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ABA Panelists Comment on JOBS Act Accounting Provisions

AUGUST 3, 2012

On August 3, a panel on the JOBS Act at the annual meeting of the ABA Business Law Section in Chicago discussed the Act's accounting standard deferral provision for emerging growth companies. That provision allows EGCs to take advantage of delayed effective dates for private companies of the applicability of new accounting standards. Panelists observed that to date few EGCs appear to have opted in to this provision. That is not totally surprising since as of now there are no new accounting standards with deferred effective dates and therefore no benefit to an EGC. The panelists noted, among other things, that not adopting new standards may create issues for EGCs such as lack of comparability to other companies, questions from investors as to what their financial statements would look like if "full public-company GAAP" were applied, and unfavorable disclosures about the effect of the deferral. These considerations may outweigh the temporary benefits of avoiding application of a new standard for a relatively short period, often just one fiscal year.

Apropos of this, Director of the SEC Division of Corporation Finance Meredith Cross indicated that EGCs who elect the accounting standard deferral should not expect transition relief for when they lose EGC status. A company that exceeds $1 billion in revenues in a fiscal year, it will have to report using public-company GAAP for that fiscal year. An EGC will have to carefully monitor its revenue projections and plan for converting to full-public company GAAP reporting if it appears that it will top the revenue threshold. This possibility also likely will impede use of the accounting standard deferral.