

# JOBS Act Implementation Schedule



This article sets forth the effective dates of the more prominent provisions of the JOBS Act.

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The “Jumpstart Our Business Startups Act” (JOBS Act, or the act) is now in effect. Notwithstanding objections to the act from the Securities and Exchange Commission (SEC), state securities regulators, institutional investors and investor protection groups based on concerns that the act eliminates numerous investor protections in the name of job creation and economic growth, the act passed the Senate and the House by overwhelming majorities and was signed by the President amid much fanfare today.

As previously described in Pepper’s recently published *Corporate and Securities Law Alert*, “If Three’s a Crowd, Thousands Are ... an Investment Round? JOBS Act Presents Significant Changes to the Federal Securities Laws,” available online at [www.pepperlaw.com/publications\\_update.aspx?ArticleKey=2322](http://www.pepperlaw.com/publications_update.aspx?ArticleKey=2322), the act removes long-standing restrictions on securities offerings by certain types of companies and to certain types of investors.

This article sets forth the effective dates of the more prominent provisions of the JOBS Act.

## EMERGING GROWTH COMPANIES

The act creates a new category of companies, dubbed “emerging growth companies” – which captures most public companies – and reduces SEC disclosure requirements for these companies for up to five years from the date of their IPO.

**Exclusion of EGCs from Say-on-Pay, Say-on-Frequency, Say-on-Golden Parachute shareholder advisory votes in proxy statements:**

- Effective upon enactment.
- Emerging growth companies (EGCs) that have not yet filed their definitive proxy statements for 2012 may omit these votes from their definitive proxy statements.

- EGCs that have already filed their definitive proxy statements for 2012 may consider filing an amended proxy statement removing these votes, after giving due consideration to investor relations issues.
- EGCs that have previously disclosed the board-approved frequency of future say-on-pay votes should consider appropriate disclosure in the event the company determines to defer future say-on-pay votes until they are no longer an emerging growth company.
- EGCs that have not conducted any registered securities offerings (such as spin-offs) will continue to be emerging growth companies until they exceed the \$1 billion revenue or “large accelerated filer” thresholds. A “large accelerated filer” is a company that has \$700 million in public equity float, has been an SEC reporting company for at least one year, and has filed at least one annual report with the SEC.

**Exclusion of EGCs from pay-for-performance disclosures and ratio of CEO compensation to the median compensation of all other employees:**

- Effective upon enactment.
- Not currently a pressing issue, as SEC rules have not yet been adopted for these disclosure requirements.

**Limiting the requirement for audited financial statements in an EGC’s Securities Act registration statement to two years instead of three years, and limiting “selected financial data” to the period commencing with the earliest audited period presented in its included financial statements:**

- Effective upon enactment.

**Limiting the MD&A discussion in an EGC's Securities Act registration statement to the periods presented in the included financial statements:**

- Effective upon enactment.

**Exclusion of EGCs from the requirement to comply with any new or revised financial accounting standards applicable to issuers but not applicable to non-issuers ("Issuer" means a company that has a class of securities registered under Section 12 of the Securities Exchange Act of 1934 or that is required to file reports under Section 15(d) of the Exchange Act, or which has filed a registration statement under the Securities Act of 1933 that has not yet gone effective and has not been withdrawn.):**

- Effective upon enactment.

**Ability for EGCs to comply with "scaled" compensation disclosure requirements of Item 402 of Regulation S-K as applicable to "smaller reporting companies:"**

- Effective upon enactment.

**Exclusion of EGCs from the requirement to file an auditor's attestation report on the company's internal financial controls for financial reporting:**

- Effective upon enactment.

**Exclusion of EGCs from any Public Company Accounting Oversight Board (PCAOB) rules requiring mandatory audit firm rotation or an "auditor discussion and analysis" as a supplement to the audit report:**

- Effective upon enactment.
- Note that the PCAOB rules currently do not include these requirements, but such requirements are under consideration.

**Exclusion of EGCs from any new rules adopted by the PCAOB:**

- Effective upon enactment except to the extent that the SEC determines that compliance with such new rules by emerging growth companies is necessary or appropriate in the public interest.

**Confidential submission of an EGC's IPO registration statement to the SEC for review instead of public filing on EDGAR:**

- Effective upon enactment.
- All confidential submissions of the original S-1 and amendments will need to be filed publicly at least 21 days prior to the commencement of the road show.

**Removal of research analyst restrictions against participating in EGC IPO investor meetings or publishing research reports before or soon after the IPO, or before the expiration of the IPO lock-up period:**

- Effective upon enactment.
- The SEC is expected to adopt conforming amendments to corresponding rules within one year.

## GENERAL SOLICITATION AND ADVERTISING

The act eliminates the prohibition against general solicitation and advertising in private placements to accredited investors, which include institutions with significant assets and wealthy individuals.

**Use of general solicitation and general advertising in private placements to accredited investors and in 144A resales to qualified institutional buyers:**

- The SEC will adopt rules within 90 days after enactment.

## CROWDFUNDING

Issuers will be permitted to raise capital through crowdfunding, which allows start-up companies to solicit small investments from many individual investors, through any medium, including the Internet.

**Offerings of up to \$1 million every 12 months through investments ranging from \$2,000 to \$100,000, depending on an investor's net worth and annual income:**

- The SEC will adopt rules within 270 days after enactment.

- Use of the newly designated type of intermediary – “funding portal” – requires SEC rulemaking, to take place within 270 days after enactment.
- A company and a registered broker-dealer could conceivably attempt to comply with the bare-bones statutory exemption, but it would be risking the possibility that its compliance efforts may not conform to whatever future rules the SEC winds up adopting.

#### INCREASE IN SECTION 3(b) OFFERING EXEMPTION LIMIT

The act increases the maximum amount of securities that may be sold under a little-used public offering exemption, which would permit “test-the-waters” communications with prospective investors and would be exempt from state securities law registration requirements.

#### **Increase of Regulation A public offering exemption from \$5 million to \$50 million:**

The SEC will adopt rules within one year after enactment.

#### INCREASE IN THRESHOLD FOR REGISTRATION UNDER EXCHANGE ACT

The act eases the requirement for registration under the Securities Exchange Act of 1934 – by which a company becomes obligated to file periodic reports with the SEC – by increasing the thresholds for registration.

#### **Increase to 2,000 or more holders of record, or 500 or more holders of record who are not “accredited investors:”**

- Effective upon enactment.

#### **Exclusion of crowdfunding investors:**

- The SEC will adopt rules within 270 days after enactment.

#### **Exclusion of recipients of employee compensation plan securities in exempt offerings:**

- Effective upon enactment.
- The SEC will adopt rules to conform its definition of “held of record” to include the statutory exclusion for employee compensation plan securityholders, as well as to adopt safe harbor provisions to define whether employee compensation plan securities were issued in exempt offerings.

#### **Increase to 2,000 or more holders of record in the case of a bank holding company:**

- Effective upon enactment.

#### INCREASE IN THRESHOLD FOR DEREGISTRATION UNDER EXCHANGE ACT FOR BANK HOLDING COMPANIES

The act makes it easier for bank holding companies to deregister under the Securities Exchange Act of 1934 and thereby exit the periodic reporting system.

#### **Ability of a bank holding company to deregister if it has fewer than 2,000 holders of record, an increase from the level of 300 holders of record applicable to other companies:**

- Effective upon enactment, but the applicable SEC forms will need to be amended by SEC rulemaking in order to address the new deregistration threshold.

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