

The JOBS Act: What It Means for Startups

Wednesday, April 11, 2012

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Today's Speaker



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JOB Act: Overview

- Intended to create jobs and jumpstart economic growth
- Streamlines IPO process for emerging growth companies
- Gives startups and other private companies new opportunities to raise funds and stay private longer
- Many practical questions yet to be answered



JOB Act: Overview

- Title I: Reopening American Capital Markets to Emerging Growth Companies
- Title II: Access to Capital for Job Creators
- Title III: Crowdfunding
- Title IV: Small Company Capital Formation
- Title V: Private Company Flexibility and Growth
- Title VI: Capital Expansion
- Title VII: Outreach to Changes on the Law



JOBES Act: Title II – Access to Capital for Job Creators

Private Placements

- SEC to modify Regulation D (within 90 days) to permit general solicitation and general advertising in Rule 506 placements, provided that all purchasers in those transactions are “accredited investors”
- General solicitation and general advertising also permitted in Rule 144A offerings



JOB Act: Broker-Dealer Registration in Private Placements

- Persons will not be required to register as a broker-dealer *solely* because they or their associated persons maintain a “platform or mechanism” that facilitates Rule 506 offerings, co-invest in such offerings or provide ancillary services in connection with such offerings (subject to certain requirements)



JOB Act: Title III – Crowdfunding

Crowdfunding

- The Act creates a new registration exemption to section 4 of the Securities Act of 1933 for “crowdfunding” transactions, subject to SEC rulemaking
- Not available to foreign issuers or SEC reporting companies
- The SEC has 270 days to issue rules implementing the new exemption and establishing bad actor disqualification provisions for both issuers and intermediaries



JOBS Act: Title III – Crowdfunding

Crowdfunding

- Issuer (including affiliates) can offer and sell a maximum of \$1 million of crowdfunded securities within a 12-month period
- The aggregate amount sold to ANY investor by ANY issuer within the 12-month period cannot exceed:
 - The greater of \$2,000 or 5% of the annual income or net worth of such investor, as applicable, if either the annual income or net worth of the investor is less than \$100,000; and
 - 10% of the annual income or net worth of such investor, as applicable, not to exceed a maximum of \$100,000, if either the annual income or net worth of the investor is equal to or greater than \$100,000
- The transaction must be conducted through a registered broker or funding portal



JOB Act: Title III – Crowdfunding

Crowdfunding - Intermediaries

- Intermediaries are subject to specific requirements (pt 1):
 - Must provide disclosures related to risks and other investor education materials
 - Must ensure that each investor acknowledges the risk associated with the investment
 - Takes measures to reduce the risk of fraud with respect to the transaction, including obtaining a background and securities enforcement regulatory history check on each officer, director and person holding more than 20% of the outstanding equity



JOBES Act: Title III – Crowdfunding

Crowdfunding - Intermediaries

- Intermediaries are subject to specific requirements (pt 2):
 - Within 21 days prior to the first sale (or other period established by the SEC), make available to the SEC and to potential investors the information provided by the issuer
 - Ensure that all offering proceeds are only provided to the issuer when the aggregate capital raised from all investors is equal to or greater than the target amount, and allow investors to cancel their commitments
 - Make efforts to ensure that no investor has purchased more than the investment limits FROM ANY ISSUER within a 12-month period



JOBES Act: Title III – Crowdfunding

Crowdfunding - Intermediaries

- Intermediaries are subject to specific requirements (pt 3):
 - Must take steps to protect the privacy of information collected from investors
 - May not compensate promoters, finders or lead generators for providing it with personal identifying information of any potential investor
 - Must meet other requirements as the SEC may determine



JOB Act: Title III – Crowdfunding

Crowdfunding: Issuer Requirements

- Must file certain information relating to the offering with the SEC, and provide it to investors and the relevant broker or funding portal, and make it available to potential investors
- May not advertise the terms of the offering, except for notices to direct investors to the intermediary
- Must disclose any compensation paid to persons promoting its offerings
- Must file financial statements with the SEC and provide to investors at least annually



JOBES Act: Title III – Crowdfunding

Crowdfunding: Issuer Requirements

- **Information Requirements:**
 - Name, legal status, physical address, website address
 - Names of directors, officers and 20% or greater stockholders
 - A description of the business of the issuer and the anticipated business plan of the issuer
 - A description of the financial condition of the issuer, including financial statements



JOBES Act: Title III – Crowdfunding

Crowdfunding: Issuer Requirements

- Information Requirements (cont.)
 - A description of the stated purpose and intended use of proceeds
 - The target offering amount, the deadline to reach the target offering amount and regular updates of progress in meeting the target
 - The price to the public of the securities or the method for determining the price
 - A description of the ownership and capital structure of the issuer
 - Other information as may be required by the SEC



JOBS Act: Title III – Crowdfunding

Crowdfunding: Issuer Liability

- Investors who purchase securities offered pursuant to the crowdfunding exemption would have a private right of action for material misstatements and omissions
- “Issuers” for liability purposes will include directors or partners of the issuer, the principal executive officers, principal financial officer, controller or principal accounting officer and any person who offers or sells the security in the offering



JOB Act: Title III – Crowdfunding

Crowdfunding: Restrictions on Sales

- Investors may not resell securities purchased pursuant to the new exemption for one year, beginning on the date of purchase, except to:
 - The issuer,
 - An Accredited Investor,
 - As part of an SEC-registered offering, or
 - To a member of the family of the purchaser or the equivalent, or in connection with the death or divorce of the purchaser or other similar circumstances, in the discretion of the SEC



JOBES Act: Title III – Crowdfunding

Crowdfunding: A Good Idea?

- Costs
- Issues associated with a sale of the company
- Other fiduciary duty issues

JOBS Act: Exchange Act Registration Thresholds

- The JOBS Act amends Section 12(g) of the Exchange Act of 1934 by
 - Increasing the shareholder threshold to either (i) 2,000 persons or (ii) 500 persons who are not accredited investors
 - Exempts securities received pursuant to an employee compensation plan from being considered held of record
 - Exempts securities purchased in a crowdfunding transaction from being considered held of record



JOB Act: Regulation A

- Regulation A offering limit increased from \$5 million to \$50 million
- Imposes new financial statement and reporting requirements
- Clarifies securities sold pursuant to Reg A will not be considered “restricted securities”
- Issuers will be allowed to “test the waters” by soliciting interest prior to filing an offering statement



JOBs Act: Blue Sky Laws

- Securities offered under Reg A or acquired through a crowdfunding transaction are exempt from Blue Sky laws



JOB Act: Conclusion



JOB Act: Questions



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