Securities Insight: Jumpstart Our Business Startups (JOBS) Act

In an effort to revitalize the economy, the JOBS Act was enacted in April 2012, to ease particular securities regulations and make it easier to fund startups. While certain provisions of the law became effective immediately, the SEC continues to work toward completing its rulemaking mandates under the remaining titles. Tracking all those changes and their ramifications is already a complex affair, and as other provisions are translated into rule, it will become even more challenging.

Top three recent issues

1. **Emerging Growth Companies**
   - Effective upon passage of the law, Title I of the JOBS Act created a new privileged category of filer, the Emerging Growth Company (EGC), exempt from many of the burdens of the initial public offering registration process. Such companies are even eligible to begin the IPO process confidentially. The EGC provision is aimed at giving fledgling companies a relatively easy path, or an "on-ramp," to going public. EGCs are also entitled to certain shortcuts in their SEC disclosure for the first years of their existence.
   - Examples of issues confronting companies who are considering using the EGC provisions include how to measure their revenue, how to evaluate their own eligibility for EGC status and using the confidential submission process.
2. **Regulation A+**
   - On June 19, 2015, Regulation A+ became effective, expanding Regulation A securities registration exemptions for many issuers. Regulation A+ creates two Tiers of offerings that are exempt from registration under the Securities Act. Each tier has different offering caps, disclosure requirements, and ongoing reporting obligations, all of which enable issuers to have increased flexibility depending on their financing needs. Tier 1 has offerings of securities of up to $20 million in a 12-month period and Tier 2 has offerings of securities of up to $50 million in a 12-month period. Both Tiers are subject to certain basic requirements, while Tier 2 offerings are also subject to additional disclosure and ongoing reporting requirements.
   - Regulation A+ was enacted to create more opportunities for small businesses to raise capital without having to comply with some of the more onerous features of the traditional registration process.
3. **Rule 506 Changes**
   - The SEC recently adopted new Rule 506(c), which removes the prohibition on general solicitation or general advertising for unregistered securities offerings made under Rule 506 and Rule 144A of the Securities Act of 1933. Although anyone can be solicited under the new rule, only accredited investors may actually buy.
   - Although the Rule 506 changes do not affect the definition of "accredited investor," the SEC is in the midst of reconsidering that definition as required by the Dodd-Frank Act.

In Legal Practice

Lawyers representing companies affected or potentially affected by JOBS Act regulations must keep themselves apprised of new rulemaking by the SEC and other agencies so that they can advise their clients of these changes, as well as keep on top of evolving best practices for complying with recently enacted rules.

Those involved in drafting or reviewing SEC filings will need to be aware of new disclosure requirements to ensure they're addressed appropriately. In doing so, they may want to review the disclosure of other SEC filers so they can examine how similar companies have addressed the requirements or are complying with the new regulations. For example, with respect to EGC disclosure, lawyers may be called upon to advise clients on the requirements for businesses wishing to take advantage of the exemptions offered by that provision.

For companies contemplating raising capital outside the arena of registered securities offerings, there are a host of issues to keep on top of. For example, the SEC intends that crowdfunding portals act as watchdogs against fraud: how will that be enforced, and how will liability be interpreted? How will issuers determine who is a "bad actor" prohibited from being involved in an offering using 506(c)? What constitutes a reasonable effort to confirm accredited investor status?

Along with the pending finalization of the crowdfunding rule, the SEC plans to tackle additional JOBS Act-mandated rules in 2014 and beyond, including increasing the threshold for Exchange Act reporting from 500 to 2,000 registered shareholders (for non-bank issuers or bank holding companies). The Commission will also continue to collect feedback on proposed rules and issue administrative guidance on rules already enacted.

How Lexis® Securities Mosaic® Can Help

With Lexis® Securities Mosaic® resources, you have the ability to search and set up real-time alerts for JOBS Act-related rulemaking, guidance and disclosure through our search pages on SEC Filings, No-Action Letters, Comment Letters and SEC Materials. These alerts help you track changes as they're happening and stay on top of your compliance and disclosure obligations. Complementing this capability, Lexis Securities Mosaic has hundreds of legal and scholarly articles on the JOBS Act in the form of Law Firm Memos, with new memos being added every day.

1. **Emerging Growth Companies**: Lexis Securities Mosaic is the only SEC Filings provider to allow you to filter on companies that have self-declared their EGC status. See what the Annual Report or Proxy Statement of an EGC looks like, or combine with the IPO filter to see how ECGs have taken advantage of the "IPO on-ramp" created by the JOBS Act. You can also use the SEC Comment Letters page to see how the SEC has responded to filings submitted by EGCs.

2. **Regulation A+**: Set up alerts at the Securities Mosaic® SEC Filings page to see when new EDGAR® forms for Regulation A+ are filed with the SEC. Also, track changes to Form 1-A and keep track of which companies are utilizing Regulation A+ offerings. In addition, Tier 2 issuers who are interested in listing their securities on a national securities exchange by using the revised Form 8-A short form registration statement can browse the SEC Filings page to see Form 8-A filings that are submitted in connection with Regulation A+ offerings

3. **Rule 506 Changes**: Find Private Placement Memoranda for offerings that have taken advantage of the new ability to solicit and advertise. See how SEC filers frame the risks and opportunities to their business related to the new rule. Locate SEC guidance and expert commentary (Law Firm Memos) on emerging best practices to comply with the new rule.

Learn more about Lexis Securities Mosaic and how it can support your business today.

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