- On April 5, 2012, the Jumpstart Our Business Startups (JOBS) Act was signed into law. The JOBS Act consists of 6 Title Provision
- **Title I IPO On-Ramp** establishes new category of issuers called “**emerging growth companies (EGC)** under the securities laws.
- **Title II** Act direct the SEC to revise Rule 506 of Regulation D and Rule 144A to eliminate the **ban on general solicitation and advertising** in connection with private offerings sold to accredited investors.
- **Title III New Crowdfunding exemptions** from Securities Act registration requirements and allow **internet crowdfunding portals**
- **Title IV Small Company Capital Formation-Regulation A** under the Securities Act Amended for increased offering amounts and additional conditions
- **Title V Private Capital Flexibility and Growth**-allows for up to an additional 1500 non-accredited shareholders and exempt employee compensation plan shareholders from threshold count.
- **Title VI Bank Capital Expansion**- shareholder threshold count raised from 500 to 2000 shareholders



Emerging Growth Company

Criteria to Qualify

1. 1. Total annual revenue less than \$1 billion in most recent fiscal year
2. 2. Has issued less than \$1 billion in non-convertible debt in previous 3 year period.
3. 3. No common equity securities issued pursuant to effective 1933 Act registration statement before December 8, 2011
4. 4. Is not classified as a large accelerated filer
5. a) -not subject to Section 13(a) and 15(d) of the Exchange Act for at least 12 calendar months
6. b) -not filed at least one annual report under 13(a) or 15(d) of the Exchange Act
7. c) -market value of its voting and nonvoting common equity (“public float”) was less than \$75 million or more than \$700 million
8. 5. Classification expires when EGC crosses threshold or 5th anniversary of the IPO



IPO On-RAMP Legislation

Title I Provisions

- Provisions are generally effective immediately and retroactive to December 9, 2011
- EGC may **confidentially submit draft IPO registration statement** to SEC for nonpublic review (must file publicly 21 days before roadshow)
- **Submit** via new email system, no filing fee or officer or director signatures required-until publicly file. (not tainted if filing pulled)
- Two years of audited financials instead of three
- EGCs and their **agents** may “test the waters” with qualified institutional buyers(QIBs) and institutional accredited investors to gauge interest before or after filing (if S-1 not finalized, SEC may ask for material)
- Research reports on EGCs are not subject to quiet period or lock-up period restrictions
- An issuer that was in registration before the JOBS Act that qualified as an EGC may switch to the confidential submission process for future amendments.



Other EGC Exemptions

- **Governance and Disclosure**-exempt from disclosing the CEO pay ratio
- Exempt from auditor attestation of internal controls under Section 404 of Sarbanes –Oxley, & reduced executive compensation disclosure
- Not subject to PCAOB rules that requires audit firm rotation or modified audit report requirements
- Not required to comply with new or revised accounting standards until date applicable broadly to private companies
- **Opt Out of EGC status**-may opt out of any exemption and comply like other issuers- (can't selectively opt-in or out of accounting standards)
- Opt out election made at time of first registration statement or Exchange Act report
- **Permitted Communications**-research reports are not subject to quiet period or lock-up period restrictions. Bankers & analysts involved.
- Research reports not subject to conflicts disclosure and certifications



General Solicitation Legislation

Title II Safe Harbors For all issuers in private offerings

- The JOBS Act directed the SEC to amend **Rule 506 of Regulation D** under the Securities Act of 1933 and Rule 144A to eliminate the prohibition on “general solicitation and general advertising” in such offerings
- On August 29, 2012, the SEC announced **proposed rules** eliminating the prohibition on general solicitation and advertising in offerings under Rule 506 of Regulation D, provided that all purchasers of securities are “**accredited investors**”
- Issuer must take **reasonable steps to verify** that all purchasers are accredited investors
- Applicable for offerings conducted under **Rule 506 of Regulation D**
- **Rule 144A offerings** (per Section 201 of the JOBS Act) for securities sold to “qualified institutional buyers”
- Modified **Form D**-changed for new exemption check box (Proposed Rule 506(c))



Rule 506 of Regulation D

Current Rules O Securities Act of 1933

- Rule 506 is a safe harbor under Section 4(a)(2) of the Act which exempts transactions “not involving any public offering” from the Act’s registration requirements
- Issuer may only offer and sell securities to **accredited investors**
- May offer to no more than **35 sophisticated non-accredited investors** so long as there is no general solicitation or advertising by the issuer or any person acting on their behalf in connection with the offering
- Rule 501 of Regulation D defines an accredited investors as having annual income of at least **\$200k (\$300K married)** for prior two years or
- Have net worth of at least **\$1million** (excluding residence)
- Certain companies, partnership and trust qualify as accredited investors



Rule 144A Offerings

Current Exemption From Securities Act of 1933

- Rule 144A is a similar safe harbor rule exempting from the re registration requirements of the Securities Act the **resale** of certain “**restricted securities**” to qualified institutional buyers (QIBs)
- Is limited to resale transactions
- Includes securities acquired directly or indirectly from the issuer in a chain of transactions not involving a public offering
- Rule 144A often used for capital raising by issuers through sales of securities to a financial intermediary, who then resells such securities to QIBs
- QIB defined as an institution that manages at least **\$100 million** in securities from issuers not affiliated with the institution
- If institution is a bank or savings and loan thrift, must have net worth of at least **\$25 million**



Limitations to Offering Exemptions

- Unregistered offerings are not exempt from the **anti-fraud rules**
- Still prohibits untrue statements of material facts
- Prohibits omissions to state material facts to make the statements made not misleading in connection with the offer and sale of securities
- Although offers and sales of securities under Rule 506 are preempted from state blue sky law by **Section 18 of the Securities Act** (other than the fee and notice requirements)-SEC language requiring taking reasonable steps to verify accredited investors leave open the door to **blue sky law claims** challenging compliance with Rule 506



Crowdfunding Offerings

Title III-JOBS Act

- JOBS Act creates new Section 4(6) of the Securities Act of 1933 to facilitate crowdfunding
- Crowdfunding is a technique to raise capital in small individual amounts (from the crowd)
- Internet used to publicly solicit a large number of small investments
- A broker or funding portal must be used as an intermediary under the crowdfunding exemption
- Broker or funding portal required to register with the SEC and be responsible to ensure investors understand the risk of investments
- Securities may not be transferred for one year after purchase
- No advertising is permitted other than notices directing investors to the broker or funding portal
- SEC must issue rules to carry out these provisions of the JOBS Act within 270 days of the Acts enactment



Crowdfunding Offerings

Title III-Criteria to Qualify for Exemption

1. **1. Issuer Profile**-Must be a domestic entity, not subject to reporting requirements of the Securities Act, and are not investment companies (and not a “bad actor”)
2. **2. Issuer Cap**-Up to \$1 million per year to investors exempt from registration under the Securities Act in a 12 month period
3. **3. Annual Investor Cap**-based on investor’s annual income or net worth
 1. a) if income or net worth <\$100k, cap is the greater of \$2000 or 5% of income or net worth or
 2. b) if income or net worth >\$100k, cap is 10% of income or net worth up to a max of \$100K
4. **4. Required Use of Intermediaries**-must be conducted through a broker or a “funding portal” registered with the SEC and any self—regulatory organization
5. **5. Issuer Disclosure Obligations**-must furnish information to SEC and potential investors (through an intermediary 21 days prior to first sale of shares) plus annual financial disclosure



Crowdfunding Offerings

Title III-Criteria to Qualify for Exemption

➤ Issuer Disclosure Information-

File with the SEC and provide to investor and selling intermediaries

1. **Financial Statements** –review or audited based on target offering amount
2. **Officers, directors**, and greater than 20% stockholders
3. **Risk** relating to the issuer and the offering
4. **Target amount**, deadline to reach target amount and regular updates regarding progress
5. At least annually, **reports of the results of operations** and financial statements and other (issuer subject to rescission)

➤ Broker and Funding Portal Requirements

1. Can not compensate promoters, finders or lead generators
2. Provide all proceeds to issuer when target amount equals or exceeds target offering amount
3. Allow for cancellation of commitments to purchase in the offering



Regulation A+ of the Securities Act

Title IV-New Registration Exemption

- JOBS Act provides a new exemption from registration requirements of the Securities Act modeled after Registration A
- Issuer exemption cap of **unrestricted securities** offerings increased to **\$50 million from \$5 million** in any 12-month period
- **No holding period** or restriction on resales. However, if not exchange traded may be illiquid
- Securities (equity, debt, convertible debt)-offered and sold publicly
- Issuer must file **audited statements with SEC** annually and periodic report filing



Regulation A+ of the Securities Act

Title IV-New Registration Exemption

- Drawback, unlike crowdfunding exemption, Reg. A issuances are not exempt from state blue sky registration requirements , **unless** ---securities sold on a national securities exchange or sold only to qualified purchaser (to be defined by the SEC)
- If not exchange traded may be illiquid
- Issuer must file and distribute to prospective investors an offering statement containing specific disclosures
- Issuer must file audited statements with SEC annually and periodic report filing
- Adds a **civil liability provision** (Section 12(a)(2)) of the Securities Act for false or misleading statements or omissions in offering documents or oral communications involved in the offer or sale of securities
- No effective date for SEC rulemaking



Private Company Flexibility

Title V of the JOBS Act

- **Current Rule** of Exchange Act Section 12(g) require company with more than **\$10 million in assets** to register any class of its equity securities that is held of record by **500 or more person**
- Title V-raises the current 500 shareholder threshold to **2,000** shareholders so long as no more than 499 are non-accredited investors
- SEC must adopt **safe harbor** provisions to exclude shareholders who receive their shares pursuant to exempt transactions under employee compensation plans
- Upon adoption of SEC rules, holders of **crowdfunding securities** excluded from calculation too



Bank & Bank Holding Company Flexibility

Title VI of the JOBS Act

- JOBS Act raises the current **500** shareholder threshold for banks and bank holding companies to **2,000** shareholders, and
- Permits the termination and suspension of registration and reporting obligations if shareholders of record is reduced to fewer than **1,200**
- **Safe harbor** provisions for persons who received their shares pursuant to exempt transaction under an **employee compensation plan**
- Upon adoption of SEC rules, holders of crowdfunding securities excluded from calculation too



JOB Act Concerns and SEC Post-Governance

➤ **Concerns for investor protection**

- Reduced financial reporting
- Reduced compensation reporting
- Scaled down disclosure
- Relaxed internal controls under Sarbanes-Oxley
- Investment banker and equity analysts jointly involved

➤ **New solicitation and advertising SEC Rules adopted**

- Must be an accredited investor-need SEC guidance on “issuer verification” and “reasonable belief” provisions
- Equity analyst able to issue reports before registration
- Anti-Fraud Provisions still in place

➤ **Crowdfunding** –Still work in process-subject to small investor litigation (blue sky laws)

- May be impractical to use internet and social media to find investors
- May be difficult to attract later round financing or engage in M&A that need shareholder approval

➤ **SEC** -Has not adopted implementing rules for all JOBS Act mandates. Greater details and guidance are expected. The SEC, in some cases, has broad authority to shape the utility of the JOBS Act

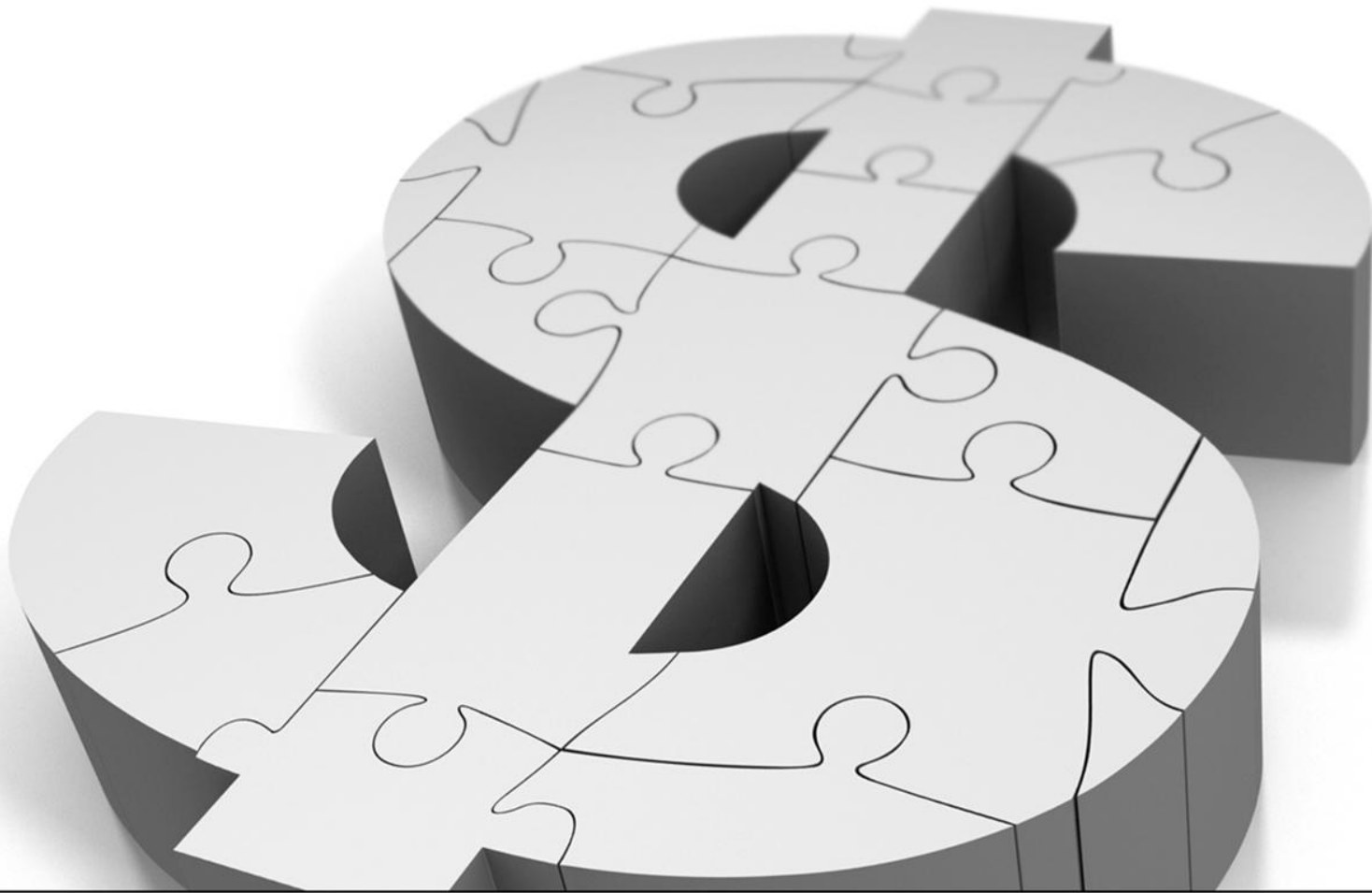
➤ **Market Participants**-need to assess their existing processes and documentation as SEC guidance and rulemaking is implemented



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- We are conveniently located in the northern portion of Galleria/Uptown Houston at the corner of South Post Oak Lane and Woodway near the 610 loop.

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Existing Crowdfunding Platforms

Ten Crowdfunding Sites

1. SomoLend.com
2. Indiegogo.com
3. Kickstarter.com
4. Peerbacker.com
5. GoFundMe.com
6. StartSomeGood.com
7. RocketHub.com
8. Causes.com-(designed for 501(c)(3))
9. Pozible.com
10. Crowdrise.com