

April 2012

The JOBS Act: Changes to Existing Law A Blackline and Annotated Reference Guide

SECURITIES ACT OF 1933,
SECURITIES EXCHANGE ACT OF 1934,
SARBANES-OXLEY ACT OF 2002 AND
INVESTOR PROTECTION AND SECURITIES REFORM ACT OF 2010,
AS AMENDED BY THE JUMPSTART OUR BUSINESS STARTUPS ACT¹

¹ This document shows selected sections of the Securities Act of 1933, as amended (the “Securities Act”), the Securities Exchange Act of 1934, as amended (the “Exchange Act”), the Sarbanes-Oxley Act of 2002, as amended (“the Sarbanes-Oxley Act”), and the Investor Protection and Securities Reform Act of 2010, as amended, marked to show changes that will be made by the Jumpstart Our Business Startups Act (the “JOBS Act”) when it becomes law.

This compilation was created by Shearman & Sterling LLP from the final bill made available on the Library of Congress website, <http://thomas.loc.gov>. We underline new text added by the JOBS Act to a statute and strike through and place between bold brackets “[]” text deleted by the JOBS Act. We have also added footnotes and inserted some descriptions in non-bold brackets “[].”

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SECURITIES ACT OF 1933

SEC. 2. DEFINITIONS²

(a) DEFINITIONS.— When used in this title, unless the context otherwise requires—

(1) * * * (2) * * *

(3) The term “sale” or “sell” shall include every contract of sale or disposition of a security or interest in a security, for value. The term “offer to sell,” “offer for sale,” or “offer” shall include every attempt or offer to dispose of, or solicitation of an offer to buy, a security or interest in a security, for value. The terms defined in this paragraph and the term “offer to buy” as used in subsection (c) of section 5³ shall not include preliminary negotiations or agreements between an issuer (or any person directly or indirectly controlling or controlled by an issuer, or under direct or indirect common control with an issuer) and any underwriter or among underwriters who are or are to be in privity of contract with an issuer (or any person directly or indirectly controlling or controlled by an issuer, or under direct or indirect common control with an issuer). Any security given or delivered with, or as a bonus on account of, any purchase of securities or any other thing, shall be conclusively presumed to constitute a part of the subject of such purchase and to have been offered and sold for value. The issue or transfer of a right or privilege, when originally issued or transferred with a security, giving the holder of such security the right to convert such security into another security of the same issuer or of another person, or giving a right to subscribe to another security of the same issuer or of another person, which right cannot be exercised until some future date, shall not be deemed to be an offer or sale of such other security; but the issue or transfer of such other security upon the exercise of such right of conversion or subscription shall be deemed a sale of such other security. Any offer or sale of a security futures product by or on behalf of the issuer of the securities underlying the security futures product, an affiliate of the issuer, or an underwriter, shall constitute a contract for sale of, sale of, offer for sale, or offer to sell the underlying securities. Any offer or sale of a security-based swap by or on behalf of the issuer of the securities upon which such security-based swap is based or is referenced, an affiliate of the issuer, or an underwriter, shall constitute a contract for sale of, sale of, offer for sale, or offer to sell such securities. The publication or distribution by a broker or dealer of a research report about an emerging growth company that is the subject of a proposed public offering of the common equity securities of such emerging growth company pursuant to a registration statement that the issuer proposes to file, or has filed, or that is effective shall be deemed for purposes of paragraph (10) of this subsection⁴ and section 5(c)⁵ not to constitute an offer for sale or offer to sell a security, even if the broker or dealer is participating or will participate in the registered offering of the securities of the

² Contains common definitions used throughout the Securities Act.

³ Prohibits offers of securities unless a registration statement is on file.

⁴ Contains definition of “prospectus.”

⁵ Prohibits public offers of securities unless a registration statement is on file.

Securities Act of 1933 (con't)

SEC. 2. DEFINITIONS

issuer. As used in this paragraph, the term “research report” means a written, electronic, or oral communication that includes information, opinions, or recommendations with respect to securities of an issuer or an analysis of a security or an issuer, whether or not it provides information reasonably sufficient upon which to base an investment decision.⁶

(4) * * * through * * * (9) * * *

(10) The term “prospectus” means any prospectus, notice, circular, advertisement, letter, or communication, written or by radio or television, which offers any security for sale or confirms the sale of any security; except that (a) a communication sent or given after the effective date of the registration statement (other than a prospectus permitted under subsection (b) of section 10)⁷ shall not be deemed a prospectus if it is proved that prior to or at the same time with such communication a written prospectus meeting the requirements of subsection (a) of section 10 at the time of such communication was sent or given to the person to whom the communication was made, and (b) a notice, circular, advertisement, letter, or communication in respect of a security shall not be deemed to be a prospectus if it states from whom a written prospectus meeting the requirements of section 10 may be obtained and, in addition, does no more than identify the security, state the price thereof, state by whom orders will be executed, and contain such other information as the Commission,⁸ by rules or regulations deemed necessary or appropriate in the public interest and for the protection of investors, and subject to such terms and conditions as may be prescribed therein, may permit.

(11) * * * through * * * (18) * * *

(19) The term “emerging growth company” means an issuer that had total annual gross revenues of less than \$1,000,000,000 (as such amount is indexed for inflation every 5 years by the Commission to reflect the change in the Consumer Price Index for All Urban Consumers published by the Bureau of Labor Statistics, setting the threshold to the nearest 1,000,000) during its most recently completed fiscal year.⁹ An issuer that is an emerging growth company as of the first day of that fiscal year shall continue to be deemed an emerging growth company until the earliest of—

(A) the last day of the fiscal year of the issuer during which it had total annual gross revenues of \$1,000,000,000 (as such amount is indexed for inflation every 5 years by the Commission to

⁶ JOBS Act Section 105(a): Availability of Information About Emerging Growth Companies – Provision of Research. In addition, JOBS Act Section 105(d) prohibits the Securities and Exchange Commission (“the Commission”) or any national securities association registered under Section 15(a) of the Exchange Act (i.e., FINRA) from adopting or maintaining any rules, with respect to securities of an emerging growth company, that would prohibit a broker-dealer from publishing a research report or making a public appearance within any prescribed period following the IPO or the expiration of an IPO lock-up agreement.

⁷ Sets out the information requirement for registration statements.

⁸ Section 101(c)(1) of the JOBS Act defines “Commission” to mean the Securities and Exchange Commission.

⁹ Section 101(d) of the JOBS Act states that “Notwithstanding section 2(a)(19) of the Securities Act of 1933 and section 3(a)(80) of the Securities Exchange Act of 1934, an issuer shall not be an emerging growth company for purposes of such Acts if the first sale of common equity securities of such issuer pursuant to an effective registration statement under the Securities Act of 1933 occurred on or before December 8, 2011.”

reflect the change in the Consumer Price Index for All Urban Consumers published by the Bureau of Labor Statistics, setting the threshold to the nearest 1,000,000) or more;

(B) the last day of the fiscal year of the issuer following the fifth anniversary of the date of the first sale of common equity securities of the issuer pursuant to an effective registration statement under this title;

(C) the date on which such issuer has, during the previous 3-year period, issued more than \$1,000,000,000 in non-convertible debt; or

(D) the date on which such issuer is deemed to be a 'large accelerated filer', as defined in section 240.12b-2 of title 17, Code of Federal Regulations,¹⁰ or any successor thereto.¹¹

SEC. 3. EXEMPTED SECURITIES¹²

(a) * * *

~~[(b) The Commission]~~ (b) ADDITIONAL EXEMPTIONS.—

(1) SMALL ISSUES EXEMPTIVE AUTHORITY.— The Commission¹³ may from time to time by its rules and regulations and subject to such terms and conditions as may be prescribed therein, add any class of securities to the securities exempted as provided in this section, if it finds that the enforcement of this title with respect to such securities is not necessary in the public interest and for the protection of investors by reason of the small amount involved or the limited character of the public offering; but no issue of securities shall be exempted under this subsection where the aggregate amount at which such issue is offered to the public exceeds \$5,000,000.

(2) ADDITIONAL ISSUES.— The Commission shall by rule or regulation add a class of securities to the securities exempted pursuant to this section in accordance with the following terms and conditions:

(A) The aggregate offering amount of all securities offered and sold within the prior 12-month period in reliance on the exemption added in accordance with this paragraph shall not exceed \$50,000,000.

(B) The securities may be offered and sold publicly.

¹⁰ A "large accelerated filer" as defined by Rule 12b-2 under the Exchange Act is a public company with at least \$700 million of public float that has filed at least one annual report and has been subject to the reporting requirements for at least 12 months.

¹¹ JOBS Act Section 101(a): Definitions – Securities Act of 1933.

¹² Exempts certain classes of securities from parts of the Securities Act.

¹³ JOBS Act Section 401(a)(1): Authority to Exempt Certain Securities – In General.

SEC. 3. EXEMPTED SECURITIES

- (C) The securities shall not be restricted securities within the meaning of the Federal securities laws and the regulations promulgated thereunder.
- (D) The civil liability provision in section 12(a)(2)¹⁴ shall apply to any person offering or selling such securities.
- (E) The issuer may solicit interest in the offering prior to filing any offering statement, on such terms and conditions as the Commission may prescribe in the public interest or for the protection of investors.
- (F) The Commission shall require the issuer to file audited financial statements with the Commission annually.
- (G) Such other terms, conditions, or requirements as the Commission may determine necessary in the public interest and for the protection of investors, which may include—

 - (i) a requirement that the issuer prepare and electronically file with the Commission and distribute to prospective investors an offering statement, and any related documents, in such form and with such content as prescribed by the Commission, including audited financial statements, a description of the issuer's business operations, its financial condition, its corporate governance principles, its use of investor funds, and other appropriate matters; and
 - (ii) disqualification provisions under which the exemption shall not be available to the issuer or its predecessors, affiliates, officers, directors, underwriters, or other related persons, which shall be substantially similar to the disqualification provisions contained in the regulations adopted in accordance with section 926 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (15 U.S.C. 77d note).¹⁵
- (3) LIMITATION.— Only the following types of securities may be exempted under a rule or regulation adopted pursuant to paragraph (2): equity securities, debt securities, and debt securities convertible or exchangeable to equity interests, including any guarantees of such securities.
- (4) PERIODIC DISCLOSURES.— Upon such terms and conditions as the Commission determines necessary in the public interest and for the protection of investors, the Commission by rule or regulation may require an issuer of a class of securities exempted under paragraph (2) to make available to investors and file with the Commission periodic disclosures regarding the issuer, its

¹⁴ Imposes potential liability for material misstatements or omissions made in any prospectus or oral communication in the offer or sale of securities.

¹⁵ Section 926 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (the "Dodd-Frank" Act) makes Regulation D Rule 506 private placements unavailable if certain felons or other bad actors are involved.

SEC. 3. EXEMPTED SECURITIES

business operations, its financial condition, its corporate governance principles, its use of investor funds, and other appropriate matters, and also may provide for the suspension and termination of such a requirement with respect to that issuer.

- (5) ADJUSTMENT.— Not later than 2 years after the date of enactment of the Small Company Capital Formation Act of 2011¹⁶ and every 2 years thereafter, the Commission shall review the offering amount limitation described in paragraph (2)(A) and shall increase such amount as the Commission determines appropriate. If the Commission determines not to increase such amount, it shall report to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate on its reasons for not increasing the amount.¹⁷

SEC. 4. EXEMPTED TRANSACTIONS¹⁸

~~[The provisions of section 5]~~

(a) The provisions of section 5¹⁹ shall not apply to— * * *

- (1) * * *
- (2) transactions by an issuer not involving any public offering.
- (3) * * * (4) * * *
- (5) transactions involving offers or sales by an issuer solely to one or more accredited investors, if the aggregate offering price of an issue of securities offered in reliance on this paragraph does not exceed the amount allowed under ~~[section 3(b)]~~ section 3(b)(1) of this title,²⁰ if there is no advertising or public solicitation in connection with the transaction by the issuer or anyone acting on the issuer's behalf, and if the issuer files such notice with the Commission as the Commission shall prescribe.
- (6) transactions involving the offer or sale of securities by an issuer (including all entities controlled by or under common control with the issuer), provided that—
- (A) the aggregate amount sold to all investors by the issuer, including any amount sold in reliance on the exemption provided under this paragraph during the 12-month period preceding the date of such transaction, is not more than \$1,000,000;
- (B) the aggregate amount sold to any investor by an issuer, including any amount sold in reliance on the exemption provided under this paragraph during the 12-month period preceding the date of such transaction, does not exceed—

¹⁶ The Small Company Capital Formation Act of 2011 is part of the JOBS Act.

¹⁷ JOBS Act Section 401(a)(2): Authority to Exempt Certain Securities – In General.

¹⁸ Section 4 of the Securities Act exempts certain transactions from the registration requirements of the Securities Act.

¹⁹ Contains the basic registration requirements for an offering of securities.

²⁰ JOBS Act Section 401(c): Authority to Exempt Certain Securities – Conforming Amendment.

SEC. 4. EXEMPTED TRANSACTIONS

(i) the greater of \$2,000 or 5 percent of the annual income or net worth of such investor, as applicable, if either the annual income or the net worth of the investor is less than \$100,000; and

(ii) 10 percent of the annual income or net worth of such investor, as applicable, not to exceed a maximum aggregate amount sold of \$100,000, if either the annual income or net worth of the investor is equal to or more than \$100,000;

(C) the transaction is conducted through a broker or funding portal that complies with the requirements of section 4A(a); and

(D) the issuer complies with the requirements of section 4A(b).²¹

(b) Offers and sales exempt under section 230.506 of title 17, Code of Federal Regulations (as revised pursuant to section 201 of the Jumpstart Our Business Startups Act)²² shall not be deemed public offerings under the Federal securities laws as a result of general advertising or general solicitation.²³

(1) With respect to securities offered and sold in compliance with Rule 506 of Regulation D under this Act, no person who meets the conditions set forth in paragraph (2) shall be subject to registration as a broker or dealer pursuant to section 15(a)(1) of this title.²⁴ solely because—

(A) that person maintains a platform or mechanism that permits the offer, sale, purchase, or negotiation of or with respect to securities, or permits general solicitations, general advertisements, or similar or related activities by issuers of such securities, whether online, in person, or through any other means;

(B) that person or any person associated with that person co-invests in such securities; or

(C) that person or any person associated with that person provides ancillary services with respect to such securities.

(2) The exemption provided in paragraph (1) shall apply to any person described in such paragraph if—

(A) such person and each person associated with that person receives no compensation in connection with the purchase or sale of such security;

²¹ JOBS Act Section 302(a): Crowdfunding Exemption – Securities Act of 1933.

²² Rule 506 of Regulation D.

²³ JOBS Act Section 201(b): Modification of Exemption – Consistency In Interpretation. JOBS Act Section 201(a) requires the Commission, within 90 days after the date of the enactment of the JOBS Act, to revise Rule 506 of Regulation D and Rule 144A under the Securities Act to permit general solicitation and general advertising for offerings made under those Rules.

²⁴ This reference appears to be to Section 15(a)(1) of the Exchange Act, not the Securities Act. Section 15(a)(1) of the Exchange Act requires broker-dealers to register with the Commission to sell securities.

Securities Act of 1933 (con't)

SEC. 4. EXEMPTED TRANSACTIONS

(B) such person and each person associated with that person does not have possession of customer funds or securities in connection with the purchase or sale of such security; and

(C) such person is not subject to a statutory disqualification as defined in section 3(a)(39) of this title²⁵ and does not have any person associated with that person subject to such a statutory disqualification.

(3) For the purposes of this subsection, the term 'ancillary services' means—

(A) the provision of due diligence services, in connection with the offer, sale, purchase, or negotiation of such security, so long as such services do not include, for separate compensation, investment advice or recommendations to issuers or investors; and

(B) the provision of standardized documents to the issuers and investors, so long as such person or entity does not negotiate the terms of the issuance for and on behalf of third parties and issuers are not required to use the standardized documents as a condition of using the service.²⁶

SEC. 4A. REQUIREMENTS WITH RESPECT TO CERTAIN SMALL TRANSACTIONS

(a) REQUIREMENTS ON INTERMEDIARIES.— A person acting as an intermediary in a transaction involving the offer or sale of securities for the account of others pursuant to section 4(6)²⁷ shall—

(1) register with the Commission as—

(A) a broker; or

(B) a funding portal (as defined in section 3(a)(80) of the Securities Exchange Act of 1934);

(2) register with any applicable self-regulatory organization (as defined in section 3(a)(26) of the Securities Exchange Act of 1934);²⁸

(3) provide such disclosures, including disclosures related to risks and other investor education materials, as the Commission shall, by rule, determine appropriate;

²⁵ This reference appears to be to Section 3(a)(39) of the Exchange Act, not the Securities Act. That Section relates to statutory disqualification from “membership or participation in, or association with a member of, a self-regulatory organization.”

²⁶ JOBS Act Section 201(c): Modification of Exemption – Explanation of Exemption.

²⁷ Contains the “crowdfunding” exemption added by the JOBS Act. JOBS Act Section 201(b) Modification of Exemption – Consistency in Interpretation amends Section 4 of the Securities Act by adding subsection (b) and relabeling pre-existing Section 4 subsections as subsection (a). The JOBS Act does not appear to update cross-references to Section 4 to refer to Section 4(a).

²⁸ Contains common definitions used throughout the Exchange Act.

SEC. 4A. REQUIREMENTS WITH RESPECT TO CERTAIN SMALL TRANSACTIONS

(4) ensure that each investor—

(A) reviews investor-education information, in accordance with standards established by the Commission, by rule;

(B) positively affirms that the investor understands that the investor is risking the loss of the entire investment, and that the investor could bear such a loss; and

(C) answers questions demonstrating—

(i) an understanding of the level of risk generally applicable to investments in startups, emerging businesses, and small issuers;

(ii) an understanding of the risk of illiquidity; and

(iii) an understanding of such other matters as the Commission determines appropriate, by rule;

(5) take such measures to reduce the risk of fraud with respect to such transactions, as established by the Commission, by rule, including obtaining a background and securities enforcement regulatory history check on each officer, director, and person holding more than 20 percent of the outstanding equity of every issuer whose securities are offered by such person;

(6) not later than 21 days prior to the first day on which securities are sold to any investor (or such other period as the Commission may establish), make available to the Commission and to potential investors any information provided by the issuer pursuant to subsection (b);

(7) ensure that all offering proceeds are only provided to the issuer when the aggregate capital raised from all investors is equal to or greater than a target offering amount, and allow all investors to cancel their commitments to invest, as the Commission shall, by rule, determine appropriate;

(8) make such efforts as the Commission determines appropriate, by rule, to ensure that no investor in a 12-month period has purchased securities offered pursuant to section 4(6) that, in the aggregate, from all issuers, exceed the investment limits set forth in section 4(6)(B);

(9) take such steps to protect the privacy of information collected from investors as the Commission shall, by rule, determine appropriate;

(10) not compensate promoters, finders, or lead generators for providing the broker or funding portal with the personal identifying information of any potential investor;

(11) prohibit its directors, officers, or partners (or any person occupying a similar status or performing a similar function) from having any financial interest in an issuer using its services; and

(12) meet such other requirements as the Commission may, by rule, prescribe, for the protection of investors and in the public interest.

(b) REQUIREMENTS FOR ISSUERS.—For purposes of section 4(6), an issuer who offers or sells securities shall—

(1) file with the Commission and provide to investors and the relevant broker or funding portal, and make available to potential investors—

(A) the name, legal status, physical address, and website address of the issuer;

SEC. 4A. REQUIREMENTS WITH RESPECT TO CERTAIN SMALL TRANSACTIONS

- (B) the names of the directors and officers (and any persons occupying a similar status or performing a similar function), and each person holding more than 20 percent of the shares of the issuer;
- (C) a description of the business of the issuer and the anticipated business plan of the issuer;
- (D) a description of the financial condition of the issuer, including, for offerings that, together with all other offerings of the issuer under section 4(6) within the preceding 12-month period, have, in the aggregate, target offering amounts of—

 - (i) \$100,000 or less—

 - (I) the income tax returns filed by the issuer for the most recently completed year (if any); and
 - (II) financial statements of the issuer, which shall be certified by the principal executive officer of the issuer to be true and complete in all material respects;
 - (ii) more than \$100,000, but not more than \$500,000, financial statements reviewed by a public accountant who is independent of the issuer, using professional standards and procedures for such review or standards and procedures established by the Commission, by rule, for such purpose; and
 - (iii) more than \$500,000 (or such other amount as the Commission may establish, by rule), audited financial statements;
- (E) a description of the stated purpose and intended use of the proceeds of the offering sought by the issuer with respect to the target offering amount;
- (F) the target offering amount, the deadline to reach the target offering amount, and regular updates regarding the progress of the issuer in meeting the target offering amount;
- (G) the price to the public of the securities or the method for determining the price, provided that, prior to sale, each investor shall be provided in writing the final price and all required disclosures, with a reasonable opportunity to rescind the commitment to purchase the securities;
- (H) a description of the ownership and capital structure of the issuer, including—

 - (i) terms of the securities of the issuer being offered and each other class of security of the issuer, including how such terms may be modified, and a summary of the differences between such securities, including how the rights of the securities being offered may be materially limited, diluted, or qualified by the rights of any other class of security of the issuer;
 - (ii) a description of how the exercise of the rights held by the principal shareholders of the issuer could negatively impact the purchasers of the securities being offered;

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(iii) the name and ownership level of each existing shareholder who owns more than 20 percent of any class of the securities of the issuer;

(iv) how the securities being offered are being valued, and examples of methods for how such securities may be valued by the issuer in the future, including during subsequent corporate actions; and

(v) the risks to purchasers of the securities relating to minority ownership in the issuer, the risks associated with corporate actions, including additional issuances of shares, a sale of the issuer or of assets of the issuer, or transactions with related parties; and

(I) such other information as the Commission may, by rule, prescribe, for the protection of investors and in the public interest;

(2) not advertise the terms of the offering, except for notices which direct investors to the funding portal or broker;

(3) not compensate or commit to compensate, directly or indirectly, any person to promote its offerings through communication channels provided by a broker or funding portal, without taking such steps as the Commission shall, by rule, require to ensure that such person clearly discloses the receipt, past or prospective, of such compensation, upon each instance of such promotional communication;

(4) not less than annually, file with the Commission and provide to investors reports of the results of operations and financial statements of the issuer, as the Commission shall, by rule, determine appropriate, subject to such exceptions and termination dates as the Commission may establish, by rule; and

(5) comply with such other requirements as the Commission may, by rule, prescribe, for the protection of investors and in the public interest.

(c) LIABILITY FOR MATERIAL MISSTATEMENTS AND OMISSIONS.—

(1) ACTIONS AUTHORIZED.—

(A) IN GENERAL.—Subject to paragraph (2), a person who purchases a security in a transaction exempted by the provisions of section 4(6) may bring an action against an issuer described in paragraph (2), either at law or in equity in any court of competent jurisdiction, to recover the consideration paid for such security with interest thereon, less the amount of any income received thereon, upon the tender of such security, or for damages if such person no longer owns the security.

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- (B) LIABILITY.—An action brought under this paragraph shall be subject to the provisions of section 12(b)²⁹ and section 13,³⁰ as if the liability were created under section 12(a)(2)³¹.
- (2) APPLICABILITY.—An issuer shall be liable in an action under paragraph (1), if the issuer—
- (A) by the use of any means or instruments of transportation or communication in interstate commerce or of the mails, by any means of any written or oral communication, in the offering or sale of a security in a transaction exempted by the provisions of section 4(6), makes an untrue statement of a material fact or omits to state a material fact required to be stated or necessary in order to make the statements, in the light of the circumstances under which they were made, not misleading, provided that the purchaser did not know of such untruth or omission; and
- (B) does not sustain the burden of proof that such issuer did not know, and in the exercise of reasonable care could not have known, of such untruth or omission.
- (3) DEFINITION.—As used in this subsection, the term ‘issuer’ includes any person who is a director or partner of the issuer, and the principal executive officer or officers, principal financial officer, and controller or principal accounting officer of the issuer (and any person occupying a similar status or performing a similar function) that offers or sells a security in a transaction exempted by the provisions of section 4(6), and any person who offers or sells the security in such offering.
- (d) INFORMATION AVAILABLE TO STATES.—The Commission shall make, or shall cause to be made by the relevant broker or funding portal, the information described in subsection (b) and such other information as the Commission, by rule, determines appropriate, available to the securities commission (or any agency or office performing like functions) of each State and territory of the United States and the District of Columbia.
- (e) RESTRICTIONS ON SALES.—Securities issued pursuant to a transaction described in section 4(6)—
- (1) may not be transferred by the purchaser of such securities during the 1-year period beginning on the date of purchase, unless such securities are transferred—
- (A) to the issuer of the securities;
- (B) to an accredited investor;
- (C) as part of an offering registered with the Commission; or

²⁹ Requires loss causation for liability under Section 12(a)(2) of the Securities Act.

³⁰ Establishes limitations and repose periods for actions under Section 12(a)(2) of the Securities Act.

³¹ Imposes potential liability for material misstatements or omissions made in any prospectus or oral communication in the offer or sale of securities.

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(D) to a member of the family of the purchaser or the equivalent, or in connection with the death or divorce of the purchaser or other similar circumstance, in the discretion of the Commission; and

(2) shall be subject to such other limitations as the Commission shall, by rule, establish.

(f) APPLICABILITY.—Section 4(6) shall not apply to transactions involving the offer or sale of securities by any issuer that—

(1) is not organized under and subject to the laws of a State or territory of the United States or the District of Columbia;³²

(2) is subject to the requirement to file reports pursuant to section 13 or section 15(d) of the Securities Exchange Act of 1934;³³

(3) is an investment company, as defined in section 3 of the Investment Company Act of 1940, or is excluded from the definition of investment company by section 3(b) or section 3(c) of that Act;³⁴ or

(4) the Commission, by rule or regulation, determines appropriate.

(g) RULE OF CONSTRUCTION.—Nothing in this section or section 4(6) shall be construed as preventing an issuer from raising capital through methods not described under section 4(6).

(h) CERTAIN CALCULATIONS.—

(1) DOLLAR AMOUNTS.—Dollar amounts in section 4(6) and subsection (b) of this section shall be adjusted by the Commission not less frequently than once every 5 years, by notice published in the Federal Register to reflect any change in the Consumer Price Index for All Urban Consumers published by the Bureau of Labor Statistics.

(2) INCOME AND NET WORTH.—The income and net worth of a natural person under section 4(6)(B) shall be calculated in accordance with any rules of the Commission under this title regarding the calculation of the income and net worth, respectively, of an accredited investor.³⁵

³² Crowdfunding is thus not available for foreign issuers.

³³ Sections 13 and 15(d) of the Exchange Act require issuers to file annual, periodic and other reports with the Commission.

³⁴ The exceptions in Sections 3(b) and 3(c) of the Investment Company Act of 1940 are fairly broad and cover most hedge funds and private equity funds. These entities would not be able to use the crowdfunding provisions of the JOBS Act.

³⁵ JOBS Act Section 302(b): Crowdfunding – Requirements to Qualify for Crowdfunding Exemption. JOBS Act Sections 302(c) and (d) require the Commission, within 270 days after the enactment of the JOBS Act, to (i) establish rules to carry out newly added sections 4(a)(6) and 4A of the Securities Act and (ii) establish disqualification provisions.

SEC. 5. PROHIBITIONS RELATING TO INTERSTATE COMMERCE AND THE MAILES

- (a) Unless a registration statement is in effect as to a security, it shall be unlawful for any person, directly or indirectly—
- (1) to make use of any means or instruments of transportation or communication in interstate commerce or of the mails to sell such security through the use or medium of any prospectus or otherwise; or
 - (2) to carry or cause to be carried through the mails or in interstate commerce, by any means or instruments of transportation, any such security for the purpose of sale or for delivery after sale.
- (b) It shall be unlawful for any person, directly or indirectly—
- (1) to make use of any means or instruments of transportation or communication in interstate commerce or of the mails to carry or transmit any prospectus relating to any security with respect to which a registration statement has been filed under this title, unless such prospectus meets the requirements of section 10; or
 - (2) to carry or cause to be carried through the mails or in interstate commerce any such security for the purpose of sale or for delivery after sale, unless accompanied or preceded by a prospectus that meets the requirements of subsection (a) of section 10.
- (c) It shall be unlawful for any person, directly or indirectly, to make use of any means or instruments of transportation or communication in interstate commerce or of the mails to offer to sell or offer to buy through the use or medium of any prospectus or otherwise any security, unless a registration statement has been filed as to such security, or while the registration statement is the subject of a refusal order or stop order or (prior to the effective date of the registration statement) any public proceeding of examination under section 8.³⁶
- (d) LIMITATION.— Notwithstanding any other provision of this section, an emerging growth company or any person authorized to act on behalf of an emerging growth company may engage in oral or written communications with potential investors that are qualified institutional buyers or institutions that are accredited investors, as such terms are respectively defined in section 230.144A³⁷ and section 230.501(a)³⁸ of title 17, Code of Federal Regulations, or any successor thereto, to determine whether such investors might have an interest in a contemplated securities offering, either prior to or following the date of filing of a registration statement with respect to such securities with the Commission, subject to the requirement of subsection (b)(2).³⁹

³⁶ Covers stop orders and examinations related to the effectiveness of registration statements and amendments thereto.

³⁷ Rule 144A under the Securities Act.

³⁸ Rule 501 of Regulation D under the Securities Act.

³⁹ JOBS Act Section 105(c): Availability of Information About Emerging Growth Companies – Expanding Permissible Communications.

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SEC. 5. PROHIBITIONS RELATING TO INTERSTATE COMMERCE AND THE MAILS

~~[(d)]~~ (e) Notwithstanding the provisions of section 3 or 4, unless a registration statement meeting the requirements of section 10(a) is in effect as to a security-based swap, it shall be unlawful for any person, directly or indirectly, to make use of any means or instruments of transportation or communication in interstate commerce or of the mails to offer to sell, offer to buy or purchase or sell a security-based swap to any person who is not an eligible contract participant as defined in section 1a(18) of the Commodity Exchange Act (7 U.S.C. 1a(18)).⁴⁰

SEC. 6. REGISTRATION OF SECURITIES AND SIGNING OF A REGISTRATION STATEMENT⁴¹

(a) * * * through * * * (d) * * *

(e) EMERGING GROWTH COMPANIES.—

(1) IN GENERAL.— Any emerging growth company, prior to its initial public offering date,⁴² may confidentially submit to the Commission a draft registration statement, for confidential nonpublic review by the staff of the Commission prior to public filing, provided that the initial confidential submission and all amendments thereto shall be publicly filed with the Commission not later than 21 days before the date on which the issuer conducts a road show, as such term is defined in section 230.433(h)(4) of title 17, Code of Federal Regulations,⁴³ or any successor thereto.

(2) CONFIDENTIALITY.— Notwithstanding any other provision of this title, the Commission shall not be compelled to disclose any information provided to or obtained by the Commission pursuant to this subsection. For purposes of section 552 of title 5, United States Code,⁴⁴ this subsection shall be considered a statute described in subsection (b)(3)(B) of such section 552.⁴⁵ Information described in or obtained pursuant to this subsection shall be deemed to constitute confidential information for purposes of section 24(b)(2)⁴⁶ of the Securities Exchange Act of 1934.⁴⁷

⁴⁰ This reference appears to be to Section 1a(12) of the Commodity Exchange Act, not Section 1a(18), which defines foreign futures authorities. The Commodity Exchange Act generally defines an eligible contract participant as a financial institution, insurance company, commodity pool, or wealthy individual that has sufficient regulated status or a specified amount of assets and can thus engage in sophisticated transactions such as block trades, exchanging excluded commodities, and transacting on a derivatives transaction execution facility.

⁴¹ Contains provisions covering the method of registration, registration fees, and the public availability of information in registration statements.

⁴² Section 101(c)(2) of the JOBS Act defines “initial public offering date” as “the date of the first sale of common equity securities of an issuer pursuant to an effective registration statement under the Securities Act of 1933.”

⁴³ Rule 433(h)(4) under the Securities Act defines a “road show” as “an offer (other than a statutory prospectus or a portion of a statutory prospectus filed as part of a registration statement) that contains a presentation regarding an offering by one or more members of the issuer's management (and in the case of an offering of asset-backed securities, management involved in the securitization or servicing function of one or more of the depositors, sponsors, or servicers (as such terms are defined in Item 1101 of Regulation AB) or an affiliated depositor) and includes discussion of one or more of the issuer, such management, and the securities being offered.”

⁴⁴ 5 U.S.C. 552 is the Freedom of Information Act.

⁴⁵ Information obtained by the Commission as part of confidential submissions in connection with offerings by emerging growth companies is exempt from Freedom of Information Act requests.

⁴⁶ Prohibits Commission staff from disclosing information accorded confidential treatment.

⁴⁷ JOBS Act Section 106(a): Other Matters – Draft Registration Statements.

SEC. 7. INFORMATION REQUIRED IN REGISTRATION STATEMENT⁴⁸

~~[(a) The registration]~~ (a) INFORMATION REQUIRED IN REGISTRATION STATEMENT.—

(1) IN GENERAL.—The registration⁴⁹ statement, when relating to a security other than a security issued by a foreign government, or political subdivision thereof, shall contain the information, and be accompanied by the documents, specified in Schedule A, and when relating to a security issued by a foreign government, or political subdivision thereof, shall contain the information, and be accompanied by the documents, specified in Schedule B; except that the Commission may by rules or regulations provide that any such information or document need not be included in respect of any class of issuers or securities if it finds that the requirement of such information or document is inapplicable to such class and that disclosure fully adequate for the protection of investors is otherwise required to be included within the registration statement. If any accountant, engineer, or appraiser, or any person whose profession gives authority to a statement made by him, is named as having prepared or certified any part of the registration statement, or is named as having prepared or certified a report or valuation for use in connection with the registration statement, the written consent of such person shall be filed with the registration statement. If any such person is named as having prepared or certified a report or valuation (other than a public official document or statement) which is used in connection with the registration statement, but is not named as having prepared or certified such report or valuation for use in connection with the registration statement, the written consent of such person shall be filed with the registration statement unless the Commission dispenses with such filing as impracticable or as involving undue hardship on the person filing the registration statement. Any such registration statement shall contain such other information, and be accompanied by such other documents, as the Commission may by rules or regulations require as being necessary or appropriate in the public interest or for the protection of investors.

(2) TREATMENT OF EMERGING GROWTH COMPANIES. —An emerging growth company—

(A) need not present more than 2 years of audited financial statements in order for the registration statement of such emerging growth company with respect to an initial public offering of its common equity securities to be effective, and in any other registration statement to be filed with the Commission, an emerging growth company need not present selected financial data in accordance with section 229.301 of title 17, Code of Federal Regulations,⁵⁰ for any period prior to the earliest audited period presented in connection with its initial public offering; and

(B) may not be required to comply with any new or revised financial accounting standard until such date that a company that is not an issuer (as defined under section 2(a) of the

⁴⁸ Sets forth the information required in registration statements.

⁴⁹ JOBS Act Section 102(b): Disclosure Obligations - Financial Disclosures and Accounting Pronouncements.

⁵⁰ Item 301 of Regulation S-K requires inclusion of a minimum of five years of selected financial data.

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SEC. 7. INFORMATION REQUIRED IN REGISTRATION STATEMENT

Sarbanes-Oxley Act of 2002 (15 U.S.C. 7201(a))⁵¹ is required to comply with such new or revised accounting standard, if such standard applies to companies that are not issuers.⁵²

SEC. 12. CIVIL LIABILITIES ARISING IN CONNECTION WITH PROSPECTUSES AND COMMUNICATIONS

(a) IN GENERAL.— Any person who—

- (1) offers or sells a security in violation of section 5, or
- (2) offers or sells a security (whether or not exempted by the provisions of section 3, other than paragraphs (2) and (14) of subsection (a) thereof), by the use of any means or instruments of transportation or communication in interstate commerce or of the mails, by means of a prospectus or oral communication, which includes an untrue statement of a material fact or omits to state a material fact necessary in order to make the statements, in the light of the circumstances under which they were made, not misleading (the purchaser not knowing of such untruth or omission), and who shall not sustain the burden of proof that he did not know, and in the exercise of reasonable care could not have known, of such untruth or omission, shall be liable, subject to subsection (b), to the person purchasing such security from him, who may sue either at law or in equity in any court of competent jurisdiction, to recover the consideration paid for such security with interest thereon, less the amount of any income received thereon, upon the tender of such security, or for damages if he no longer owns the security.

SEC. 18. EXEMPTION FROM STATE REGULATION OF SECURITIES OFFERINGS⁵³

(a) Scope of Exemption.— Except as otherwise provided in this section, no law, rule, regulation, or order, or other administrative action of any State or any political subdivision thereof—

- (1) requiring, or with respect to, registration or qualification of securities, or registration or qualification of securities transactions, shall directly or indirectly apply to a security that—
 - (A) is a covered security; or
 - (B) will be a covered security upon completion of the transaction;
- (2) shall directly or indirectly prohibit, limit, or impose any conditions upon the use of—
 - (A) with respect to a covered security described in subsection (b), any offering document that is prepared by or on behalf of the issuer; or

⁵¹ An issuer under the Sarbanes-Oxley Act is an issuer (as defined in Section 3(a)(8) of the Exchange Act, “any person who issues or proposes to issue any security,” subject to certain exceptions) that has registered securities under Section 12 of the Exchange Act, is required to file reports under Section 15(d) of the Exchange Act or files or has filed a registration statement that has not yet become effective under the Securities Act and that it has not withdrawn.

⁵² JOBS Act Section 102(b): Disclosure Obligations – Financial Disclosures and Accounting Pronouncements.

⁵³ Contains the federal preemption of state Blue Sky laws.

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SEC. 18. EXEMPTION FROM STATE REGULATION OF SECURITIES OFFERINGS

(B) any proxy statement, report to shareholders, or other disclosure document relating to a covered security or the issuer thereof that is required to be and is filed with the Commission or any national securities organization registered under section 15A of the Securities Exchange Act of 1934, except that this subparagraph does not apply to the laws, rules, regulations, or orders, or other administrative actions of the State of incorporation of the issuer; or

(3) shall directly or indirectly prohibit, limit, or impose conditions, based on the merits of such offering or issuer, upon the offer or sale of any security described in paragraph (1).

(b) COVERED SECURITIES.— For purposes of this section, the following are covered securities:

(1) * * * (2) * * *

(3) Sales to qualified purchasers.— A security is a covered security with respect to the offer or sale of the security to qualified purchasers, as defined by the Commission by rule. In prescribing such rule, the Commission may define the term "qualified purchaser" differently with respect to different categories of securities, consistent with the public interest and the protection of investors.

(4) Exemption in connection with certain exempt offerings.— A security is a covered security with respect to a transaction that is exempt from registration under this title pursuant to—

(A) paragraph (1) or (3) of section 4,⁵⁴ and the issuer of such security files reports with the Commission pursuant to section 13 or 15(d)⁵⁵ of the Securities Exchange Act of 1934;

(B) section 4(4);⁵⁶

(C) section 4(6);⁵⁷

(D) a rule or regulation adopted pursuant to section 3(b)(2)⁵⁸ and such security is—

(i) offered or sold on a national securities exchange; or

(ii) offered or sold to a qualified purchaser, as defined by the Commission pursuant to paragraph (3)⁵⁹ with respect to that purchase or sale;⁶⁰

⁵⁴ Section 4[(a)](1) exempts transactions not involving an issuer, underwriter or dealer from the registration requirements of the Securities Act. Section 4[(a)](3) exempts certain dealer transactions from those requirements as well.

⁵⁵ Sections 13 and 15(d) of the Exchange Act require issuers to file annual, periodic and other reports with the Commission.

⁵⁶ Exempts brokers' transactions executed upon customers' orders, but not the solicitation of such orders, from the registration requirements of the Securities Act.

⁵⁷ JOBS Act Section 305(a): Relationship with State Law – In General. JOBS Act Section 305(b)(1) clarifies that the amendment contained in Section 305(a) relates solely to registration, documentation and offering requirements and not to state authority to take enforcement action.

⁵⁸ This section requires the Commission to create an exemption for offerings raising up to \$50 million.

⁵⁹ The term "qualified purchaser" was added to the Exchange Act in 1996. The Commission has not yet acted to define "qualified purchaser."

⁶⁰ JOBS Act Section 401(b): Authority to Exempt Certain Securities – Treatment as Covered Securities for Purposes of NSMIA.

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SEC. 18. EXEMPTION FROM STATE REGULATION OF SECURITIES OFFERINGS

~~[(C)]~~ (E) section 3(a),⁶¹ other than the offer or sale of a security that is exempt from such registration pursuant to paragraph (4), (10), or (11) of such section, except that a municipal security that is exempt from such registration pursuant to paragraph (2) of such section is not a covered security with respect to the offer or sale of such security in the State in which the issuer of such security is located; or

~~[(D)]~~ (F) Commission rules or regulations issued under section 4(2),⁶² except that this subparagraph does not prohibit a State from imposing notice filing requirements that are substantially similar to those required by rule or regulation under section 4(2) that are in effect on September 1, 1996.

(c) PRESERVATION OF AUTHORITY.—

(1) FRAUD AUTHORITY.— Consistent with this section, the securities commission (or agency or office performing like functions) of any State shall retain jurisdiction under the laws of such State to investigate and bring enforcement actions ~~[with respect to fraud or deceit, or unlawful conduct by a broker or dealer, in connection with securities or securities transactions.], in connection with securities or securities transactions~~

(A) with respect to—

(i) fraud or deceit; or

(ii) unlawful conduct by a broker, dealer, or funding portal⁶³; and

(B) in connection to a transaction described under section 4(6), with respect to—

(i) fraud or deceit; or

(ii) unlawful conduct by a broker, dealer, funding portal, or issuer.⁶⁴

(2) PRESERVATION OF FILING REQUIREMENTS.—

(A) NOTICE FILINGS PERMITTED.— Nothing in this section prohibits the securities commission (or any agency or office performing like functions) of any State from requiring the filing of any document filed with the Commission pursuant to this title, together with annual or periodic reports of the value of securities sold or offered to be sold to persons located in the State (if such sales data is not included in documents filed with the Commission), solely for notice purposes and the assessment of any fee, together with a consent to service of process and any required fee.

⁶¹ Describes securities that are exempted from certain provisions of the Securities Act.

⁶² Exempts transactions by an issuer not involving any public offering from the registration requirements of the Securities Act.

⁶³ JOBS Act Section 305(d)(2) Relationship with State Law – State Exemption and Oversight – Funding Portals.

⁶⁴ JOBS Act Section 305(b)(2): Relationship with State Law – Clarification of the Preservation of State Enforcement Authority.

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SEC. 18. EXEMPTION FROM STATE REGULATION OF SECURITIES OFFERINGS

(B) PRESERVATION OF FEES.—

- (i) IN GENERAL.— Until otherwise provided by law, rule, regulation, or order, or other administrative action of any State, or any political subdivision thereof, adopted after the date of enactment of the National Securities Markets Improvement Act of 1996, filing or registration fees with respect to securities or securities transactions shall continue to be collected in amounts determined pursuant to State law as in effect on the day before such date.
- (ii) SCHEDULE.— The fees required by this subparagraph shall be paid, and all necessary supporting data on sales or offers for sales required under subparagraph (A), shall be reported on the same schedule as would have been applicable had the issuer not relied on the exemption provided in subsection (a).

(C) AVAILABILITY OF PREEMPTION CONTINGENT ON PAYMENT OF FEES.—

- (i) In general.— During the period beginning on the date of enactment of the National Securities Markets Improvement Act of 1996 and ending 3 years after that date of enactment, the securities commission (or any agency or office performing like functions) of any State may require the registration of securities issued by any issuer who refuses to pay the fees required by subparagraph (B).
- (ii) Delays.— For purposes of this subparagraph, delays in payment of fees or underpayments of fees that are promptly remedied shall not constitute a refusal to pay fees.

(D) * * * (E) * * *

(F) FEES NOT PERMITTED ON CROWDFUNDED SECURITIES.—Notwithstanding subparagraphs (A), (B), and (C), no filing or fee may be required with respect to any security that is a covered security pursuant to subsection (b)(4)(B), or will be such a covered security upon completion of the transaction, except for the securities commission (or any agency or office performing like functions) of the State of the principal place of business of the issuer, or any State in which purchasers of 50 percent or greater of the aggregate amount of the issue are residents, provided that for purposes of this subparagraph, the term ‘State’ includes the District of Columbia and the territories of the United States.⁶⁵

⁶⁵ JOBS Act Section 305(c): Relationship with State Law – Notice Filings Permitted.

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SEC. 3. DEFINITIONS AND APPLICATION OF TITLE⁶⁶

(a) When used in this title, unless the context otherwise requires—

(1) * * * through * * * (78) * * *

~~[(77)]~~ (79)⁶⁷ ASSET-BACKED SECURITY.— The term ‘asset-backed security’—

(A) * * * (B) * * *

(80) EMERGING GROWTH COMPANY.—The term ‘emerging growth company’ means an issuer that had total annual gross revenues of less than \$1,000,000,000 (as such amount is indexed for inflation every 5 years by the Commission to reflect the change in the Consumer Price Index for All Urban Consumers published by the Bureau of Labor Statistics, setting the threshold to the nearest 1,000,000) during its most recently completed fiscal year.⁶⁸ An issuer that is an emerging growth company as of the first day of that fiscal year shall continue to be deemed an emerging growth company until the earliest of—

(A) the last day of the fiscal year of the issuer during which it had total annual gross revenues of \$1,000,000,000 (as such amount is indexed for inflation every 5 years by the Commission to reflect the change in the Consumer Price Index for All Urban Consumers published by the Bureau of Labor Statistics, setting the threshold to the nearest 1,000,000) or more;

(B) the last day of the fiscal year of the issuer following the fifth anniversary of the date of the first sale of common equity securities of the issuer pursuant to an effective registration statement under the Securities Act of 1933;

(C) the date on which such issuer has, during the previous 3-year period, issued more than \$1,000,000,000 in non-convertible debt; or

(D) the date on which such issuer is deemed to be a ‘large accelerated filer’, as defined in section 240.12b–2 of title 17, Code of Federal Regulations,⁶⁹ or any successor thereto.⁷⁰

⁶⁶ Contains common definitions used throughout the Exchange Act.

⁶⁷ The JOBS Act moves the definition of “asset-backed security” from a duplicate of Section 3(a)(77) to Section 3(a)(79).

⁶⁸ Section 101(d) of the JOBS Act states that “Notwithstanding section 2(a)(19) of the Securities Act of 1933 and section 3(a)(80) of the Securities Exchange Act of 1934, an issuer shall not be an emerging growth company for purposes of such Acts if the first sale of common equity securities of such issuer pursuant to an effective registration statement under the Securities Act of 1933 occurred on or before December 8, 2011.”

⁶⁹ A “large accelerated filer” is generally defined by Rule 12b-2 under the Exchange Act as a public company with at least \$700 million of public float that has filed at least one annual report and has been subject to the reporting requirements for at least 12 months.

⁷⁰ JOBS Act Section 101(b): Definitions – Securities Exchange Act of 1934.

(80)⁷¹ FUNDING PORTAL.— The term ‘funding portal’ means any person acting as an intermediary in a transaction involving the offer or sale of securities for the account of others, solely pursuant to section 4(6) of the Securities Act of 1933 (15 U.S.C. 77d(6)), that does not—

(A) offer investment advice or recommendations;

(B) solicit purchases, sales, or offers to buy the securities offered or displayed on its website or portal;

(C) compensate employees, agents, or other persons for such solicitation or based on the sale of securities displayed or referenced on its website or portal;

(D) hold, manage, possess, or otherwise handle investor funds or securities; or

(E) engage in such other activities as the Commission, by rule, determines appropriate.

(b) * * * through * * * (g) * * *

(h) LIMITED EXCEPTION FOR FUNDING PORTALS.—

(1) IN GENERAL.— The Commission shall, by rule, exempt, conditionally or unconditionally, a registered funding portal from the requirement to register as a broker or dealer under section 15(a)(1),⁷² provided that such funding portal—

(A) remains subject to the examination, enforcement, and other rulemaking authority of the Commission;

(B) is a member of a national securities association registered under section 15A; and

(C) is subject to such other requirements under this title as the Commission determines appropriate under such rule.

(2) NATIONAL SECURITIES ASSOCIATION MEMBERSHIP.— For purposes of sections 15(b)(8)⁷³ and 15A,⁷⁴ the term ‘broker or dealer’ includes a funding portal and the term ‘registered broker or dealer’ includes a registered funding portal, except to the extent that the Commission, by rule, determines otherwise, provided that a national securities association shall only examine for and enforce against a registered funding portal rules of such national securities association written specifically for registered funding portals.⁷⁵

⁷¹ JOBS Act Section 101(b): Definitions – Securities Exchange Act of 1934 and JOBS Act Section 304(b): Funding Portal Regulation – Definition both add a subsection (80) to Section 3(a) of the Exchange Act. This annotated document lists both as they appear in the text of the JOBS Act.

⁷² Requires broker-dealers to register with the Commission to sell securities.

⁷³ Requires a broker-dealer to be a member of a securities association registered pursuant to section 15A the Exchange Act or to effect transactions in securities solely on a national securities exchange of which it is a member.

⁷⁴ Describes the terms and conditions and process by which an association of brokers and dealers may be registered as a national securities association.

⁷⁵ JOBS Act Section 304(a): Funding Portal Regulation – Exemption. JOBS Act Section 304(a)(2) requires the Commission to issue a rule to carry out Section 3(h) of the Exchange Act not later than 270 days after the date of enactment of the JOBS Act.

SEC. 11A. NATIONAL MARKET SYSTEM FOR SECURITIES; SECURITIES INFORMATION PROCESSORS

(a) * * * (b) * * *

(c)

(1) * * * through * * * (5) * * *

(6) TICK SIZE.—

(A) STUDY AND REPORT.— The Commission shall conduct a study examining the transition to trading and quoting securities in one penny increments, also known as decimalization. The study shall examine the impact that decimalization has had on the number of initial public offerings since its implementation relative to the period before its implementation. The study shall also examine the impact that this change has had on liquidity for small and middle capitalization company securities and whether there is sufficient economic incentive to support trading operations in these securities in penny increments. Not later than 90 days after the date of enactment of this paragraph, the Commission shall submit to Congress a report on the findings of the study.

(B) DESIGNATION.— If the Commission determines that the securities of emerging growth companies should be quoted and traded using a minimum increment of greater than \$0.01, the Commission may, by rule not later than 180 days after the date of enactment of this paragraph, designate a minimum increment for the securities of emerging growth companies that is greater than \$0.01 but less than \$0.10 for use in all quoting and trading of securities in any exchange or other execution venue.⁷⁶

SEC. 12. REGISTRATION REQUIREMENTS FOR SECURITIES⁷⁷

(a) * * * through * * * (f) * * *

(g)

(1) Every issuer which is engaged in interstate commerce, or in a business affecting interstate commerce, or whose securities are traded by use of the mails or any means or instrumentality of interstate commerce shall—

⁷⁶ JOBS Act Section 106(b): Other Matters – Tick Size.

⁷⁷ Prior to the JOBS Act, Section 12(g) of the Exchange Act required registration of any class of equity securities held by more than 500 record holders where the issuer had assets of \$10 million as of the end of its fiscal year. As described below, JOBS Act Sections 501 and 601 raise the number of record holders.

SEC. 12. REGISTRATION REQUIREMENTS FOR SECURITIES

- (A) ~~[within one hundred and twenty days after the last day of its first fiscal year ended after the effective date of this subsection on which the issuer has total assets exceeding \$1,000,000 and a class of equity security (other than an exempted security) held of record by seven hundred and fifty or more persons;]~~ within 120 days after the last day of its first fiscal year ended on which the issuer has total assets exceeding \$10,000,000 and a class of equity security (other than an exempted security) held of record by either—
- (i) 2,000 persons, or
 - (ii) 500 persons who are not accredited investors (as such term is defined by the Commission),⁷⁸ and
- (B) ~~[within one hundred and twenty days after the last day of its first fiscal year ended after two years from the effective date of this subsection on which the issuer has total assets exceeding \$1,000,000 and a class of equity security (other than an exempted security) held of record by five hundred or more but less than seven hundred and fifty persons]~~ in the case of an issuer that is a bank or a bank holding company, as such term is defined in section 2 of the Bank Holding Company Act of 1956 (12 U.S.C. 1841), not later than 120 days after the last day of its first fiscal year ended after the effective date of this subsection, on which the issuer has total assets exceeding \$10,000,000 and a class of equity security (other than an exempted security) held of record by 2,000 or more persons,⁷⁹

register such security by filing with the Commission a registration statement (and such copies thereof as the Commission may require) with respect to such security containing such information and documents as the Commission may specify comparable to that which is required in an application to register a security pursuant to subsection (b)⁸⁰ of this section. Each such registration statement shall become effective sixty days after filing with the Commission or within such shorter period as the Commission may direct. Until such registration statement becomes effective it shall not be deemed filed for the purposes of section 18 of this title. Any issuer may register any class of equity security not required to be registered by filing a registration statement pursuant to the provisions of this paragraph. The Commission is authorized to extend the date upon which any issuer or class of issuers is required to register a security pursuant to the provisions of this paragraph.

⁷⁸ JOBS Act Section 501: Threshold for Registration.

⁷⁹ JOBS Act Section 601(a)(1): Shareholder Threshold for Registration – Amendments to Section 12 of the Securities Exchange Act of 1934. Section 602 of the JOBS Act requires the Commission to issue final regulations to implement Title VI “not later than 1 year after the date of enactment.”

⁸⁰ Describes registration of a security under the Exchange Act in connection with listing the security on a national securities exchange.

Securities Exchange Act of 1934 (con't)

SEC. 12. REGISTRATION REQUIREMENTS FOR SECURITIES

- (2) * * * through * * * (3) * * *
- (4) Registration of any class of security pursuant to this subsection shall be terminated ninety days, or such shorter period as the Commission may determine, after the issuer files a certification with the Commission that the number of holders of record of such class of security is reduced to less than ~~three hundred~~ 300 persons, or, in the case of a bank or a bank holding company, as such term is defined in section 2 of the Bank Holding Company Act of 1956 (12 U.S.C. 1841), 1,200 persons.⁸¹ The Commission shall after notice and opportunity for hearing deny termination of registration if it finds that the certification is untrue. Termination of registration shall be deferred pending final determination on the question of denial.
- (5) For the purposes of this subsection the term “class” shall include all securities of an issuer which are of substantially similar character and the holders of which enjoy substantially similar rights and privileges. The Commission may for the purpose of this subsection define by rules and regulations the terms “total assets” and “held of record” as it deems necessary or appropriate in the public interest or for the protection of investors in order to prevent circumvention of the provisions of this subsection. For purposes of this subsection, a security futures product shall not be considered a class of equity security of the issuer of the securities underlying the security futures product. For purposes of determining whether an issuer is required to register a security with the Commission pursuant to paragraph (1), the definition of ‘held of record’ shall not include securities held by persons who received the securities pursuant to an employee compensation plan in transactions exempted from the registration requirements of section 5 of the Securities Act of 1933.⁸²
- (6) EXCLUSION FOR PERSONS HOLDING CERTAIN SECURITIES.— The Commission shall, by rule, exempt, conditionally or unconditionally, securities acquired pursuant to an offering made under section 4(6) of the Securities Act of 1933 from the provisions of this subsection.⁸³

SEC. 13. PERIODICAL AND OTHER REPORTS

- (a) Every issuer of a security registered pursuant to section 12 of this title shall file with the Commission, in accordance with such rules and regulations as the Commission may prescribe as necessary or appropriate for the proper protection of investors and to insure fair dealing in the security—

⁸¹ JOBS Act Section 601(a)(2): Shareholder Threshold for Registration – Amendments to Section 12 of the Securities Exchange Act of 1934. Section 602 of the JOBS Act requires the Commission to issue final regulations to implement Title VI “not later than 1 year after the date of enactment.”

⁸² JOBS Act Section 502: Employees. JOBS Act Section 503 requires the Commission to (i) revise the definition of “held of record” to implement the amendment made by section 502 and (ii) adopt safe harbor provisions for determining whether holders received securities pursuant to an employee compensation plan in transactions that were exempt from the registration requirements of section 5 of the Securities Act.

⁸³ JOBS Act Section 303(a): Exclusion of Crowdfunding Investors From Shareholder Cap – Exemption. Section 303(b) requires that the Commission issue a rule to carry out this section within 270 days after the JOBS Act is enacted. In addition to these amendments, JOBS Act Section 504 requires the Commission to consider whether it needs new tools to enforce the anti-evasion provision of Rule 12g5-1(b)(3) under the Exchange Act and to submit its recommendations within 120 days of the enactment of the JOBS Act.

Securities Exchange Act of 1934 (con't)

SEC. 13. PERIODICAL AND OTHER REPORTS

- (1) such information and documents (and such copies thereof) as the Commission shall require to keep reasonably current the information and documents required to be included in or filed with an application or registration statement filed pursuant to section 12, except that the Commission may not require the filing of any material contract wholly executed before July 1, 1962.
- (2) such annual reports (and such copies thereof), certified if required by the rules and regulations of the Commission by independent public accountants, and such quarterly reports (and such copies thereof), as the Commission may prescribe.

Every issuer of a security registered on a national securities exchange shall also file a duplicate original of such information, documents, and reports with the exchange. In any registration statement, periodic report, or other reports to be filed with the Commission, an emerging growth company need not present selected financial data in accordance with section 229.301⁸⁴ of title 17, Code of Federal Regulations,⁸⁵ for any period prior to the earliest audited period presented in connection with its first registration statement that became effective under this Act or the Securities Act of 1933 and, with respect to any such statement or reports, an emerging growth company may not be required to comply with any new or revised financial accounting standard until such date that a company that is not an issuer (as defined under section 2(a)⁸⁶ of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7201(a))) is required to comply with such new or revised accounting standard, if such standard applies to companies that are not issuers.⁸⁷

SEC. 14. PROXIES

- (a) * * * through * * * (h) * * *
- (i) The Commission shall, by rule, require each issuer to disclose in any proxy or consent solicitation material for an annual meeting of the shareholders of the issuer a clear description of any compensation required to be disclosed by the issuer under section 229.402 of title 17, Code of Federal Regulations⁸⁸ (or any successor

⁸⁴ Item 301 of Regulation S-K requires inclusion of a minimum of five years of selected financial data.

⁸⁵ Regulation S-K.

⁸⁶ An issuer under the Sarbanes-Oxley Act is an issuer (as defined in section 3(a)(8) of the Exchange Act, "any person who issues or proposes to issue any security," subject to certain exceptions) that has registered securities under Section 12 of the Exchange Act, is required to file reports under section 15(d) of the Exchange Act or files or has filed a registration statement that has not yet become effective under the Securities Act and that it has not withdrawn.

⁸⁷ JOBS Act Section 102(b)(2): Disclosure Obligations – Financial Disclosures and Accounting Pronouncements – Securities Exchange Act of 1934.

⁸⁸ Item 402 of Regulation S-K requires disclosure related to compensation of directors and officers. Section 108 of the JOBS Act requires that the Commission conduct a review of Regulation S-K to "comprehensively analyze the current registration requirements of such regulation" and "determine how such requirements can be updated to modernize and simplify the registration process and reduce the costs and other burdens associated with these requirements for issuers who are emerging growth companies." The Commission must include recommendations in its report and send the report to Congress within 180 days of the enactment of the JOBS Act.

thereto), including, for any issuer other than an emerging growth company.⁸⁹ information that shows the relationship between executive compensation actually paid and the financial performance of the issuer, taking into account any change in the value of the shares of stock and dividends of the issuer and any distributions. The disclosure under this subsection may include a graphic representation of the information required to be disclosed.

SEC. 14A. SHAREHOLDER APPROVAL OF EXECUTIVE COMPENSATION

(a) SEPARATE RESOLUTION REQUIRED.—

- (1) IN GENERAL.— Not less frequently than once every 3 years, a proxy or consent or authorization for an annual or other meeting of the shareholders for which the proxy solicitation rules of the Commission require compensation disclosure shall include a separate resolution subject to shareholder vote to approve the compensation of executives, as disclosed pursuant to section 229.402⁹⁰ of title 17, Code of Federal Regulations, or any successor thereto.
- (2) FREQUENCY OF VOTE.— Not less frequently than once every 6 years, a proxy or consent or authorization for an annual or other meeting of the shareholders for which the proxy solicitation rules of the Commission require compensation disclosure shall include a separate resolution subject to shareholder vote to determine whether votes on the resolutions required under paragraph (1) will occur every 1, 2, or 3 years.
- (3) EFFECTIVE DATE.— The proxy or consent or authorization for the first annual or other meeting of the shareholders occurring after the end of the 6-month period beginning on the date of enactment of this section shall include—
 - (A) the resolution described in paragraph (1); and
 - (B) a separate resolution subject to shareholder vote to determine whether votes on the resolutions required under paragraph (1) will occur every 1, 2, or 3 years.

⁸⁹ JOBS Act Section 102(a)(2) Disclosure Obligations – Executive Compensation – Proxies.

⁹⁰ Item 402 of Regulation S-K requires disclosure related to compensation of directors and officers.

SEC. 14A. SHAREHOLDER APPROVAL OF EXECUTIVE COMPENSATION

(b) SHAREHOLDER APPROVAL OF GOLDEN PARACHUTE COMPENSATION.—

- (1) DISCLOSURE.— In any proxy or consent solicitation material (the solicitation of which is subject to the rules of the Commission pursuant to subsection (a)) for a meeting of the shareholders occurring after the end of the 6-month period beginning on the date of enactment of this section, at which shareholders are asked to approve an acquisition, merger, consolidation, or proposed sale or other disposition of all or substantially all the assets of an issuer, the person making such solicitation shall disclose in the proxy or consent solicitation material, in a clear and simple form in accordance with regulations to be promulgated by the Commission, any agreements or understandings that such person has with any named executive officers of such issuer (or of the acquiring issuer, if such issuer is not the acquiring issuer) concerning any type of compensation (whether present, deferred, or contingent) that is based on or otherwise relates to the acquisition, merger, consolidation, sale, or other disposition of all or substantially all of the assets of the issuer and the aggregate total of all such compensation that may (and the conditions upon which it may) be paid or become payable to or on behalf of such executive officer.
- (2) SHAREHOLDER APPROVAL.— Any proxy or consent or authorization relating to the proxy or consent solicitation material containing the disclosure required by paragraph (1) shall include a separate resolution subject to shareholder vote to approve such agreements or understandings and compensation as disclosed, unless such agreements or understandings have been subject to a shareholder vote under subsection (a).

(c) * * * (d) * * *

(e) EXEMPTION.— ~~[The Commission may]~~

(1) IN GENERAL.—The Commission may, by rule or order, exempt ~~[an issuer]~~ any other issuer or class of issuers from the requirement under subsection (a) or (b). In determining whether to make an exemption under this subsection, the Commission shall take into account, among other considerations, whether the requirements under subsections (a) and (b) disproportionately burdens small issuers.

(2) TREATMENT OF EMERGING GROWTH COMPANIES.—

(A) IN GENERAL.— An emerging growth company shall be exempt from the requirements of subsections (a) and (b).

(B) COMPLIANCE AFTER TERMINATION OF EMERGING GROWTH COMPANY TREATMENT.—An issuer that was an emerging growth company but is no longer an emerging growth company shall include the first separate resolution described under subsection (a)(1) not later than the end of—

(i) in the case of an issuer that was an emerging growth company for less than 2 years after the date of first sale of common equity securities of the issuer pursuant to an

Securities Exchange Act of 1934 (con't)

SEC. 14A. SHAREHOLDER APPROVAL OF EXECUTIVE COMPENSATION

effective registration statement under the Securities Act of 1933, the 3-year period beginning on such date; and

(ii) in the case of any other issuer, the 1-year period beginning on the date the issuer is no longer an emerging growth company.⁹¹

SEC. 15. REGISTRATION AND REGULATION OF BROKERS AND DEALERS

(a) * * * through * * * (c) * * *

(d) SUPPLEMENTARY AND PERIODIC INFORMATION.—

(1) IN GENERAL.— Each issuer which has filed a registration statement containing an undertaking which is or becomes operative under this subsection as in effect prior to the date of enactment of the Securities Acts Amendments of 1964,⁹² and each issuer which shall after such date file a registration statement which has become effective pursuant to the Securities Act of 1933, as amended, shall file with the Commission, in accordance with such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors, such supplementary and periodic information, documents, and reports as may be required pursuant to section 13⁹³ of this title in respect of a security registered pursuant to section 12 of this title. The duty to file under this subsection shall be automatically suspended if and so long as any issue of securities of such issuer is registered pursuant to section 12 of this title. The duty to file under this subsection shall also be automatically suspended as to any fiscal year, other than the fiscal year within which such registration statement became effective, if, at the beginning of such fiscal year, the securities of each class, other than any class of asset-backed securities, to which the registration statement relates are held of record by less than ~~three hundred~~ 300 persons, or, in the case of bank or a bank holding company, as such term is defined in section 2 of the Bank Holding Company Act of 1956 (12 U.S.C. 1841), 1,200 persons.⁹⁴ For the purposes of this subsection, the term “class” shall be construed to include all securities of an issuer which are of substantially similar character and the holders of which enjoy substantially similar rights and privileges. The Commission may, for the purpose of this subsection, define by rules and regulations the term “held of record” as it deems necessary or appropriate in the public interest or for the protection of investors in order to prevent circumvention of the provisions of this subsection. Nothing in this subsection shall apply to securities issued by a foreign government or political subdivision thereof.

(2) * * *

(e) * * * through * * * (h) * * *

⁹¹ JOBS Act Section 102(a)(1): Disclosure Obligations – Executive Compensation – Exemption.

⁹² August 20, 1964.

⁹³ Contains provisions governing annual, periodic and other reports.

⁹⁴ JOBS Act Section 601(b): Shareholder Threshold for Registration – Amendments to Section 15 of the Securities Exchange Act of 1934.

Securities Exchange Act of 1934 (con't)

SEC. 15. REGISTRATION AND REGULATION OF BROKERS AND DEALERS

(i) LIMITATIONS ON STATE LAW.—

(1) * * *

(2) FUNDING PORTALS.—

(A) LIMITATION ON STATE LAWS.— Except as provided in subparagraph (B), no State or political subdivision thereof may enforce any law, rule, regulation, or other administrative action against a registered funding portal with respect to its business as such.

(B) EXAMINATION AND ENFORCEMENT AUTHORITY.— Subparagraph (A) does not apply with respect to the examination and enforcement of any law, rule, regulation, or administrative action of a State or political subdivision thereof in which the principal place of business of a registered funding portal is located, provided that such law, rule, regulation, or administrative action is not in addition to or different from the requirements for registered funding portals established by the Commission.

(C) DEFINITION.— For purposes of this paragraph, the term ‘State’ includes the District of Columbia and the territories of the United States.⁹⁵

~~[(2)]~~ (3) * * *

~~[(3)]~~ (4) * * *

SEC. 15D. SECURITIES ANALYSTS AND RESEARCH REPORTS⁹⁶

(a) ANALYST PROTECTIONS.— The Commission, or upon the authorization and direction of the Commission, a registered securities association or national securities exchange, shall have adopted, not later than 1 year after the date of enactment of this section, rules reasonably designed to address conflicts of interest that can arise when securities analysts recommend equity securities in research reports and public appearances, in order to improve the objectivity of research and provide investors with more useful and reliable information, including rules designed—

(1) to foster greater public confidence in securities research, and to protect the objectivity and independence of securities analysts, by—

(A) restricting the prepublication clearance or approval of research reports by persons employed by the broker or dealer who are engaged in investment banking activities, or persons not directly responsible for investment research, other than legal or compliance staff;

⁹⁵ JOBS Act Section 305(d)(1): Relationship with State Law – Funding Portals – State Exemptions and Oversight.

⁹⁶ Section 15D of the Exchange Act requires the Commission and registered securities associations and national securities exchanges to adopt rules designed to address conflicts of interest that can arise when securities analysts recommend equity securities.

Securities Exchange Act of 1934 (con't)

SEC. 15D. SECURITIES ANALYSTS AND RESEARCH REPORTS

- (B) limiting the supervision and compensatory evaluation of securities analysts to officials employed by the broker or dealer who are not engaged in investment banking activities; and
 - (C) requiring that a broker or dealer and persons employed by a broker or dealer who are involved with investment banking activities may not, directly or indirectly, retaliate against or threaten to retaliate against any securities analyst employed by that broker or dealer or its affiliates as a result of an adverse, negative, or otherwise unfavorable research report that may adversely affect the present or prospective investment banking relationship of the broker or dealer with the issuer that is the subject of the research report, except that such rules may not limit the authority of a broker or dealer to discipline a securities analyst for causes other than such research report in accordance with the policies and procedures of the firm;
- (2) to define periods during which brokers or dealers who have participated, or are to participate, in a public offering of securities as underwriters or dealers should not publish or otherwise distribute research reports relating to such securities or to the issuer of such securities;
 - (3) to establish structural and institutional safeguards within registered brokers or dealers to assure that securities analysts are separated by appropriate informational partitions within the firm from the review, pressure, or oversight of those whose involvement in investment banking activities might potentially bias their judgment or supervision; and
 - (4) to address such other issues as the Commission, or such association or exchange, determines appropriate.

(b) * * *

(c) LIMITATION.— Notwithstanding subsection (a) or any other provision of law, neither the Commission nor any national securities association registered under section 15A may adopt or maintain any rule or regulation in connection with an initial public offering of the common equity of an emerging growth company—

- (1) restricting, based on functional role, which associated persons of a broker, dealer, or member of a national securities association, may arrange for communications between a securities analyst and a potential investor; or
- (2) restricting a securities analyst from participating in any communications with the management of an emerging growth company that is also attended by any other associated person of a broker, dealer, or member of a national securities association whose functional role is other than as a securities analyst.⁹⁷

⁹⁷ JOBS Act Section 105(b): Availability of Information About Emerging Growth Companies – Provision of Research. In addition, JOBS Act Section 105(d) prohibits the Commission or any national securities association registered under Section 15(a) of the Exchange Act (i.e., FINRA) from adopting or maintaining any rules, with respect to securities of an emerging growth company, that would prohibit a broker-dealer from publishing a research report or making a public appearance within any prescribed period following the IPO or prior to the expiration of a lock-up agreement.

Securities Exchange Act of 1934 (con't)

SEC. 15D. SECURITIES ANALYSTS AND RESEARCH REPORTS

~~[(e)]~~ (d) DEFINITIONS.— In this section—

- (1) the term “securities analyst” means any associated person of a registered broker or dealer that is principally responsible for, and any associated person who reports directly or indirectly to a securities analyst in connection with, the preparation of the substance of a research report, whether or not any such person has the job title of “securities analyst”; and
- (2) the term “research report” means a written or electronic communication that includes an analysis of equity securities of individual companies or industries, and that provides information reasonably sufficient upon which to base an investment decision.

SARBANES-OXLEY ACT OF 2002

SEC. 103. AUDITING, QUALITY CONTROL, AND INDEPENDENCE STANDARDS AND RULES⁹⁸

(a) AUDITING, QUALITY CONTROL, AND ETHICS STANDARDS.—

(1) * * * (2) * * *

(3) AUTHORITY TO ADOPT OTHER STANDARDS.—⁹⁹

(A) * * * (B) * * *

(C) TRANSITION PERIOD FOR EMERGING GROWTH COMPANIES.— Any rules of the Board requiring mandatory audit firm rotation or a supplement to the auditor’s report in which the auditor would be required to provide additional information about the audit and the financial statements of the issuer (auditor discussion and analysis) shall not apply to an audit of an emerging growth company, as defined in section 3 of the Securities Exchange Act of 1934. Any additional rules adopted by the Board after the date of enactment of this subparagraph shall not apply to an audit of any emerging growth company, unless the Commission determines that the application of such additional requirements is necessary or appropriate in the public interest, after considering the protection of investors and whether the action will promote efficiency, competition, and capital formation.¹⁰⁰

SEC. 404. MANAGEMENT ASSESSMENT OF INTERNAL CONTROLS

(a) RULES REQUIRED.— The Commission shall prescribe rules requiring each annual report required by section 13(a) or 15(d)¹⁰¹ of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a) or 78o(d)) of this title to contain an internal control report, which shall—

(1) state the responsibility of management for establishing and maintaining an adequate internal control structure and procedures for financial reporting; and

⁹⁸ Directs the Public Company Accounting Oversight Board (the “PCAOB”) to adopt auditing, attestation, quality control, ethics and independence standards for registered public accounting firms and specifies certain requirements for these standards.

⁹⁹ Grants the PCAOB authority to adopt auditing standards for registered public accounting firms and directs the Board to do so.

¹⁰⁰ JOBS Act Section 104: Auditing Standards.

¹⁰¹ Sections 13 and 15(d) of the Exchange Act require issuers to file annual, periodic and other reports with the Commission.

Sarbanes-Oxley Act of 2002 (con't)

SEC. 404. MANAGEMENT ASSESSMENT OF INTERNAL CONTROLS.

- (2) contain an assessment, as of the end of the most recent fiscal year of the issuer, of the effectiveness of the internal control structure and procedures of the issuer for financial reporting.
- (b) INTERNAL CONTROL EVALUATION AND REPORTING.— With respect to the internal control assessment required by subsection (a) of this section, each registered public accounting firm that prepares or issues the audit report for the issuer, other than an issuer that is an emerging growth company (as defined in section 3 of the Securities Exchange Act of 1934),¹⁰² shall attest to, and report on, the assessment made by the management of the issuer. An attestation made under this subsection shall be made in accordance with standards for attestation engagements issued or adopted by the Board. Any such attestation shall not be the subject of a separate engagement.

¹⁰² JOBS Act Section 103: Internal Controls Audit.

INVESTOR PROTECTION AND SECURITIES REFORM ACT OF 2010¹⁰³

SEC. 953. EXECUTIVE COMPENSATION DISCLOSURES¹⁰⁴

- (a) DISCLOSURE OF PAY VERSUS PERFORMANCE.— Section 14 of the Securities Exchange Act of 1934 (15 U.S.C. 78n), as amended by this title, is amended by adding at the end the following:

“(i) Disclosure of Pay Versus Performance.— The Commission shall, by rule, require each issuer to disclose in any proxy or consent solicitation material for an annual meeting of the shareholders of the issuer a clear description of any compensation required to be disclosed by the issuer under section 229.402 of title 17, Code of Federal Regulations (or any successor thereto), including information that shows the relationship between executive compensation actually paid and the financial performance of the issuer, taking into account any change in the value of the shares of stock and dividends of the issuer and any distributions. The disclosure under this subsection may include a graphic representation of the information required to be disclosed.”.

- (b) ADDITIONAL DISCLOSURE REQUIREMENTS.—

- (1) IN GENERAL.—The Commission shall amend section 229.402 of title 17, Code of Federal Regulations,¹⁰⁵ to require each issuer, other than an emerging growth company, as that term is defined in section 3(a) of the Securities Exchange Act of 1934,¹⁰⁶ to disclose in any filing of the issuer described in section 229.10(a) of title 17, Code of Federal Regulations (or any successor thereto)¹⁰⁷—
- (A) the median of the annual total compensation of all employees of the issuer, except the chief executive officer (or any equivalent position) of the issuer;
 - (B) the annual total compensation of the chief executive officer (or any equivalent position) of the issuer; and
 - (C) the ratio of the amount described in subparagraph (A) to the amount described in subparagraph (B).

¹⁰³ The Investor Protection and Securities Reform Act of 2010 is part of the Dodd-Frank Act.

¹⁰⁴ Directs the Commission to issue rules regarding disclosure of specified information regarding executive compensation, including “pay versus performance” disclosure and internal pay equity disclosure.

¹⁰⁵ Item 402 of Regulation S-K requires disclosure related to compensation of directors and officers.

¹⁰⁶ JOBS Act Section 102(a)(3): Disclosure Obligations – Executive Compensation – Compensation Disclosures.

¹⁰⁷ Item 10(a) of Regulation S-K lists all types of filings with the Commission that are subject to Regulation S-K.

JOBS ACT PROVISIONS NOT AMENDING OTHER FEDERAL STATUTES

SEC. 1. SHORT TITLE.

This Act may be cited as the “Jumpstart Our Business Startups Act”.

SEC. 2. TABLE OF CONTENTS.

The table of contents of this Act is as follows: * * *

SEC. 101. DEFINITIONS

(a) * * * (b) * * *

(c) OTHER DEFINITIONS.—As used in this title, the following definitions shall apply:

(1) COMMISSION.—The term “Commission” means the Securities and Exchange Commission.

(2) INITIAL PUBLIC OFFERING DATE.—The term “initial public offering date” means the date of the first sale of common equity securities of an issuer pursuant to an effective registration statement under the Securities Act of 1933.

(d) EFFECTIVE DATE.—Notwithstanding section 2(a)(19) of the Securities Act of 1933 and section 3(a)(80) of the Securities Exchange Act of 1934, an issuer shall not be an emerging growth company for purposes of such Acts if the first sale of common equity securities of such issuer pursuant to an effective registration statement under the Securities Act of 1933 occurred on or before December 8, 2011.

SEC. 102. DISCLOSURE OBLIGATIONS

(a) * * * (b) * * *

(c) OTHER DISCLOSURES.—An emerging growth company may comply with section 229.303(a) of title 17,¹⁰⁸ Code of Federal Regulations, or any successor thereto, by providing information required by such section with respect to the financial statements of the emerging growth company for each period presented pursuant to section 7(a) of the Securities Act of 1933¹⁰⁹ (15 U.S.C. 77g(a)). An emerging growth company may comply with section 229.402 of title 17,¹¹⁰ Code of Federal Regulations, or any successor thereto, by disclosing the same

¹⁰⁸ Item 303(a) of Regulation S-K specifies information required in management’s discussion and analysis of financial condition and results of operations (“MD&A”).

¹⁰⁹ Specifies information that must be included in a registration statement.

¹¹⁰ Item 402 of Regulation S-K requires disclosure related to compensation of directors and officers. Item 402(l)-402(r) of Regulation S-K provides alternate disclosure for smaller reporting companies as defined by Item 10(f) of Regulation S-K, which includes any issuer with a market value of outstanding voting and nonvoting common equity held by non-affiliates of less than \$75,000,000.

information as any issuer with a market value of outstanding voting and nonvoting common equity held by non-affiliates of less than \$75,000,000.

SEC. 105. AVAILABILITY OF INFORMATION ABOUT EMERGING GROWTH COMPANIES

(a) *** through *** (c) ***

(d) POST OFFERING COMMUNICATIONS.—Neither the Commission nor any national securities association registered under section 15A of the Securities Exchange Act of 1934 may adopt or maintain any rule or regulation prohibiting any broker, dealer, or member of a national securities association from publishing or distributing any research report or making a public appearance, with respect to the securities of an emerging growth company, either—

- (1) within any prescribed period of time following the initial public offering date of the emerging growth company; or
- (2) within any prescribed period of time prior to the expiration date of any agreement between the broker, dealer, or member of a national securities association and the emerging growth company or its shareholders that restricts or prohibits the sale of securities held by the emerging growth company or its shareholders after the initial public offering date.

SEC. 107. OPT-IN RIGHT FOR EMERGING GROWTH COMPANIES

(a) IN GENERAL.—With respect to an exemption provided to emerging growth companies under this title, or an amendment made by this title, an emerging growth company may choose to forgo such exemption and instead comply with the requirements that apply to an issuer that is not an emerging growth company.

(b) SPECIAL RULE.—Notwithstanding subsection (a), with respect to the extension of time to comply with new or revised financial accounting standards provided under section 7(a)(2)(B)¹¹¹ of the Securities Act of 1933 and section 13(a)¹¹² of the Securities Exchange Act of 1934, as added by section 102(b), if an emerging growth company chooses to comply with such standards to the same extent that a non-emerging growth company is required to comply with such standards, the emerging growth company—

- (1) must make such choice at the time the company is first required to file a registration statement, periodic report, or other report with the Commission under section 13 of the Securities Exchange Act of 1934 and notify the Securities and Exchange Commission of such choice;
- (2) may not select some standards to comply with in such manner and not others, but must comply with all such standards to the same extent that a non-emerging growth company is required to comply with such standards; and

¹¹¹ Specifies information that must be included in a registration statement.

¹¹² Section 13(a) of the Exchange Act requires issuers to file annual, periodic and other reports with the Commission.

- (3) must continue to comply with such standards to the same extent that a non-emerging growth company is required to comply with such standards for as long as the company remains an emerging growth company.

SEC. 108. REVIEW OF REGULATION S-K

- (a) REVIEW.—The Securities and Exchange Commission shall conduct a review of its Regulation S-K (17 CFR 229.10 et seq.) to—
 - (1) comprehensively analyze the current registration requirements of such regulation; and
 - (2) determine how such requirements can be updated to modernize and simplify the registration process and reduce the costs and other burdens associated with these requirements for issuers who are emerging growth companies.
- (b) REPORT.—Not later than 180 days after the date of enactment of this title, the Commission shall transmit to Congress a report of the review conducted under subsection (a). The report shall include the specific recommendations of the Commission on how to streamline the registration process in order to make it more efficient and less burdensome for the Commission and for prospective issuers who are emerging growth companies.

SEC. 201. MODIFICATION OF EXEMPTION

- (a) MODIFICATION OF RULES.—
 - (1) Not later than 90 days after the date of the enactment of this Act, the Securities and Exchange Commission shall revise its rules issued in section 230.506 of title 17, Code of Federal Regulations,¹¹³ to provide that the prohibition against general solicitation or general advertising contained in section 230.502(c) of such title¹¹⁴ shall not apply to offers and sales of securities made pursuant to section 230.506, provided that all purchasers of the securities are accredited investors. Such rules shall require the issuer to take reasonable steps to verify that purchasers of the securities are accredited investors, using such methods as determined by the Commission. Section 230.506 of title 17, Code of Federal Regulations, as revised pursuant to this section, shall continue to be treated as a regulation issued under section 4(2) of the Securities Act of 1933 (15 U.S.C. 77d(2)).
 - (2) Not later than 90 days after the date of enactment of this Act, the Securities and Exchange Commission shall revise subsection (d)(1) of section 230.144A of title 17, Code of Federal Regulations,¹¹⁵ to provide that securities sold under such revised exemption may be offered to persons other than qualified institutional buyers, including by means of general solicitation or general advertising, provided that

¹¹³ Rule 506 of Regulation D.

¹¹⁴ Rule 502(c) of Regulation D.

¹¹⁵ Rule 144A(d)(1) only permits offers to qualified institutional buyers, or to offerees or purchasers that sellers and any person acting on behalf of the sellers reasonably believe are qualified institutional buyers.

securities are sold only to persons that the seller and any person acting on behalf of the seller reasonably believe is a qualified institutional buyer.

SEC. 301. SHORT TITLE.

This title may be cited as the “Capital Raising Online While Deterring Fraud and Unethical Non-Disclosure Act of 2012” or the “CROWDFUND Act”.

SEC. 302. CROWDFUNDING EXEMPTION

(a) * * * (b) * * *

(c) **RULEMAKING.**—Not later than 270 days after the date of enactment of this Act, the Securities and Exchange Commission (in this title referred to as the “Commission”) shall issue such rules as the Commission determines may be necessary or appropriate for the protection of investors to carry out sections 4(6) and section 4A of the Securities Act of 1933, as added by this title. In carrying out this section, the Commission shall consult with any securities commission (or any agency or office performing like functions) of the States, any territory of the United States, and the District of Columbia, which seeks to consult with the Commission, and with any applicable national securities association.

(d) **DISQUALIFICATION.**—

(1) **IN GENERAL.**—Not later than 270 days after the date of enactment of this Act, the Commission shall, by rule, establish disqualification provisions under which—

- (A) an issuer shall not be eligible to offer securities pursuant to section 4(6) of the Securities Act of 1933, as added by this title; and
- (B) a broker or funding portal shall not be eligible to effect or participate in transactions pursuant to that section 4(6).

(2) **INCLUSIONS.**—Disqualification provisions required by this subsection shall—

- (A) be substantially similar to the provisions of section 230.262 of title 17, Code of Federal Regulations¹¹⁶ (or any successor thereto); and
- (B) disqualify any offering or sale of securities by a person that—
 - (i) is subject to a final order of a State securities commission (or an agency or officer of a State performing like functions), a State authority that supervises or examines banks, savings associations, or credit unions, a State insurance commission (or an agency or officer of a State performing like functions), an appropriate Federal banking agency, or the National Credit Union Administration, that—

¹¹⁶ Rule 262 of Regulation A, which lists Regulation A’s disqualification provisions.

(I) bars the person from—

(aa) association with an entity regulated by such commission, authority, agency, or officer;

(bb) engaging in the business of securities, insurance, or banking; or

(cc) engaging in savings association or credit union activities; or

(II) constitutes a final order based on a violation of any law or regulation that prohibits fraudulent, manipulative, or deceptive conduct within the 10-year period ending on the date of the filing of the offer or sale; or

(ii) has been convicted of any felony or misdemeanor in connection with the purchase or sale of any security or involving the making of any false filing with the Commission.

SEC. 303. EXCLUSION OF CROWDFUNDING INVESTORS FROM SHAREHOLDER CAP

(a) * * *

(b) RULEMAKING.—The Commission shall issue a rule to carry out section 12(g)(6) of the Securities Exchange Act of 1934 (15 U.S.C. 78c), as added by this section, not later than 270 days after the date of enactment of this Act.

SEC. 304. FUNDING PORTAL REGULATION

(a) * * *

(1) * * *

(2) RULEMAKING.—The Commission shall issue a rule to carry out section 3(h) of the Securities Exchange Act of 1934 (15 U.S.C. 78c), as added by this subsection, not later than 270 days after the date of enactment of this Act.

SEC. 305. RELATIONSHIP WITH STATE LAW

(a) * * *

(b) CLARIFICATION OF THE PRESERVATION OF STATE ENFORCEMENT AUTHORITY.—

(1) IN GENERAL.—The amendments made by subsection (a) relate solely to State registration, documentation, and offering requirements, as described under section 18(a) of Securities Act of 1933 (15 U.S.C. 77r(a)), and shall have no impact or limitation on other State authority to take enforcement action with regard to an issuer, funding portal, or any other person or entity using the exemption from registration provided by section 4(6) of that Act.

SEC. 402. STUDY ON THE IMPACT OF STATE BLUE SKY LAWS ON REGULATION A OFFERINGS

The Comptroller General shall conduct a study on the impact of State laws regulating securities offerings, or “Blue Sky laws”, on offerings made under Regulation A (17 CFR 230.251 et seq.).¹¹⁷ The Comptroller General shall transmit a report on the findings of the study to the Committee on Financial Services of the House of Representatives, and the Committee on Banking, Housing, and Urban Affairs of the Senate not later than 3 months after the date of enactment of this Act.

SEC. 503. COMMISSION RULEMAKING

The Securities and Exchange Commission shall revise the definition of “held of record” pursuant to section 12(g)(5) of the Securities Exchange Act of 1934 (15 U.S.C. 78l(g)(5)) to implement the amendment made by section 502. The Commission shall also adopt safe harbor provisions that issuers can follow when determining whether holders of their securities received the securities pursuant to an employee compensation plan in transactions that were exempt from the registration requirements of section 5 of the Securities Act of 1933.

SEC. 504. COMMISSION STUDY OF ENFORCEMENT AUTHORITY UNDER RULE 12g5–1

The Securities and Exchange Commission shall examine its authority to enforce Rule 12g5–1 to determine if new enforcement tools are needed to enforce the anti-evasion provision contained in subsection (b)(3) of the rule, and shall, not later than 120 days after the date of enactment of this Act transmit its recommendations to Congress.

SEC. 602. RULEMAKING

Not later than 1 year after the date of enactment of this Act, the Securities and Exchange Commission shall issue final regulations to implement this title and the amendments made by this title.

SEC. 701. OUTREACH BY THE COMMISSION

The Securities and Exchange Commission shall provide online information and conduct outreach to inform small and medium sized businesses, women owned businesses, veteran owned businesses, and minority owned businesses of the changes made by this Act.

¹¹⁷ Rules 251 through 263 of Regulation A.

This memorandum is intended only as a general discussion of these issues. It should not be regarded as legal advice. We would be pleased to provide additional details or advice about specific situations if desired.

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