

# JOBS ACT

## A NEW IPO PLAYING FIELD FOR EMERGING GROWTH COMPANIES

Summary of provisions intended to reduce the costs and risks associated with initial public offerings for emerging growth companies. Comparison to pre-JOBS Act in order to highlight key changes.

Subject Matter	Pre-JOBS Act	Post-JOBS Act
<b>IPO Process</b>		
<b>Confidential Submission of IPO Registration Statement</b>	Not permitted	Permitted, but all submissions must be publicly filed at least 21 days prior to road show
<b>Testing the Waters: Pre-Filing Communications</b>	Written and oral communications regarding the offering prior to filing registration statement are generally prohibited	Written and oral communications to institutions that are accredited investors and QIBs to “test the waters” are permitted, but Section 12 liability will apply to these communications and FWP requirements may be revised to apply
<b>Testing the Waters: Post-Filing Communications</b>	During the offering, written communications regarding the offering other than the prospectus are generally prohibited, subject to limited exceptions and FWPs after price range is included	Written communications to institutions that are accredited investors and QIBs to “test the waters” are permitted, but Section 12 liability will apply to these communications and FWP requirements may be revised to apply
<b>Research Reports and Public Appearances by Research Analysts</b>	<ul style="list-style-type: none"> <li>• Research reports by offering participants in connection with the offering may be considered prospectuses and offers for purposes of Section 12 liability and Section 5 “gun jumping” restrictions</li> <li>• Research reports and public appearances by managers and co-managers are prohibited by FINRA rules for up to 40 days after the date of the offering and within 15 days before or after the expiration of lock-up provisions, subject to certain exceptions</li> </ul>	<ul style="list-style-type: none"> <li>• Research reports by offering participants in connection with offerings for common equity securities are not considered prospectuses or offers for purposes of Section 12 liability and Section 5 “gun jumping” restrictions</li> <li>• FINRA rules prohibiting publication of research reports and public appearances do not apply to research reports and public appearances by offering participants following the IPO or prior to the expiration of lock-up provisions</li> </ul>
<b>Separation of Research Analysts and Investment Bankers</b>	<ul style="list-style-type: none"> <li>• FINRA rules include extensive restrictions on the ability of research analysts and investment bankers to interact</li> <li>• Global settlement further restricts the ability of research analysts and investment bankers to interact at firms subject to the settlement</li> </ul>	<ul style="list-style-type: none"> <li>• SEC and FINRA rules may not restrict investment bankers from arranging for communications between research analysts and potential investors or research analysts from participating in communications with management in the presence of investment bankers; rules are otherwise unaffected</li> <li>• Global settlement is unaffected</li> </ul>

Subject Matter	Pre-JOBS Act	Post-JOBS Act
<b>IPO Registration Statement Disclosure Requirements</b>		
<b>Required Financial Information</b>	<ul style="list-style-type: none"> <li>• Three years of audited financial statements (and interim financials)</li> <li>• Five years of selected financial data</li> </ul>	<ul style="list-style-type: none"> <li>• Two years of audited financial statements (and interim financials)</li> <li>• Two years of selected financial data</li> </ul>
<b>Accounting Standards</b>	Public company GAAP	Not required to comply with new or revised accounting standards until private companies must comply, if the standard applies to private companies
<b>Audit Firm Rotation and Potential Other Future PCAOB Rules</b>	PCAOB considering requiring mandatory audit firm rotation and auditor discussion and analysis	<ul style="list-style-type: none"> <li>• Exempt from mandatory audit firm rotation and auditor discussion and analysis, if adopted</li> <li>• Future PCAOB rules only apply if specifically determined by SEC after considering certain factors</li> </ul>
<b>Executive Compensation Disclosure</b>	<ul style="list-style-type: none"> <li>• CD&amp;A required</li> <li>• Disclosure required for CEO, CFO and three other most highly paid executive officers</li> <li>• All compensation tables required</li> <li>• Quantification of termination/change of control benefits is required</li> <li>• Internal pay comparison expected to be required</li> </ul>	<ul style="list-style-type: none"> <li>• May comply with smaller reporting company disclosure requirements, which permits:                             <ul style="list-style-type: none"> <li>➢ No CD&amp;A</li> <li>➢ Disclosure for only CEO and two other most highly paid executive officers</li> <li>➢ Only two required tables (summary compensation table and outstanding equity awards table)</li> <li>➢ No quantification of termination/change of control benefits</li> </ul> </li> <li>• Internal pay comparison not required</li> </ul>

Subject Matter	Pre-JOBS Act	Post-JOBS Act
<b>Post-IPO Reporting and Other Requirements</b>		
<p>Note: Unless otherwise noted, these more lenient requirements will continue to apply until a company exits emerging growth company (EGC) status, which generally occurs on the earliest of: (1) the last day of the fiscal year during which the EGC has annual gross revenues of \$1 billion or more, (2) the last day of the fiscal year following the fifth anniversary of the first sale of common equity securities pursuant to an effective registration statement, (3) the date on which the EGC has issued more than \$1 billion in non-convertible debt during the previous 3-year period or (4) the date on which the EGC is deemed to be a large accelerated filer.</p>		
<b>Say on Pay Votes</b>	<ul style="list-style-type: none"> <li>• Initial say on pay and say on pay frequency vote required at first annual meeting post-IPO</li> <li>• Say on golden parachute pay vote required at meetings to approve M&amp;A transactions</li> </ul>	<ul style="list-style-type: none"> <li>• Initial say on pay vote not required until first year after exiting EGC status or, if exit occurs within first two years post-IPO, until third year after IPO</li> <li>• Initial say on pay frequency vote not required until first annual meeting after exiting EGC status</li> <li>• Say on golden parachute pay vote not required at meetings to approve M&amp;A transactions</li> </ul>
<b>Required Financial Information in Annual Reports</b>	<ul style="list-style-type: none"> <li>• Three years of audited financial statements (and interim financials)</li> <li>• Five years of selected financial data</li> </ul>	<ul style="list-style-type: none"> <li>• Not required to include audited financial statements or selected financial data for years earlier than those provided in IPO registration statement</li> <li>• Within one year of IPO, emerging growth company would report three years of audited financial statements</li> </ul>
<b>Accounting Standards</b>	Public company GAAP	Not required to comply with new or revised accounting standards until private companies must comply, if the standard applies to private companies
<b>Audit Firm Rotation and Potential Other Future PCAOB Rules</b>	PCAOB considering requiring mandatory audit firm rotation and auditor discussion and analysis	<ul style="list-style-type: none"> <li>• Exempt from mandatory audit firm rotation and auditor discussion and analysis, if adopted</li> <li>• Future PCAOB rules only apply if specifically determined by SEC after considering certain factors</li> </ul>
<b>Executive Compensation Disclosure</b>	<ul style="list-style-type: none"> <li>• CD&amp;A required</li> <li>• Disclosure required for CEO, CFO and three other most highly paid executive officers</li> <li>• All compensation tables required</li> <li>• Quantification of termination/change of control benefits is required</li> <li>• Pay for performance and internal pay comparison disclosure to be required upon adoption of final rules by SEC</li> </ul>	<ul style="list-style-type: none"> <li>• May comply with smaller reporting company disclosure requirements, which permits:               <ul style="list-style-type: none"> <li>➢ No CD&amp;A</li> <li>➢ Disclosure for only CEO and two other most highly paid executive officers</li> <li>➢ Only two required tables (summary compensation table and outstanding equity awards table)</li> <li>➢ No quantification of termination/change of control benefits</li> </ul> </li> <li>• Pay for performance and internal pay comparison not required</li> </ul>

Subject Matter	Pre-JOBS Act	Post-JOBS Act
SOX 404(b) Auditor Attestation	Required beginning with second Form 10-K filed	Not required
Follow-On Public Offerings	<ul style="list-style-type: none"> <li>• Confidential submissions of draft registration statements not permitted</li> <li>• Written and oral communications regarding the offering prior to filing registration statement are generally prohibited, except for communications by WKSIs, which, if written, must be filed as FWP's</li> <li>• During the offering, written communications regarding the offering other than the prospectus are generally prohibited, subject to exceptions for FWP's in certain circumstances and other limited exceptions</li> <li>• Research reports by offering participants may be considered prospectuses and offers for purposes of Section 12 liability and Section 5 "gun jumping" restrictions, subject to certain exceptions for companies eligible to use Form S-3 for unlimited primary offerings and in certain other circumstances</li> <li>• Research reports and public appearances by managers and co-managers of follow-on offerings are prohibited by FINRA rules for 10 days after the date of the offering and within 15 days before or after the expiration of lock-up provisions, subject to exceptions for actively traded securities and in certain other circumstances</li> <li>• No reduced disclosure requirements apply, but incorporation by reference available after first annual report is filed and Form S-3 shelf registration statement available 12 months after IPO</li> </ul>	<ul style="list-style-type: none"> <li>• Confidential submissions of draft registration statements still not permitted</li> <li>• Testing the waters communications permitted to the same extent as for IPO</li> <li>• Research reports by offering participants are not considered prospectuses or offers for purposes of Section 12 liability and Section 5 "gun jumping" restrictions in connection with follow-on offerings for common equity securities</li> <li>• The Act does not address FINRA rules regarding research reports and public appearances in connection with follow-on offerings</li> <li>• The Act provision prohibiting certain SEC and FINRA rules regarding separation of research analysts and investment bankers in IPOs does not apply</li> <li>• Reduced disclosure requirements applicable to IPO apply, provided that audited financial statements and selected financial data will be required for the same periods as for non-EGCs except that these financial statements and data are not required for years earlier than those provided in IPO registration statement</li> </ul>

Please note that this chart does not necessarily describe the specific impact of the provisions of the JOBS Act summarized above on voluntary filers, foreign private issuers, smaller reporting companies, asset-backed issuers, registered investment companies and others subject to unique requirements.

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