

JOBS Act Implementation Chart

April 18, 2012

The following chart maps the key provisions of the [Jumpstart Our Business Startups Act](#) (“JOBS Act”) signed by the President on April 5, 2012.

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Notice: This chart is a summary intended to be used for general information. It is not a full analysis of the matters presented and should not be relied upon as legal advice. If you have any questions about the matters covered in this publication, the names and office locations of all of our partners appear on our website, davispolk.com.

JOBS ACT IMPLEMENTATION CHART

JOBS ACT PROVISION	SECTION	EFFECTIVE DATE	IMPLEMENTATION ISSUES AND OTHER CONSIDERATIONS
Emerging Growth Company (“EGC”) Definition			
<p>An EGC is a company that conducts an IPO after December 8, 2011 and had annual gross revenues of less than \$1 billion during its most recent fiscal year. A company will retain EGC status until the earliest of:</p> <ul style="list-style-type: none"> ▪ the first fiscal year after its annual revenues reach \$1 billion; ▪ the first fiscal year following the fifth anniversary of its IPO; ▪ the date on which the company has, during the previous three-year period, issued more than \$1 billion in non-convertible debt; and ▪ the date on which the company becomes a “large accelerated filer” 	101	April 5, 2012	<p>The SEC staff has issued FAQs on the General Applicability of Title I of the JOBS Act. Please follow this link for the Title I FAQs. The Title I FAQs explain that:</p> <ul style="list-style-type: none"> ▪ “annual gross revenues” means total revenues as presented on the income statement presentation under U.S. GAAP (or IFRS as issued by the IASB, if used as the basis for reporting by a foreign private issuer); ▪ for purposes of registration statement disclosure, a company should test whether it qualifies as an EGC (1) at the time of its initial confidential submission and (2) at the time of its first public filing. If a company qualifies as an EGC at the time of its first public filing, it will retain EGC status for disclosure purposes through the effectiveness of the registration statement, even if it would otherwise lose EGC status if tested again during registration; ▪ for purposes of the testing-the-waters and research provisions in Section 105, a company should test whether it qualifies as an EGC at the time that it would engage in these communications; and ▪ an EGC should determine whether it has issued \$1 billion in non-convertible debt securities on a rolling-three-year basis, looking back from the date the EGC issues the debt securities. <p>The SEC should issue guidance specifying that, for purposes of exiting EGC status based on annual revenue, an EGC will be entitled to a grace period subsequent to its fiscal year-end, during which an EGC will retain EGC status, while its revenues for the prior fiscal year are calculated and audited.</p>

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IPO Process Reforms for EGCs			
An EGC may provide two years of audited financial statements instead of three in its IPO registration statement. In subsequent registration statements, an EGC is not required to present audited financial statements for any period prior to the earliest audited period in its IPO registration statement	102	April 5, 2012	The Title I FAQs confirm that an EGC may present only two years of financial statements for other entities whose financial statements are required to be included in its IPO registration statement (e.g., financial statements of acquired businesses and equity method investees).
In its IPO and subsequent registration statements, an EGC may omit selected financial data for any period prior to the earliest audit period	102	April 5, 2012	The Title I FAQs verify that a foreign private issuer that qualifies as an EGC may provide the EGC scaled disclosures despite contrary language in Form 20-F.
An EGC may limit its MD&A to periods covered by its audited financial statements plus interim periods	102	April 5, 2012	
An EGC may provide reduced executive compensation disclosure and omit CD&A	102	April 5, 2012	
An EGC and its designees may “test-the-waters” or gauge investor interest in their securities prior to an offering through communications with QIBs or institutional accredited investors	105	April 5, 2012	
An EGC may file its IPO registration statement confidentially, provided that the confidential submission and related amendments are filed publicly at least 21 days before the EGC conducts a road show	106	April 5, 2012	The SEC staff has posted instructions and FAQs for confidential submissions. Please follow this link for the instructions. Please follow this link for the FAQs.
			The confidential submission FAQs clarify that the definition of road show in Section 106 of the JOBS Act does not include testing-the-waters or non public presentations permitted by Section 105.
			A dual-listed foreign private issuer that qualifies as an EGC and takes advantage of the EGC scaled disclosures or other benefits must comply with all of the confidential submission requirements applicable to EGCs when submitting a registration statement confidentially. Other foreign private issuers may submit confidentially under the SEC’s historical policy on non public submissions. Please follow this link for the SEC’s historical policy on non public submissions.
Reduced Public Company Reporting Requirements for EGCs			
An EGC is exempt from the requirement to provide an auditor’s attestation report on internal controls, as otherwise mandated by Section 404(b) of the Sarbanes-Oxley Act	103	April 5, 2012	

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Reduced Public Company Reporting Requirements for EGCs (cont'd)			
An EGC is exempt from the requirement to hold shareholder advisory votes on executive compensation	102	April 5, 2012	
An EGC is not required to comply with new GAAP accounting pronouncements applicable to public companies until the pronouncements are also applicable to private companies	102/107	April 5, 2012	<p>An EGC must choose either to:</p> <ul style="list-style-type: none"> ▪ defer compliance with all new GAAP accounting pronouncements applicable to public companies until also applicable to private companies, or ▪ comply with all new accounting pronouncements applicable to public companies, and ▪ notify the SEC staff of this decision in its initial confidential submission (or initial public filing if no confidential submission is made). An EGC must also disclose, for each deferred accounting pronouncement, the date on which adoption is required for non-EGCs and the date on which the EGC will adopt the recently issued accounting standard, assuming that it remains an EGC as of such date.
An EGC is exempt from any future PCAOB rules mandating auditor rotation or supplemental information in the auditor report (auditor discussion and analysis), and any other future PCAOB rules as determined by the SEC	104	April 5, 2012	
Loosening of Research Restrictions			
A broker-dealer is permitted to publish or distribute a research report related to an EGC prior to the EGC's proposed IPO or other equity offering	105	April 5, 2012	
FINRA must rescind its rules restricting research analysts from participating in meetings with an EGC alongside investment banking personnel in connection with an EGC's IPO	105	April 5, 2012	FINRA has not yet amended its rules to reflect these changes. FINRA or the SEC should confirm that a broker-dealer can treat existing FINRA rules that are prohibited by the JOBS Act as non-operative as of effectiveness of the JOBS Act.

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Loosening of Research Restrictions (cont'd)			
FINRA must rescind its rules prohibiting research about an EGC during any particular period of time following either its IPO or the expiration of any lock-up period related to its IPO	105	April 5, 2012	<p>The JOBS Act would not eliminate all restrictions on research related to EGCs. For example, a research analyst would still need to comply with the unaffected provisions of FINRA's research rules and with Regulation AC, which requires a research analyst to certify that the views he or she expresses in his or her research reports accurately reflect his or her personal views.</p> <p>It is unclear what the ongoing status of the Global Research Settlement will be in light of the JOBS Act's mandated changes to SEC and FINRA research rules. To the extent that the Global Research Settlement is still applicable, it includes restrictions that could limit the ability of firms that are party to the Global Research Settlement to take advantage of some of the flexibility contained in the JOBS Act.</p>
Amendments to Section 12(g) Shareholder Registration Threshold			
The shareholder registration threshold in Section 12(g) of the Exchange Act is raised to 2,000 shareholders or 500 shareholders who are not accredited investors	501	April 5, 2012	The SEC should adopt safe harbor provisions for determining whether a holder of record is an accredited investor and can therefore be excluded from the shareholder count.
The definition of "held of record" in Section 12(g)(5) of the Exchange Act is revised to exclude persons who received company securities pursuant to an equity compensation plan in an exempt transaction from the shareholder count for purposes of the Section 12(g) threshold. The SEC to conduct rulemaking to implement this change and to adopt safe harbor provisions that an issuer can follow when determining whether its securities are covered by the employee compensation plan exclusion	502/503	April 5, 2012/no deadline for SEC rulemaking	
The SEC to conduct rulemaking to exclude, conditionally or unconditionally, a shareholder who acquired securities in an exempt crowdfunding transaction from the shareholder count for purposes of the Section 12(g) threshold	303	December 31, 2012 (270 days from enactment)	The SEC should clarify whether subsequent transferees are also excluded from the shareholder count for purposes of the Section 12(g) threshold.

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Amendments to Section 12(g) Shareholder Registration Threshold (cont'd)			
A bank or bank holding company is permitted to have 2,000 shareholders before being subject to public company reporting requirements and to deregister when its shareholder count falls below 1,200	601/602	April 5, 2012/April 5, 2013	<p>Section 12(g) of the Exchange Act is amended on April 5, 2012 to raise the shareholder threshold for bank and bank holding companies, but the SEC is also directed to issue rules implementing this amendment by April 5, 2013.</p> <p>The SEC staff has issued FAQs to confirm that a company should rely on the JOBS Act amendment to Section 12(g) when determining whether to register or deregister under Section 12(g), even though the SEC has not yet made corresponding changes to its rules. Please follow this link for the Section 12(g) FAQs.</p>
The SEC to report to Congress on whether it needs new authority or tools to enforce the anti-evasion provisions in Rule 12g5-1 under the Exchange Act	504	August 3, 2012 (120 days from enactment)	
General Solicitation			
Widespread advertising and other forms of “general solicitation” in private offerings in reliance on Rule 506 under Regulation D or Rule 144A under the Securities Act is permitted so long as all actual purchasers of the securities are accredited investors (under Rule 506 of Regulation D) or QIBs (under Rule 144A under the Securities Act)	201	July 4, 2012 (90 days from enactment)	<p>SEC rulemaking is required by July 4, 2012 to implement these provisions. Davis Polk and other law firms have issued guidance on the conduct of private offerings prior to the issuance of these rules. Please follow this link for the guidance.</p> <p>Like Rule 144A, the JOBS Act expressly requires that securities sold pursuant to Rule 144A be sold to persons the seller “reasonably believes” to be QIBs. The SEC should adopt a similar “reasonable belief” standard in its rules permitting general solicitation in sales to accredited investors pursuant to Rule 506.</p>
Decimalization			
The SEC to submit a report to Congress on stock-price decimalization and its impact on smaller public companies	106	July 4, 2012 (90 days from enactment)	
The SEC authorized to issue rules to permit trading in EGC securities in increments of up to nine cents rather than a penny	106	October 2, 2012 (180 days from enactment)	

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Review of Regulation S-K			
The SEC to review Regulation S-K to determine how its requirements can be updated to make EGC registration and reporting less burdensome. The SEC must then report the results of such review, along with related recommendations for improvements to Regulation S-K, to Congress	108	October 2, 2012 (180 days from enactment)	
Crowdfunding			
The SEC to issue rules exempting “crowdfunding” offerings by an issuer of up to an aggregate of \$1 million annually, subject to certain restrictions	Title III	December 31, 2012 (270 days from enactment)	While the crowdfunding exemption is added to the federal securities as of April 5, 2012, the SEC is required to issue rules to implement the disclosure and filing obligations, disqualification criteria, funding portal registration requirements and other transfer restrictions within 270 days of enactment of the JOBS Act. Accordingly, as a practical matter, the crowdfunding exemption does not take effect until December 31, 2012 or upon such earlier date as the SEC issues rules to implement these crowdfunding provisions.
New Exemption for Offerings of Up to \$50 Million			
The SEC to issue rules to add a new securities registration exemption, modeled on the current Regulation A exemption, that would allow the issuance of up to \$50 million of securities annually without registration	401	No deadline	
GAO to report to Congress on the impact of Blue Sky laws on offerings made under Regulation A of the Securities Act	402	July 5, 2012 (within 3 months of enactment of the JOBS Act)	

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