The JOBS Act: 2014 mid-year update
An overview of implementation and an analysis of emerging growth company trends
August 2014
The Jumpstart Our Business Startups Act (JOBS Act or Act)\(^1\) was enacted on 5 April 2012 to give private companies greater access to capital and make it easier for certain companies to go public on US exchanges.

The Act created a new category of issuer called an emerging growth company (EGC) and provides regulatory relief to EGCs to encourage initial public offerings (IPOs). The Act also increased the number of record holders that triggers a company’s obligation to register and report as a public company under the Exchange Act. In addition, the JOBS Act allows private companies to raise capital through new exemptions from registration.

Other provisions of the Act require rulemaking by the Securities and Exchange Commission (SEC or Commission). The SEC has made significant progress toward fulfilling its mandates under the JOBS Act by finalizing rules to remove the long-standing ban on general solicitation and advertising in certain offerings of restricted securities that are exempt from registration. The SEC also proposed rules that would promote capital formation through exempt offerings by increasing the offering threshold in existing Regulation A (creating what’s known as “Regulation A+”) and to allow “crowdfunding,” or raising small amounts of capital from large pools of investors over the internet. Regulation A+ and crowdfunding are both on the SEC’s 2014 rulemaking agenda, and SEC Chair Mary Jo White has said they are a primary focus. In addition, the SEC staff has issued its study on Regulation S-K disclosure requirements and has launched its disclosure effectiveness initiative to conduct a comprehensive review of existing requirements in Regulations S-K and S-X to identify ways to reduce the costs and burdens on companies while still providing material information to investors.

In this publication, we look at the IPO market before and after the JOBS Act and analyze how EGCs are using the relief available to them under the Act. We also provide an update on what still must be done to finish implementing the JOBS Act.

2014 is shaping up to be a banner year for IPOs. For the first time in more than 10 years, the second quarter of 2014 marked the third consecutive quarter that had more than 70 IPOs on US exchanges.

Since enactment, EGCs have dominated the IPO market, representing 84% of IPOs that have gone effective. Most EGCs are taking advantage of the confidential review accommodation and reduced executive compensation disclosure relief available to them. The ability to provide only two years of audited financial statements and selected financial data is particularly appealing to smaller EGCs.

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\(^1\) The JOBS Act is available at http://www.gpo.gov/fdsys/pkg/BILLS-112hr3606enr/pdf/BILLS-112hr3606enr.pdf.
The JOBS Act was intended to promote job creation and economic growth by improving access to the capital markets for emerging, high-growth companies. The Act incorporated many recommendations from a task force formed in 2011 to address the decline in the number of IPOs since the technology boom of the late 1990s.²

The charts below show that IPO activity continues to rebound, and 2014 is on track to be the strongest year by number of IPOs and capital raised over the past 10 years. Although the JOBS Act may have accelerated the plans of some IPO candidates, the IPO market is affected by a number of factors, including macroeconomic conditions, equity market stability and investor confidence.

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² The IPO Task Force report presented to the US Department of the Treasury, Rebuilding the IPO On-Ramp — Putting Emerging Companies and the Job Market Back on the Road to Growth, is available on the SEC’s website at http://www.sec.gov/info/smallbus/acsec/rebuilding_the_ipo_on-ramp.pdf.
Although there was no immediate increase in US IPO market activity after the JOBS Act was enacted, the IPO market started surging in the second quarter of 2013, and it has maintained a strong pace through the first half of 2014. In the first half of 2014, 158 IPOs have gone effective in the US, raising $35.2 billion in capital. That’s a 21% increase in the number of IPOs over the second half of 2013 and a 66% jump over the first half of 2013. The uptick in activity has been spurred by an increase in the number of IPOs backed by financial sponsors such as private equity and venture capital firms.

Financial sponsors have taken advantage of attractive valuations and solid after-market performance to exit aging investments and clear the backlog of older companies in their portfolios. 2013 marked a turning point for venture capital investment with a more positive exit environment as a result of improved economic conditions, higher liquidity levels and stronger investor confidence. In the first half of 2014, financial sponsor-backed listings accounted for 64% of IPOs by number of deals and 80% by capital raised.

**Financial sponsor-backed IPO activity (2009 - 2014*)**

<table>
<thead>
<tr>
<th>Year</th>
<th>Number of IPOs</th>
</tr>
</thead>
<tbody>
<tr>
<td>2009</td>
<td>36</td>
</tr>
<tr>
<td>2010</td>
<td>108</td>
</tr>
<tr>
<td>2011</td>
<td>80</td>
</tr>
<tr>
<td>2012</td>
<td>87</td>
</tr>
<tr>
<td>2013</td>
<td>144</td>
</tr>
<tr>
<td>2014*</td>
<td>101</td>
</tr>
</tbody>
</table>

* Based on six month year-to-date information for 2014.

**Capital raised by financial sponsor-backed IPOs**

- 80% in 2014
- 60% 2009-2013
Recent trends also show that IPOs by companies based in foreign jurisdictions, referred to as cross-border offerings, that raise capital on US stock exchanges have increased. In the first half of 2014, cross-border offerings accounted for 21% of IPOs by number of deals and 24% by capital raised. Companies based in China, the United Kingdom and Israel account for the majority of cross-border IPOs in the US.

**Cross-border IPO activity (2009 - 2014*)**

<table>
<thead>
<tr>
<th>Year</th>
<th>Number of IPOs</th>
</tr>
</thead>
<tbody>
<tr>
<td>2009</td>
<td>17</td>
</tr>
<tr>
<td>2010</td>
<td>53</td>
</tr>
<tr>
<td>2011</td>
<td>23</td>
</tr>
<tr>
<td>2012</td>
<td>12</td>
</tr>
<tr>
<td>2013</td>
<td>38</td>
</tr>
<tr>
<td>2014*</td>
<td>33</td>
</tr>
</tbody>
</table>

* Based on six month year-to-date information for 2014. The term “cross-border” represents companies that are domiciled outside the US but conducted an offering on a major US stock exchange.

**Capital raised by cross-border IPOs**

- 24% in 2014
- 17% 2009-2013
The typical company that conducts an IPO has annual revenues below $100 million. More than half of the companies that went public in 2014 had revenues below $55 million, while the median revenue for IPOs in 2013 was $80 million. Median proceeds also were lower through the first half of 2014, declining by 26% compared to 2013.

When we take a closer look at the profile of companies that have gone public in 2013 and 2014, substantially all of the growth in IPOs is coming from companies in the EGC category (i.e., those with less than $1 billion in revenue in the last audited fiscal year presented in their registration statement).
Under the JOBS Act, certain regulatory requirements are phased in for emerging growth companies during a five-year period known as an IPO “on-ramp.” In a major change from past practice, an EGC can also submit its IPO registration statement and subsequent amendments to the SEC on a confidential basis.

The provisions of the JOBS Act related to EGCs were effective immediately and did not require SEC rulemaking. Given the self-executing nature of the EGC provisions, the staff of the SEC’s Division of Corporation Finance has issued a series of frequently asked questions (FAQs) related to eligibility and disclosure considerations and the confidential submission of EGC registration statements.

Smaller companies that now qualify as EGCs continue to dominate the IPO market. Approximately 81% of all publicly filed IPO registration statements and approximately 84% of the IPOs that have gone effective since April 2012 were filed by EGCs. Since the JOBS Act was enacted, the number of foreign private issuer (FPI) registrants filing as EGCs has increased each year. FPIs represented approximately 9% of all EGC IPO registration statements filed in 2012, 14% of those filed in 2013 and 19% of those filed in the first half of 2014. EGCs that publicly filed IPO registration statements were primarily concentrated in the health care, technology, real estate, oil and gas, and financial services industries.

Unless otherwise noted, the statistics presented in this section are based on an EGC’s initial IPO registration statement publicly filed between April 2012 and June 2014 and exclude IPO registration statements that were initially filed before the enactment of the JOBS Act.

### Breakdown of the top industries among EGCs that have publicly filed IPO registration statements

- **32%** Health care
- **20%** Technology
- **9%** Real estate
- **9%** Oil and gas
- **9%** Financial services

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3 SEC staff guidance, including its FAQs about the JOBS Act, is available on the SEC’s website at [http://www.sec.gov/divisions/corpfin/cfjobsact.shtml](http://www.sec.gov/divisions/corpfin/cfjobsact.shtml).
EGC eligibility
An EGC is defined as a company with “total annual gross revenues” (i.e., total revenues presented on the income statement in accordance with US GAAP) of less than $1 billion in its most recently completed fiscal year. Companies that have issued more than $1 billion in nonconvertible debt securities over a rolling 36-month period would not qualify as an EGC. In addition, companies that had their first sale of common equity securities under an effective registration statement on or prior to 8 December 2011 do not qualify as an EGC.

Under the JOBS Act, an issuer with EGC status loses its eligibility as an EGC five years after its common equity IPO or earlier if it meets any of the following criteria:

• Has annual revenues exceeding $1 billion
• Issues more than $1 billion in nonconvertible debt securities over a rolling 36-month period, including securities issued in registered or unregistered offerings
• Becomes a large accelerated filer (i.e., a seasoned issuer with public float of $700 million or more)

Reassessing EGC eligibility
As previously discussed, although issuers generally may retain EGC status for up to five years after their IPO, they should carefully monitor their eligibility. Changes in an EGC’s business (e.g., increase in revenue, unexpected increase in public float) could lead to earlier-than-anticipated financial reporting obligations. A registrant that loses its EGC status would be required to file its annual report for that year as a non-EGC and comply with the rules and regulations applicable to its filing status. For example, if a calendar-year EGC has annual revenues of more than $1 billion in 2014 the EGC relief provisions would not apply to its 2014 Form 10-K. Once an issuer loses its EGC status, it cannot be reclaimed. For example, if after 2014, the calendar-year registrant’s annual revenues fell below $1 billion, it would not regain EGC status.

Of the EGCs that have gone effective since enactment, approximately 4% (15 EGCs) lost EGC status as of the date of their most recent Form 10-K or Form 20-F. Although there is no requirement to disclose the reasons for the loss of EGC status, most ceased to be EGCs because they became large accelerated filers while the rest lost EGC status based on the revenue criterion.

EGCs should carefully monitor their eligibility because changes in their business (e.g., increase in revenue, unexpected increase in public float) could lead to earlier-than-anticipated financial reporting obligations.
Confidential registration statement submission

Approximately 85% of the EGCs that have filed IPO registration statements since the JOBS Act was enacted have taken advantage of the confidential review accommodation. This accommodation allows EGCs to submit registration statements and subsequent amendments to the SEC on a confidential basis. The SEC staff can comment on the confidential submission, and the company can respond before filing publicly. EGCs are required to publicly file all prior confidential submissions no later than 21 days before their road shows (or no later than 21 days before the anticipated effective date of the registration statement if they are not conducting a road show). For those EGCs that have elected the confidential review accommodation and have priced their IPO, their average initial public filing date is 55 days from the date of pricing. While the date of the road show is not publicly disclosed, IPOs are generally priced within two weeks of launching the road show.

Confidentially submitted registration statements are expected to be substantially complete, and the SEC staff reviews them using the same process and timetable as it does for publicly filed registration statements. The SEC staff generally has a target of less than 30 days to issue comments on all initial Securities Act filings, including confidentially submitted registration statements. According to the SEC’s Annual Performance Report, the SEC staff issued initial comments on Securities Act registration statements within an average of 25.6 days in 2013, up slightly from 24.9 days in 2012.

Separate from the SEC staff’s process to review registration statements, there are many factors, internal and external, affecting the period between initial submission or filing date and the IPO date. These factors include the ability to timely file amendments in response to SEC staff comments and market conditions affecting the decision to conduct an IPO. That said, on average, we observe the period between the initial submission or filing date and the IPO date is only slightly longer for the 15% of EGCs not submitting confidentially compared to non-EGCs. On average, the period between the initial submission and the IPO date is two weeks longer for the 85% of EGCs submitting confidentially.

One consequence of the JOBS Act provision allowing confidential submissions is reduced visibility into the IPO pipeline. As the graph demonstrates, the number of pre-effective IPO registration statements in public registration with the SEC has declined significantly since the JOBS Act was enacted. The SEC does not publish any statistics on the number of confidential submissions of IPO registration statements. Thus, it has become much harder to determine how many companies are preparing IPOs. To provide IPO market participants with meaningful data while maintaining company confidentiality, the SEC could consider publishing confidential IPO submission data on an aggregate and anonymous basis. Such pipeline data would be very helpful for market participants and IPO candidates to assess the direction of the IPO market.
EGC scaled disclosures during IPO on-ramp period

Since enactment, EGCs haven’t taken advantage of all of the scaled disclosures allowed by the JOBS Act. However, many EGCs have elected to provide only two years of audited financial statements, and most EGCs have elected to provide reduced executive compensation disclosures in their IPO registration statements.

An EGC may take an “à la carte” approach, providing some EGC scaled disclosures but not using the relief available to satisfy other SEC disclosure requirements.

The following table summarizes some of the scaled disclosures available for EGCs during their IPO on-ramp period:

<table>
<thead>
<tr>
<th>Requirements for registrants*</th>
<th>Scaled requirements available to EGCs</th>
</tr>
</thead>
<tbody>
<tr>
<td>Three years of audited financial statements in common equity IPO registration statement</td>
<td>Two years of audited financial statements in common equity IPO registration statement</td>
</tr>
<tr>
<td>Five years of selected financial data in IPO registration statement, subsequent registration statements and periodic reports</td>
<td>Two years of selected financial data in IPO registration statement; selected financial data in subsequent registration statements and periodic reports limited to earliest audited period presented in IPO registration statement</td>
</tr>
<tr>
<td>Compensation, discussion and analysis section and compensation disclosure for five named executive officers in IPO registration statement and subsequent annual reports</td>
<td>No compensation, discussion and analysis section and compensation disclosure for three named executive officers in IPO registration statement and subsequent annual reports</td>
</tr>
<tr>
<td>Management assessment and auditor attestation of internal control over financial reporting beginning with second Form 10-K following IPO</td>
<td>Only management assessment of internal control over financial reporting beginning with second Form 10-K following IPO</td>
</tr>
<tr>
<td>Follow public company effective dates for new or revised accounting standards</td>
<td>Follow private company effective dates for new or revised accounting standards</td>
</tr>
</tbody>
</table>

* Represents requirements for registrants other than those that meet the definition of a smaller reporting company or an EGC.
Number of audited financial statement periods and selected financial data

An EGC is not required to provide more than two years of audited financial statements in the registration statement for an IPO of its common equity securities. So far, approximately 53% of EGCs elected to take advantage of this relief. Use of this relief is becoming more popular, especially among smaller EGCs. The majority of EGCs in the health care, oil and gas, and real estate sectors provide only two years of audited financial statements. More than 60% of EGCs electing this relief had revenues of less than $100 million.

Use of relief for number of audited financial statement periods provided*

<table>
<thead>
<tr>
<th>Year</th>
<th>Two years of audited financial statements</th>
</tr>
</thead>
<tbody>
<tr>
<td>2012</td>
<td>35%</td>
</tr>
<tr>
<td>2013</td>
<td>55%</td>
</tr>
<tr>
<td>2014</td>
<td>56%</td>
</tr>
</tbody>
</table>

Percentage of EGCs in the top three sectors providing two years of audited financial statements*

<table>
<thead>
<tr>
<th>Sector</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Health care</td>
<td>83%</td>
</tr>
<tr>
<td>Oil and gas</td>
<td>76%</td>
</tr>
<tr>
<td>Real estate</td>
<td>63%</td>
</tr>
</tbody>
</table>

* Excludes EGCs that also qualify as a smaller reporting company or have a reporting history of less than two years.
In their common equity IPO registration statements, subsequent registration statements and periodic reports, EGCs also are not required to include selected financial data for periods before the earliest audited period presented in their IPO registration statements. So, for an EGC that elects to provide audited financial statements for 2013 and 2012 in its IPO registration statement, selected financial data would not be required for years 2009 through 2011. Similar to the increase in percentage of EGCs that elect to take advantage of the reduced audited financial statement requirements, there also has been an increasing percentage of EGCs that have elected to present reduced selected financial data disclosures. Of the EGCs that presented two years of audited financial statements, very few elected to provide selected financial data for earlier periods. Of EGCs that have elected to provide a full three years of audited financial statements, approximately 65% provided less than five years of selected financial data.

There are a number of factors that may influence an EGC’s decision to present a reduced number of periods of audited financial statements and selected financial data, including its operating history and whether the historical performance and trend information is necessary for an investor’s understanding of current performance and future prospects.

**Effective EGC IPOs, including two years versus three years of audited financial statements***

<table>
<thead>
<tr>
<th>$ in millions</th>
<th>IPOs with 2 years of audited financial statements</th>
<th>IPOs with 3 years of audited financial statements</th>
</tr>
</thead>
<tbody>
<tr>
<td>$19.3</td>
<td></td>
<td>$120.6</td>
</tr>
<tr>
<td>$20.0</td>
<td></td>
<td>$92.0</td>
</tr>
<tr>
<td>$100.0</td>
<td></td>
<td>$133.2</td>
</tr>
</tbody>
</table>

* The above data excludes EGCs that also qualify as a smaller reporting company or have a reporting history of less than two years.
Executive compensation disclosures
EGCs may provide executive compensation disclosures in a manner consistent with a smaller reporting company. Thus, EGCs are not required to provide a compensation discussion and analysis (CD&A), and the majority have elected to omit CD&A from their IPO registration statements. The tabular executive compensation disclosure requirements also are significantly reduced for EGCs. For example, EGCs are required to provide disclosure for only three named executive officers (i.e., the CEO and the two other highest-paid executives), while non-EGCs are required to provide disclosure for five named executive officers (i.e., CEO, CFO and the three other highest-paid executives). Since April 2012, approximately 94% of EGCs elected to provide reduced executive compensation disclosures. During the first half of 2014, substantially all of them have elected to provide reduced executive compensation disclosures. Once they go public, EGCs also are not required to comply with certain executive compensation requirements mandated by the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act). EGCs are not subject to the “say-on-pay” provisions of the Dodd-Frank Act, which require companies to hold a shareholder advisory vote on executive compensation and golden parachutes. In addition, when the SEC finalizes rules on “pay ratio” disclosures, EGCs will not be required to calculate and disclose the ratio of their principal executive officer’s total annual compensation to that of the median employee.

Compliance with auditor attestation of internal control over financial reporting
No IPO registration statement is required to include a report by management assessing the effectiveness of the company’s internal control over financial reporting (ICFR) or its independent auditor’s assessment of its ICFR under Sections 404(a) and 404(b) of the Sarbanes-Oxley Act, respectively. Section 404(a) requires registrants to provide a report by management assessing the effectiveness of the company’s ICFR generally beginning with their second annual report after becoming a public company. Unless an EGC elects to comply voluntarily, it may defer the requirement to comply with Section 404(b). All of the companies that went public in 2012 and filed their second annual report on Form 10-K as EGCs have taken advantage of the JOBS Act’s deferral of the requirement to have their independent auditor assess their ICFR.

Although EGCs include general disclosures about the relief available under the JOBS Act in their IPO registration statements, the majority of EGCs did not disclose whether they plan to take advantage of the relief on auditor attestation. However, in their IPO registration statements, no EGCs indicated their intent to opt out of the auditor attestation deferral. That is, in their IPO registration statements, no EGCs have committed to comply with Section 404(b) earlier than required. Only non-accelerated filers (i.e., public companies with a public float of less than $75 million) are permanently exempt from Section 404(b).

Use of executive compensation disclosure relief by year*

<table>
<thead>
<tr>
<th>Year</th>
<th>Reduced executive compensation disclosure</th>
</tr>
</thead>
<tbody>
<tr>
<td>2012</td>
<td>88%</td>
</tr>
<tr>
<td>2013</td>
<td>92%</td>
</tr>
<tr>
<td>2014</td>
<td>98%</td>
</tr>
</tbody>
</table>

* Excludes EGCs that also qualify as a smaller reporting company or a foreign private issuer.
Accounting standards issued after the JOBS Act

In their IPO registration statements, approximately 82% of EGCs opted out of the extended accounting standard transition relief that allows EGCs to adopt new or revised accounting standards when they are effective for private companies. That is, only 18% of EGCs decided to retain the ability to adopt accounting standard updates using delayed effective dates afforded to private companies. Recently, there has been an even lower percentage of EGCs retaining this relief. It appears that many EGCs want to assure investors that their financial statements will remain comparable to those of other public companies.

Under Section 107(b) of the JOBS Act, an EGC’s election to opt in to public company transition is irrevocable and applies to all new or revised accounting standards. The SEC staff has indicated that it will not object if an EGC initially decides to retain the ability to take advantage of the extended

transition period but subsequently elects to follow the requirements for public companies. An EGC that elects to follow private company effective dates may still early adopt a new or revised accounting standard, if the standard allows early adoption by private companies. This won’t affect the EGC’s ability to follow the extended private company transition relief in other standards issued by the Financial Accounting Standards Board (FASB).

The SEC staff also expects EGCs electing to use private company transition to disclose additional risk factors. Such disclosures must explain that the election allows the company to delay adoption of new or revised accounting standards that have different transition dates for public and private companies and, as a result, that the company’s financial statements may not be comparable to those of companies that comply with public company effective dates.

Use of relief for accounting standards issued after the JOBS Act by year

<table>
<thead>
<tr>
<th>Year</th>
<th>Retain ability to use private company effective dates</th>
</tr>
</thead>
<tbody>
<tr>
<td>2012</td>
<td>22%</td>
</tr>
<tr>
<td>(April to December)</td>
<td></td>
</tr>
<tr>
<td>2013</td>
<td>19%</td>
</tr>
<tr>
<td>2014</td>
<td>14%</td>
</tr>
<tr>
<td>(January to June)</td>
<td></td>
</tr>
</tbody>
</table>
In this section, we summarize what’s happened and what’s yet to come related to some of the other key provisions of the JOBS Act.

**Amendments to Exchange Act Section 12(g)**

Many of the amendments to the Exchange Act registration thresholds were effective immediately after the law was enacted.

The JOBS Act amended Exchange Act Section 12(g) and increased the number of record holders that triggers a company’s obligation to register with the SEC and report as a public company to 2,000 people (or 500 people who are not accredited investors). Previously, the record holder trigger for registration was 500 people, even if all were accredited investors. For a bank or bank holding company, the trigger is now 2,000 people, even if none are accredited investors.

The JOBS Act also amended Sections 12(g) and 15(d) of the Exchange Act to raise the threshold below which a bank or bank holding company may terminate registration and suspend its reporting obligation to 1,200 record holders from 300. The current threshold of 300 record holders for non-banks and non-bank holding companies remains unchanged.

The Act requires the SEC to revise the definition of “held of record” to exclude people who receive securities under an employee compensation plan in transactions exempted from the registration requirements of Section 5 of the Securities Act. Although the SEC has not yet revised this definition, the change went into effect immediately after enactment. That is, an issuer (including a bank holding company) may exclude people who received securities under an employee compensation plan in Securities Act exempt transactions, regardless of whether they are still employees. This change gives private companies more flexibility to issue stock to employees as compensation because these shareholders are no longer counted among record holders who could trigger public registration.

In addition, the Act required the SEC to further revise the definition of “held of record” to exclude investors who acquire securities through crowdfunding, which the Act authorizes the SEC to permit. However, the crowdfunding exemption will not be effective until the SEC issues final rules implementing the Act’s crowdfunding provisions.

Certain provisions of the JOBS Act, including increasing Exchange Act registration thresholds and lifting the ban on general solicitation and advertising in certain exempt offerings, are now effective and allow private companies to remain private longer while broadening their access to the capital markets. After the SEC adopts crowdfunding and Regulation A+, smaller companies will have even more capital-raising options.
Other exempt offerings

**General solicitation and advertising in certain exempt offerings**

An SEC rule went into effect 23 September 2013 allowing general solicitation and advertising in certain offerings of restricted securities that are exempt from registration if all purchasers are accredited investors.

The new Rule 506(c) of Regulation D allows any company (whether public, private, established or start-up) to expand its pool of potential investors without SEC registration. Rule 506(c) also is available for use by hedge funds, venture capital funds and private equity funds. Companies issuing restricted securities under the rule are permitted to solicit investors and advertise offerings, as long as they take reasonable steps to verify that the purchasers are accredited investors. The SEC did not specify what the steps would be, but the rule includes a list of methods that satisfy the verification requirements for individual investors. The SEC expects issuers to determine what steps are reasonable based on the facts and circumstances. The rule also applies to resales of restricted securities to qualified institutional buyers under Rule 144A of the Securities Act.

The SEC also proposed amendments to Regulation D that would require issuers to provide more information about exempt offerings that use general solicitation to allow the SEC to evaluate emerging market practices and their effects on capital formation and investor protection.

The SEC staff has issued a number of compliance and disclosure interpretations providing guidance on Rule 506(c) offerings. The SEC staff also issued a small entity compliance guide and investor alert for the new rules on general solicitation. The SEC also created a submission portal for registrants to voluntarily submit general solicitation materials used in Rule 506(c) offerings.

When the SEC approved the general solicitation and advertising rule, it finalized its proposal to disqualify issuers from using any exemption under Rule 506 of Regulation D if the offering involves certain felons and other bad actors, as mandated by the Dodd-Frank Act.

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**Regulation A+ exempt offerings**

The JOBS Act requires the SEC to adopt or amend its regulations to encourage capital formation without SEC registration. The SEC proposed amendments in December 2013 that would increase the offering threshold in existing Regulation A (creating what’s referred to as Regulation A+). The proposed Regulation A+ rules would establish two tiers of exempt public offerings. Tier 1 would cover offerings of up to $5 million within a 12-month period and would retain many of the existing requirements of Regulation A. Tier 2 would allow exempt public offerings of up to $50 million within 12 months but would require more robust offering disclosures and ongoing reporting. As required by the JOBS Act, the SEC will review the $50 million offering limit every two years. For Tier 2 offerings the proposed rules would pre-empt state securities laws known as Blue Sky laws.

To protect investors, the proposed rules would require companies that conduct Tier 2 offerings to file audited financial statements with the SEC on an annual basis and meet ongoing reporting requirements similar to those of smaller reporting companies. Investors in Regulation A offerings would still count toward the record holder threshold that could trigger registration under the Exchange Act.

In our comment letter, we said that the SEC should consider additional opportunities to leverage disclosure requirements in existing SEC rules and regulations for registered offerings and scale those disclosure requirements for purposes of unregistered offerings under Regulation A. We also encouraged the SEC to clarify certain terminology and disclosure requirements in the proposal that could be difficult to interpret or apply.

The proposal is on the SEC’s rulemaking agenda, and it is expected to be finalized in 2014.

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Crowdfunding

In October 2013, the SEC proposed rules that would allow start-ups and other small businesses to raise small amounts of capital from potentially large pools of investors through the internet in a process known as crowdfunding. US companies (including their predecessors and any commonly controlled companies) could raise a maximum of $1 million (subject to inflation adjustments at least every five years) in any 12-month period.

Companies would be required to disclose certain financial and other information about these offerings and report to investors annually. Generally, the extent of information required to be filed with the SEC (including potentially obtaining an independent audit or review) would depend on the offering size.

The proposal requires that such transactions be handled by an intermediary registered with the SEC. In addition, the proposal limits the amount of securities that could be sold to individual investors under crowdfunding exemptions over a 12-month period.

This proposal is also on the SEC’s rulemaking agenda and is expected to be finalized this year. While the proposal closely aligns with the provisions of the J O B S Act and in certain cases includes investor protections that go beyond them, it has garnered mixed reactions. Some constituents are concerned that its investor protections are not strong enough. Others argue that the extent of information requirements for issuers of crowdfunding securities will be so significant that few will be willing to conduct crowdfunding offerings. In the meantime, the SEC staff has reminded companies that the use of the crowdfunding exemption is unlawful until the SEC adopts final rules.5

5 The SEC staff notice related to the use of crowdfunding is available at http://www.sec.gov/spotlight/jobsact/crowdfundingexemption.htm.
The JOBS Act required the SEC to conduct studies examining the impact of certain items on EGCs, such as decimalization and the burdens associated with complying with the nonfinancial disclosure requirements of Regulation S-K.

**Regulation S-K study**

The JOBS Act required the SEC to conduct a study on how to simplify the Regulation S-K nonfinancial disclosures for EGCs. In December 2013, the SEC staff issued its Report on Review of Disclosure Requirements in Regulation S-K.\(^6\) Although the JOBS Act mandate pertains only to EGCs, the SEC staff evaluated Regulation S-K for areas of potential simplification for all public companies.

The SEC staff recommended that the Commission undertake a comprehensive review of its disclosure regime for all companies, rather than take a targeted approach. This comprehensive analysis would include reviewing requirements in Commission forms, rules (including Regulations S-K and S-X), industry guides and related interpretive guidance. The staff believes that such a review also should consider how information is delivered and presented to investors.

The SEC staff has begun reviewing SEC disclosure requirements and reaching out to companies, investors and other market participants for ideas about how to streamline disclosures and make them more meaningful. SEC Chair Mary Jo White has indicated that this project is a priority and has directed the SEC staff to undertake a comprehensive review of the existing disclosure requirements and make specific recommendations. The SEC is expected to issue one or more concept releases later this year to seek public input.

In a recent speech, SEC Division of Corporation Finance Director Keith Higgins said the staff is reviewing the requirements of Regulations S-K and S-X to identify ways to reduce the costs and burdens on companies while still providing material information to investors. However, reducing the volume of disclosures is not the SEC staff’s sole objective. If the SEC staff identifies potential gaps in disclosure or opportunities to increase the transparency of disclosures, it may recommend new or enhanced disclosure requirements. In addition, the SEC staff will consider how technology can be used to improve the focus and navigability of disclosures (e.g., use of structured data, hyperlinks, topical indexes for ease of navigation).

Preparers, investors and other constituents can submit their suggestions on how to make disclosures more effective through the spotlight page on the SEC’s website.\(^7\) The staff will use this page to communicate information about future public roundtables and other news about the project.

We applaud the SEC for recognizing the need to address disclosure effectiveness, and we believe there are significant changes that can be made to Regulations S-K and S-X (e.g., the requirements with respect to filing financial statements of an acquired business under Rule 3-05) to simplify the existing disclosure regime and focus on material information for investors.

In response to an SEC request for comment on the Regulation S-K study for EGCs, we had encouraged the SEC to broaden the scope of its review and eliminate redundant or outdated disclosures for all issuers.\(^8\) We also recommended that informational disclosures that are not specific to a reporting period should appear in a company profile and that periodic reports should include only information specific to that fiscal period. In addition, we recommended that the SEC adopt a “sunset” provision — of five or 10 years, for example — for significant new disclosure requirements. Under such a provision, new disclosure mandates would expire unless the SEC takes action to indefinitely extend or modify them. Such sunsets would require the SEC to consider changes in the economic, business and regulatory landscape when assessing whether new requirements should become permanent.

**EY resources**

- To the Point, The SEC’s opportunity to consider disclosure overload (SCORE No. CC0359)

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\(^7\) The SEC’s disclosure effectiveness spotlight page is at: [http://www.sec.gov./spotlight/disclosure-effectiveness.shtml](http://www.sec.gov./spotlight/disclosure-effectiveness.shtml).

The JOBS Act: 2014 mid-year update

Decimalization study

The Act required the SEC to conduct a study examining the effects of trading and quoting securities in one-penny increments, known as decimalization or tick sizes, on IPOs and small and mid-sized companies. The SEC staff completed its study in July 2012. The SEC staff recommended that the Commission seek the opinions of key stakeholders, including companies, investors, market makers and academics, on the broad topic of decimalization, how best to study its effects on IPOs, trading and liquidity for small and middle capitalization companies, and potential policy alternatives.

The SEC staff hosted a roundtable in February 2013 to discuss the effect of decimalization on small and mid-sized companies, market professionals, investors and US securities markets. Some participants in the roundtable suggested that the SEC launch a pilot program to examine whether changes to current trading increments would benefit the US marketplace. In addition, the SEC’s Investor Advisory Committee and the Advisory Committee on Small and Emerging Companies discussed tick sizes and made certain recommendations.

In June 2014, the SEC ordered the national securities exchanges and the Financial Industry Regulatory Authority (FINRA) to implement a 12-month pilot program to increase the tick sizes of registrants that meet certain criteria. The pilot will consist of one control group that will be quoted at the current tick size increment of one cent and multiple test groups with wider tick sizes for quotes and trading (e.g., five-cent minimum increments). The results of the pilot will be used to analyze, among other things, the effects of wider trading increments on liquidity, execution quality, volatility and market maker profitability. The exchanges and FINRA must submit a detailed plan for the pilot that will need to be approved by the Commission after a public comment period.
The SEC has two advisory committees that recently have weighed in on matters that could affect smaller companies.

In April 2014, the Investor Advisory Committee (IAC) made a series of recommendations to the SEC to include additional investor protections in its final crowdfunding rules. The recommendations would further limit the maximum amount an investor could invest in a crowdfunding offering and require intermediaries to create tools to ensure that investment limits are not exceeded and to monitor issuers’ compliance with SEC rules. In July 2014, the IAC also met to discuss the definition of an accredited investor but did not make a formal recommendation to change the definition.

The Advisory Committee on Small and Emerging Companies (the Committee) has previously recommended that the SEC increase the public float threshold for smaller reporting companies (SRCs) to $250 million from $75 million and expand the financial reporting and disclosure relief for SRCs. The Committee wants the SEC to permanently extend to SRCs some of the temporary relief provided under the JOBS Act to EGCs (e.g., exemptions from Section 404(b) auditor attestation on internal control over financial reporting, shareholder say-on-pay, public company accounting standards transition). In addition, the relief recommended by the Committee would exempt all SRCs from some of the executive compensation disclosures required by the Dodd-Frank Act (i.e., relationship of executive compensation to financial performance), exempt SRCs from the requirement to file their financial information in XBRL format and limit the Regulation S-K exhibit filing requirement to material contracts.

Given the Commission’s rulemaking backlog, it is unclear whether or how the SEC will address the Committee’s recommendations. However, some of the Committee’s previous recommendations have attracted the attention of members of Congress, including consideration of additional reporting relief for EGCs and a potential exemption for smaller companies and EGCs from complying with XBRL reporting requirements. Members of Congress continue to be interested in reducing the regulatory burden for small and emerging companies.

The JOBS Act requires the SEC to adopt rules to implement crowdfunding and Regulation A+. The comment periods for both of these proposals have ended. Given the focus on completing JOBS Act rulemaking and the fact that both proposals are on the SEC’s 2014 rulemaking agenda, the prospects for final rules on crowdfunding and Regulation A+ this year are promising.

The SEC staff has begun reviewing SEC disclosure requirements and reaching out to companies, investors and other market participants for ideas about how to streamline disclosures and make them more meaningful. Chair White has indicated that this project is a priority and has directed the SEC staff to undertake a comprehensive review of the existing disclosure requirements and make specific recommendations. We expect the SEC staff to perform additional outreach on its disclosure effectiveness project and the Commission to issue one or more concept releases seeking public input.
### Appendix: Status of SEC action items required by the JOBS Act

<table>
<thead>
<tr>
<th>Title and section</th>
<th>SEC action item</th>
<th>Deadline</th>
<th>Status</th>
</tr>
</thead>
<tbody>
<tr>
<td>Amendments to Exchange Act Section 12(g):</td>
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<tr>
<td><strong>Title V — Section 503</strong></td>
<td>Revise the definition in Exchange Act Section 12(g)(5) of “held of record” to exclude securities received under an employee compensation plan in transactions exempt from registration and adopt safe harbor provisions to follow when determining whether securities were received in such transactions</td>
<td>None</td>
<td>The amendment to the definition of “held of record” in Exchange Act Section 12(g)(5) was immediately effective; safe harbor provisions are still to be adopted by the Commission</td>
</tr>
<tr>
<td><strong>Title VI — Section 602</strong></td>
<td>Adopt rules to implement amendments to Exchange Act Sections 12(g) and 15(d) to raise the threshold to 1,200 record holders below which a bank or bank holding company may terminate registration and suspend its reporting obligation</td>
<td>1 year after enactment or 5 April 2013</td>
<td>While the Commission has not yet adopted rules, the amendments to these sections of the Exchange Act were effective immediately after enactment</td>
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<td>Other exempt offerings:</td>
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<tr>
<td><strong>Title II — Section 201</strong></td>
<td>Adopt rules to allow companies to solicit investors and advertise offerings of restricted securities that are exempt from registration if sales are limited to accredited investors (or resales are limited to qualified institutional buyers under Securities Act Rule 144A)</td>
<td>90 days after enactment or 4 July 2012</td>
<td>Final rule approved 10 July 2013 and effective 23 September 2013</td>
</tr>
<tr>
<td><strong>Title IV — Section 401</strong></td>
<td>Adopt rules to add a new category of public offerings exempt from registration of up to $50 million raised over a 12-month period (also known as Regulation A+)</td>
<td>None</td>
<td>Proposed rule issued 18 December 2013, awaiting final rule</td>
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<tr>
<td>Crowdfunding:</td>
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<tr>
<td><strong>Title III — Section 302</strong></td>
<td>Adopt rules to allow up to $1 million of securities to be sold in a rolling 12-month period and to establish disqualification provisions for using crowdfunding</td>
<td>270 days after enactment or 31 December 2012</td>
<td>Proposed rule issued 23 October 2013, awaiting final rule</td>
</tr>
<tr>
<td><strong>Title III — Section 303</strong></td>
<td>Adopt rules to amend Exchange Act Section 12(g) to exclude investors who buy securities through crowdfunding from the record holder count that triggers Exchange Act registration</td>
<td>270 days after enactment or 31 December 2012</td>
<td>Proposed rule issued 23 October 2013, awaiting final rule</td>
</tr>
<tr>
<td><strong>Title III — Section 304</strong></td>
<td>Adopt rules to amend Exchange Act Section 3 to exempt registered funding portals that meet certain requirements from the requirement to register as a broker or dealer under Exchange Act Section 15(a)(1)</td>
<td>270 days after enactment or 31 December 2012</td>
<td>Proposed rule issued 23 October 2013, awaiting final rule</td>
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<tr>
<td><strong>Studies:</strong></td>
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<tr>
<td><strong>Title I — Section 106</strong></td>
<td>Conduct a study of penny trading increments (also called decimalization) and its effects on IPOs and on liquidity for small and mid-cap companies</td>
<td>90 days after enactment or 4 July 2012</td>
<td>Study completed 20 July 2012 with recommendation to not immediately increase the penny pricing increment for any companies and to consider additional steps to determine whether future rulemaking is warranted</td>
</tr>
<tr>
<td><strong>Title I — Section 106</strong></td>
<td>Adopt, if determined necessary, rules changing current decimalization rules for EGCs</td>
<td>180 days after enactment or 2 October 2012</td>
<td>National securities exchanges and FINRA have been ordered to submit a detailed plan by 25 August 2014 to implement a 12-month pilot program to analyze the effects of increased pricing increments</td>
</tr>
<tr>
<td><strong>Title I — Section 108</strong></td>
<td>Conduct a review of Regulation S-K to analyze the current requirements and determine how it can be updated to modernize and simplify the registration process for EGCs</td>
<td>180 days after enactment or 2 October 2012</td>
<td>Study completed 20 December 2013; disclosure effectiveness initiative is ongoing and the SEC is expected to issue one or more concept releases later this year for public input</td>
</tr>
<tr>
<td><strong>Title V — Section 504</strong></td>
<td>Examine the Commission’s authority to enforce Exchange Act Rule 12g5-1 to determine whether new enforcement tools are needed to enforce the anti-evasion provision in subsection (b)(3) of the rule</td>
<td>120 days after enactment or 3 August 2012</td>
<td>Study completed 15 October 2012 that concluded existing tools are in place for enforcement of Exchange Act Rule 12g5-1; therefore, no further action from the Commission is required</td>
</tr>
<tr>
<td><strong>Other:</strong></td>
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<tr>
<td><strong>Title VII — Section 701</strong></td>
<td>Provide online information and outreach to inform affected businesses about the changes made in the JOBS Act</td>
<td>None</td>
<td>Ongoing</td>
</tr>
</tbody>
</table>

20 | The JOBS Act: 2014 mid-year update
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Sources
For purposes of this report, an IPO is defined as a company’s first registered offering of equity securities to the public.

This report discusses only IPOs for which the data provider Dealogic offers data on the issue date (the day the offer is priced and allocations are subsequently made), the trading date (the date on which the security first trades) and proceeds (funds raised, including any overallotment sold). Companies with the following Standard Industrial Classification (SIC) codes also are excluded from our study:
- 6091: Financial companies that conduct trust, fiduciary and custody activities
- 6371: Asset management companies such as health and welfare funds, pension funds and their third-party administration as well as other financial vehicles
- 6722: Companies that are open-end investment funds
- 6726: Companies that are other financial vehicles
- 6732: Companies that are grant-making foundations
- 6733: Asset management companies that deal with trusts, estates and agency accounts
- 6799: Special Purpose Acquisition Companies

We have included only IPOs on the three major US exchanges: New York Stock Exchange (NYSE), NASDAQ and NYSE MKT.

Revenue data used in this report was obtained from data provider S&P Capital IQ.

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