



ATTORNEYS AT LAW

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JOBS Act Brings Changes to Securities Laws

The "Jumpstart Our Business Startups Act" (JOBS Act) officially became law on April 5, 2012. The JOBS Act, along with the related rulemaking and guidance from the Securities and Exchange Commission (SEC), brings significant changes to several aspects of federal securities laws.

The JOBS Act is intended to encourage funding for private companies by providing more flexibility for companies desiring to raise capital. A few key provisions of the JOBS Act for small and medium size businesses include (1) elimination of the prohibition on general solicitation or advertising for securities offerings under Rule 506 of Regulation D; (2) lifting of the cap on Regulation A securities offerings from \$5 million to \$50 million; and (3) creation of an exemption for "crowdfunding" offerings. The following is a brief summary of these provisions.

I. Rule 506 Exemption

Rule 506 of Regulation D permits sales of securities to sophisticated investors, subject to certain limitations, including the requirement that the company and its agents not engage in "general solicitation" (i.e. broadly soliciting investors with whom no previous relationship exists) or advertising of the offering. The JOBS Act lifts the current ban on general solicitation and advertising for Rule 506 offerings so long as the investors are "accredited investors." The JOBS Act does require companies to take reasonable steps to verify that the investors are accredited investors.

II. "Regulation A+" Exemption

Regulation A provides companies the option of offering securities without the restrictions imposed by Rule 506 offerings while also avoiding the extensive time and effort involved in making a public offering. However, prior to the JOBS Act, Regulation A offerings were limited to a maximum of \$5 million and were still subject to state "blue sky" laws. The JOBS Act seeks to encourage the use of the Regulation A exemption by establishing a new and expanded exemption informally known as Regulation A+. Regulation A+ raises the limit for securities offerings exempted under Regulation A from \$5 million to \$50 million and exempts such

offerings from state registration if such offerings are made on a national securities exchange or if made to qualified purchasers (such term as yet to be defined by the SEC).

III. “Crowdfunding” Exemption

The JOBS Act creates a new crowdfunding exemption that gives private companies the ability to raise small amounts of capital from a large number and broad range of investors up to a limit of \$1 million in any 12 month period. This exemption requires the use of a registered broker-dealer or special registered "funding portals" to raise the needed capital. One key limit to these crowdfunding programs is a yearly aggregate limit on the amount each investor may invest in offerings of this type, tiered by the investor's net worth or yearly income. The JOBS Act also requires companies utilizing these provisions to disclose a significant amount of information to investors and contains numerous other limitations and restrictions.

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