An overview of implementation after one year and an analysis of emerging growth company trends

April 2013

After one year,
still more to come…

The Jumpstart Our Business Startups Act (JOBS Act or Act)[1] was enacted on 5 April 2012 to give private companies greater access to capital and make it easier for certain companies to go public on US exchanges.

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

The provisions of the JOBS Act related to EGCs and many of the amendments to the Exchange Act registration thresholds were effective immediately after the law was enacted. The SEC staff has issued interpretive guidance to address many implementation questions on those provisions of the Act.[2]

Ernst & Young resources

- Technical Line, Implementing the JOBS Act (SCORE No. CC0363)
- To the Point, SEC proposes allowing solicitation and advertising in certain exempt offerings (SCORE No. CC0355)

Other provisions of the Act still require a significant amount of SEC rulemaking with statutory deadlines for rulemaking having already been missed. In August, the SEC issued its first proposed rule under the JOBS Act to remove the long-standing ban on general solicitation and advertising in connection with offerings of restricted securities that are exempt from registration. The SEC hasn't yet finalized the rule. The SEC also hasn't yet proposed rules to allow "crowdfunding," or raising small amounts of equity capital from large pools of investors, often over the internet.

Last month, at her confirmation hearing before the Senate Banking Committee, Mary Jo White said that one of her top priorities as the new SEC chairman would be to complete implementation of the JOBS Act quickly and efficiently, using rigorous economic analysis. In her prepared testimony, she emphasized the importance of completing required rulemaking, stating that "the SEC needs to get the rules right, but it also needs to get them done." We therefore expect significant activity from the Commission in 2013 and 2014 related to JOBS Act rulemaking.

In this publication, we look at the IPO market before and after the JOBS Act and analyze how EGCs are using the relief available to them under the Act. We also provide an update on what still must be done to implement key provisions of the JOBS Act. Although we are in the early stages of implementing the JOBS Act, the US IPO market has not shown a significant increase in activity. Since enactment, the IPO market has been dominated by EGCs, representing 83% of IPOs that went effective since April 2012. The majority of EGCs are taking advantage of the confidential review accommodation and reduced executive compensation disclosure relief available to EGCs.

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1 The JOBS Act is available at: http://www.gpo.gov/fdsys/pkg/BILLS-112hr3606enr/pdf/BILLS-112hr3606enr.pdf.

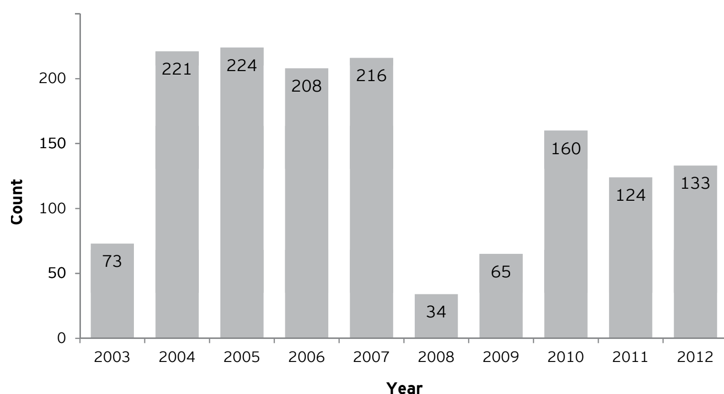
2 SEC staff interpretive guidance on the JOBS Act is available at: http://www.sec.gov/spotlight/jobs-act.shtml.

Overview
of the IPO market

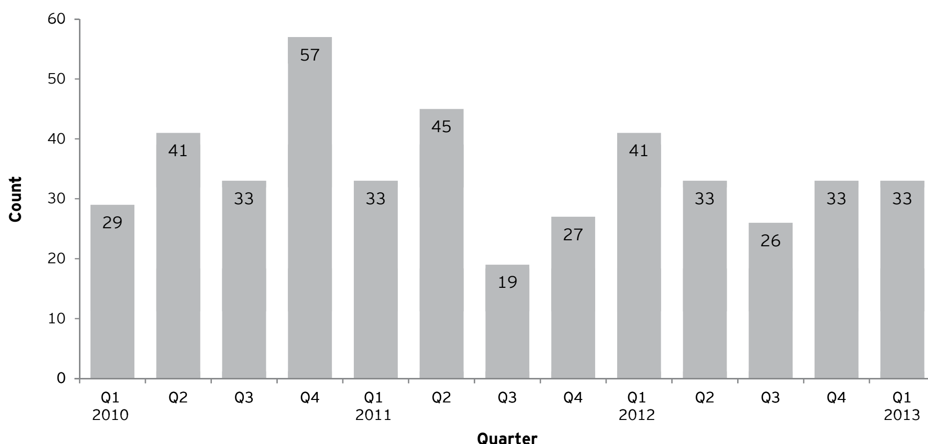
The JOBS Act was intended to promote job creation and economic growth by improving access to the capital markets for emerging, high-growth companies. In 2011, a small group of professionals formed an IPO Task Force that provided recommendations to the US Department of the Treasury to address the decline in the number of IPOs since the technology boom of the late 1990s.[3] The JOBS Act incorporated many of the Task Force's recommendations.

As illustrated by the charts below, IPO activity did not increase appreciably in 2012; however, we're still in the early stages of implementing the JOBS Act. The IPO market also is highly sensitive to economic conditions, which remained sluggish in 2012.

Number of effective IPOs by year



Number of effective IPOs by quarter



[3] The IPO Task Force report presented to the US Department of the Treasury, *Rebuilding the IPO On-Ramp — Putting Emerging Companies and the Job Market Back on the Road to Growth*, is available on the SEC's website at http://www.sec.gov/info/smallbus/acsec/rebuilding_the_ipo_on-ramp.pdf.

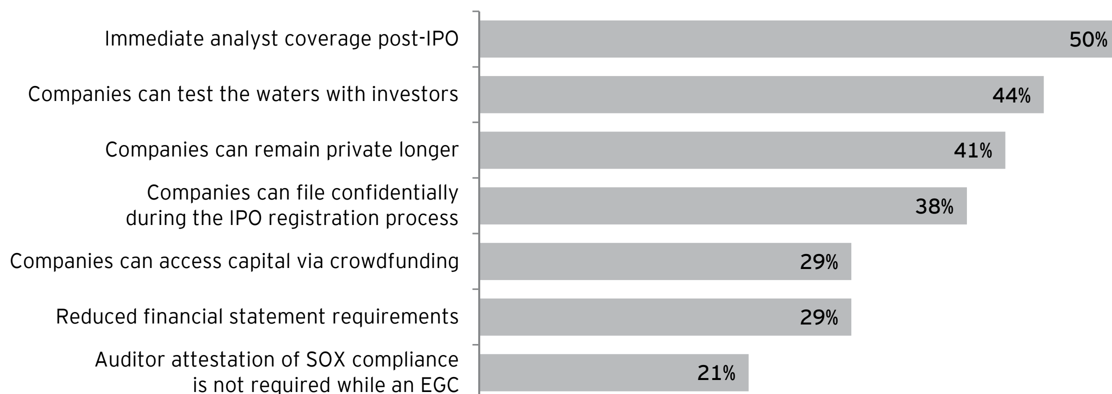
Survey respondents in the US believe the main benefits of the JOBS Act are those that affect the offering process rather than those related to disclosure and compliance relief for emerging growth companies.

Since the JOBS Act was enacted, the US IPO market has not shown a significant increase in activity. So far in 2013, 33 IPOs have gone effective in the US in the first quarter, raising $8.6 billion. Investor confidence nevertheless is on the rise. In a recent Ernst & Young survey,[4] 82% of global institutional investors said they have invested in pre-IPO companies and IPOs in the past 12 months, and the remaining 18% said they had invested in such companies in the previous two to three years.

Despite increasing confidence, institutional investors remain skeptical about whether the JOBS Act will achieve its objective of increasing IPO activity, according to our survey. Interestingly, institutional investors outside the US were more optimistic about realizing benefits from the JOBS Act than were institutional investors in the US. Also noteworthy, survey respondents in the US believe the main benefits of the JOBS Act are those that affect the offering process (e.g., allowing immediate analyst coverage after an IPO, giving companies the ability to test the waters with certain investors) rather than those related to disclosure and compliance relief for emerging growth companies (e.g., deferral of auditor attestation on internal control, reduced financial reporting periods).

Investor views on main benefits of legislation and regulatory changes on IPO activity

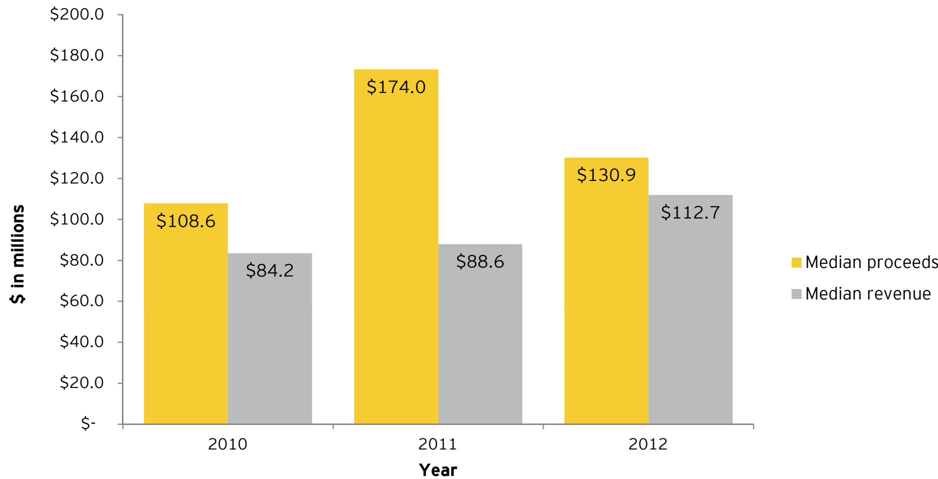
The following percentages of US respondents view these provisions as the main benefits of the JOBS Act.



[4] The Ernst & Young survey, Right Team, right story, right price: Institutional investors support IPOs that come to market well prepared, published in February 2013, is available at http://www.ey.com/Publication/vwLUAssets/Investment_appetite_up_for_IPOs_among_institutional_investors/$FILE/Institutional_Investor_Survey.pdf.

Companies that went public in 2012 compared with 2011 tended to have higher revenues, even though the JOBS Act was designed to encourage IPOs by emerging growth companies with smaller revenues.

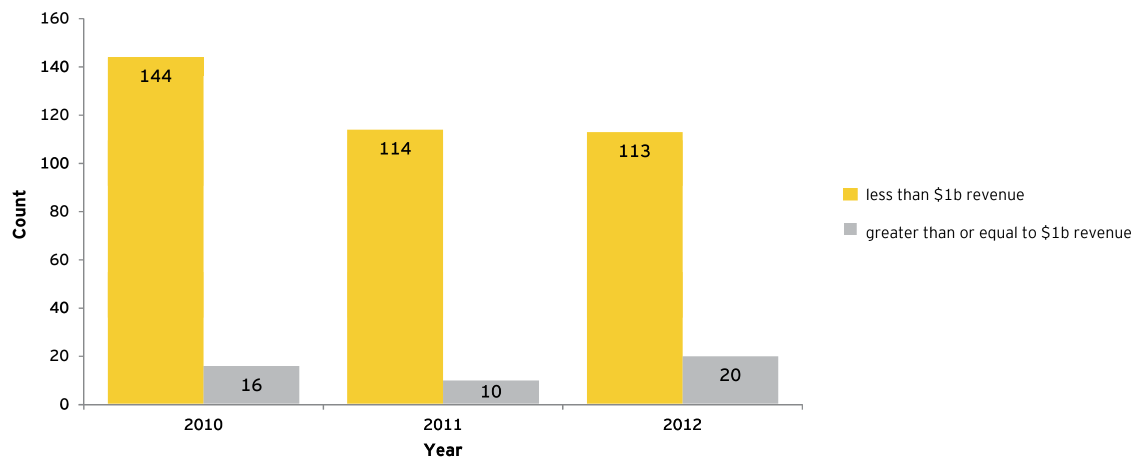
Median IPO proceeds and revenue* by year



* Revenue refers to revenue in the last audited fiscal year presented in the registration statement

When we take a closer look at the profile of companies that went public in 2012 and 2011, we see that the number of companies in the EGC category (those with less than $1 billion in revenue in the last audited fiscal year presented in their registration statement) remained fairly consistent year over year. Instead, the growth in the number of IPOs in 2012 came from larger companies that did not qualify as EGCs.

IPOs by year below and above $1 billion in revenue*



* $1 billion in revenue refers to revenue in the last audited fiscal year presented in registration statement.

Emerging growth company trends

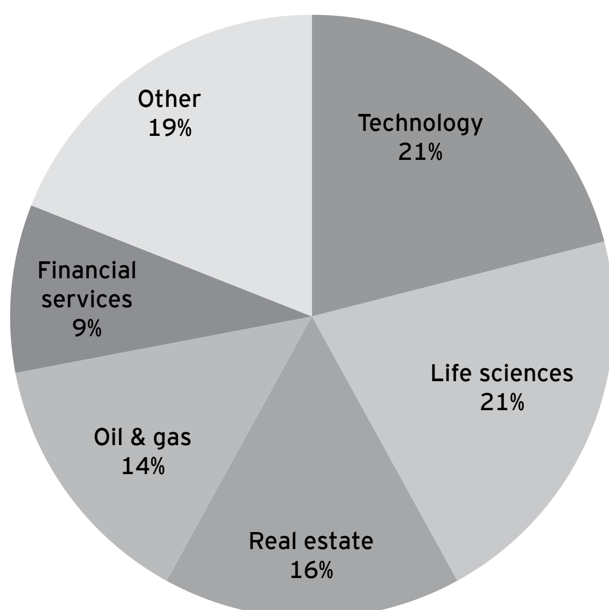
Under the JOBS Act, certain regulatory requirements are phased in for emerging growth companies during a five-year period known as an IPO "on-ramp." In a major change from past practice, an EGC can also submit its IPO registration statement and subsequent amendments to the SEC on a confidential basis.

The provisions of the JOBS Act related to EGCs were effective immediately and did not require SEC rulemaking; however, the SEC is expected to adopt conforming changes to its existing rules and regulations to resolve conflicts with the Act's provisions that are already in effect. Given the self-executing nature of the EGC provisions, the staff of the SEC's Division of Corporation Finance has issued a series of frequently asked questions (FAQs)[5] related to eligibility and disclosure considerations and the confidential submission of EGC registration statements.

Small companies that now qualify as EGCs continue to dominate the IPO market. Approximately 78% of all publicly filed IPO registration statements and approximately 83% of the IPOs that went effective since April 2012 were filed by EGCs. These EGCs were primarily concentrated in the technology, life sciences, real estate, oil and gas and financial services industries.

Unless otherwise noted, the statistics presented in this section are based on an EGC's initial publicly filed IPO registration statement between April 2012 and March 2013 and exclude IPO registration statements that were initially filed before the enactment of the JOBS Act.

Top industries for EGC IPOs



An EGC is defined as a company with "total annual gross revenues" (i.e., total revenues presented on the income statement in accordance with US GAAP) of less than $1 billion in its most recently completed fiscal year. Companies that had their first sale of common equity securities under an effective registration statement on or prior to 8 December 2011 do not qualify as an EGC.

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

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

[5] SEC staff guidance, including its FAQs about the JOBS Act, is available on the SEC's website at http://www.sec.gov./divisions/corpfin/cfjobsact.shtml.

Confidential registration statement submission

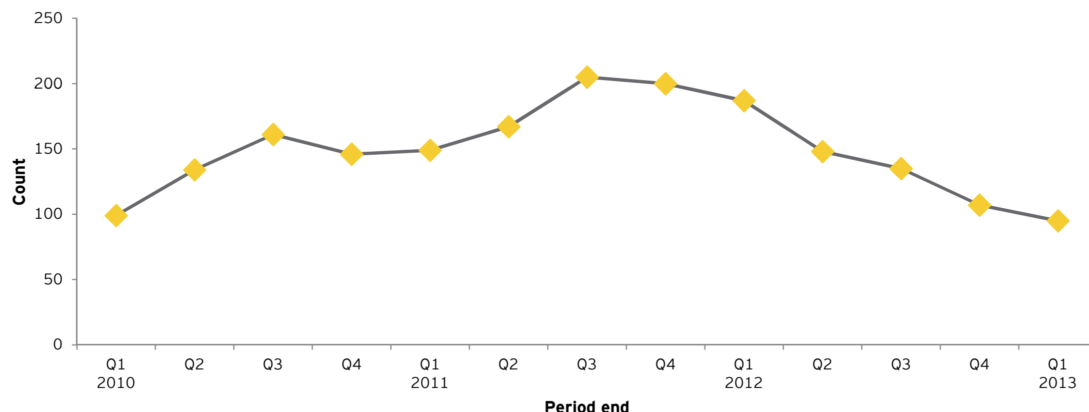
Approximately 63% of the EGCs that have filed IPO registration statements since the JOBS Act was enacted in April 2012 have taken advantage of the confidential review accommodation. This accommodation allows EGCs to submit registration statements and subsequent amendments to the SEC on a confidential basis. The SEC staff can comment on the confidential submission, and the company can respond before filing publicly. EGCs are required to publicly file all prior confidential submissions no later than 21 days before their road shows (or no later than 21 days before the anticipated effective date of the registration statement if they are not conducting a road show).

Based on the limited data available to date, confidential filing does not appear to have hindered the success of IPOs. For example, of the EGC IPOs that have become effective since April 2012, the average first-day post-IPO gain for those that filed on a confidential basis was 15.1%, compared with an average gain of 12.5% for those that filed on a nonconfidential basis. Because the SEC staff reviews confidential submissions using the same process and timetable as it does for a publicly filed registration statement, confidential submissions haven't delayed the IPO process. A company should evaluate its individual facts and circumstances when determining whether to submit its initial registration statement on a confidential basis. It's too soon to tell whether there is a correlation between IPO performance and the shorter period of market exposure before pricing that results from filing confidentially.

In our experience, the variance in use of this provision reflects how EGCs have weighed the advantages of not disclosing sensitive nonpublic information with the potential benefits of providing information to investors at an earlier date during the IPO process to increase awareness and attract potential investors.

One consequence of the JOBS Act provision allowing confidential submissions is reduced visibility into the IPO pipeline. As the graph demonstrates, the number of pre-effective IPO registration statements on file with the SEC has declined significantly since the JOBS Act was enacted. The SEC does not publish any statistics on the number of confidential submissions of IPO registration statements. Thus, it has become much harder to determine how many companies are preparing IPOs.

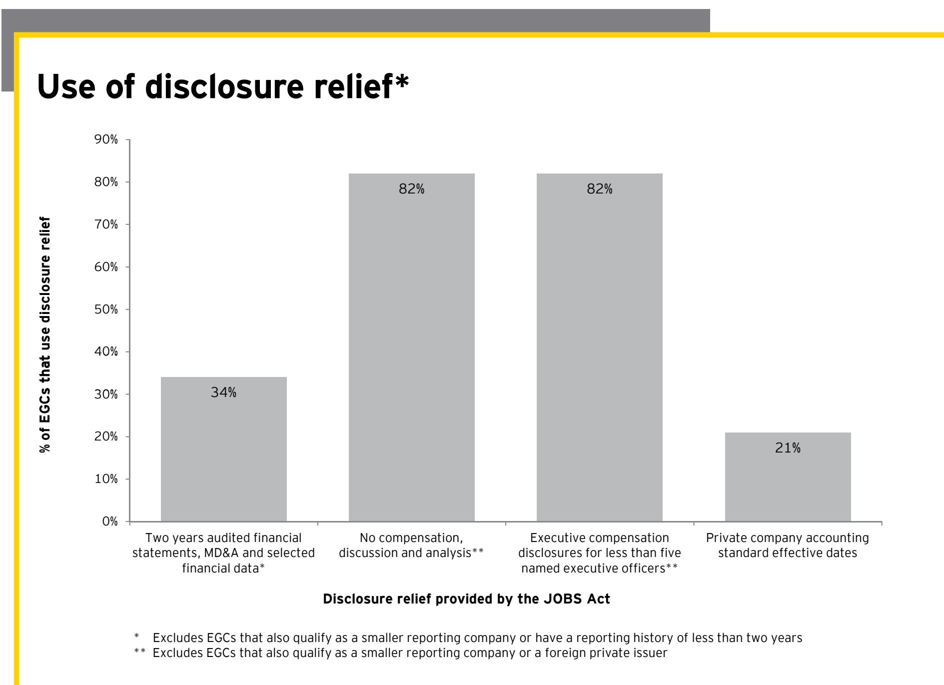
IPOs in registration at period end



EGC scaled disclosures during IPO on-ramp period

Many EGCs haven't taken advantage of the scaled disclosures allowed by the JOBS Act, with one exception: most EGCs have elected to provide reduced executive compensation disclosures in their IPO filings.

An EGC may take an "à la carte" approach and provide some EGC scaled disclosures but not use the relief available to satisfy other SEC disclosure requirements.



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

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

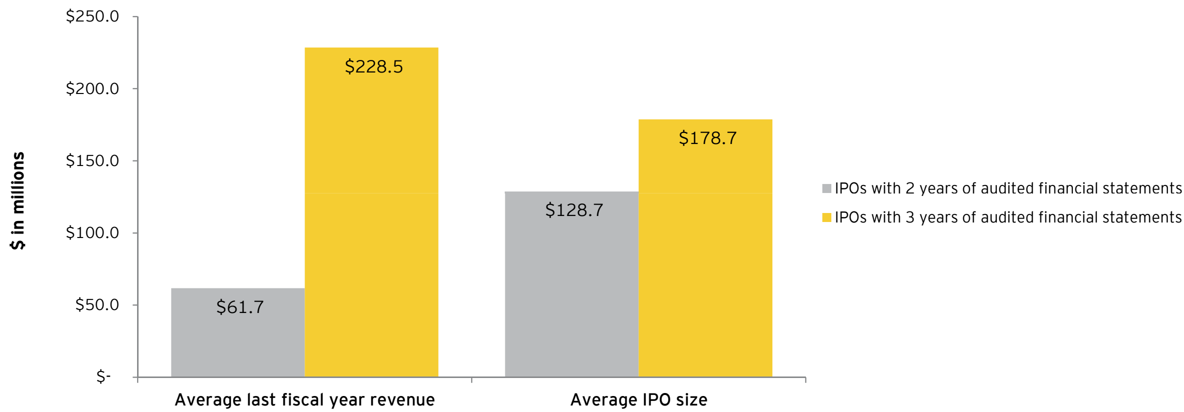
* Represents requirements for registrants other than those that meet the definition of a smaller reporting company or an EGC.

Number of audited financial statement periods and selected financial data

An EGC is not required to provide more than two years of audited financial statements in the registration statement for an IPO of its common equity securities. EGCs also are not required to include selected financial data in their common equity IPO registration statements, subsequent registration statements and periodic reports for periods before the earliest audited period presented in their IPO registration statements.

So far, approximately 66% of EGCs did not use this available relief. Instead, they have included three years of audited financial statements in their IPO registration statements. The number of years of selected financial data included for those ECGs that elected to include three years of audited financial statements varied, with some including up to five years. EGCs that elected the relief and included only two years of audited financial statements in their IPO registration statements also limited selected financial data to two years. Those EGCs were significantly smaller in terms of revenue and total offering proceeds and generally experienced a lower first-day IPO gain.

EGC IPOs including 2 versus 3 years of audited financial statements*



* The above data is based on the most recent IPO registration statement on file as of 31 March 2013 and excludes EGCs that also qualify as a smaller reporting company or have a reporting history of less than two years.

Executive compensation disclosures

EGCs may provide executive compensation disclosures in a manner consistent with a smaller reporting company. Thus, EGCs are not required to provide a Compensation Discussion and Analysis (CD&A), and the majority of EGCs have elected to omit CD&A from their IPO registration statements. The tabular executive compensation disclosure requirements also are significantly reduced for EGCs. For example, EGCs are required to provide compensation disclosure for only three named executive offers (i.e., the CEO and the two other highest-paid executives), while non-EGCs are required to provide disclosure for five named executive officers (i.e., CEO, CFO and the three other highest-paid executives). Approximately 82% of EGCs elected to provide executive compensation disclosures for less than five named executive officers. Once they go public, EGCs also are not required to comply with the "say-on-pay" provisions of the Dodd-Frank Act, which require companies to hold a shareholder advisory vote on executive compensation and golden parachutes.

Compliance with auditor attestation of internal control over financial reporting

We won't know until 2014, when EGCs that went public in 2012 will file their second annual report on Form 10-K, whether EGCs actually take advantage of the JOBS Act's deferral of the requirement to have their independent auditor assess their internal control over financial reporting (ICFR) under Section 404(b) of the Sarbanes-Oxley Act. Registrants are not required to comply with Section 404(a) and 404(b) in their IPO registration statement.

Although EGCs include general disclosures about the relief available under the JOBS Act in their IPO registration statements, the majority of EGCs did not disclose whether they plan to take advantage of the relief on auditor attestation. However, in their IPO registration statements, no EGCs indicated their intent to opt out of the auditor attestation deferral. That is, no EGCs have committed to complying with Section 404(b) earlier than required.

An EGC that defers the auditor attestation requirement still must comply with the Section 404(a) requirement that management assess the company's ICFR, generally beginning with its second annual report on Form 10-K. Only non-accelerated filers (public companies with public float of less than $75 million) are permanently exempt from Section 404(b).

Accounting standards issued after the JOBS Act

Approximately 79% of EGCs opted out of the extended accounting transition relief that allows EGCs to adopt new or revised accounting standards when they are effective for private companies. That is, only 21% of EGCs decided to retain the ability to adopt accounting standard updates using delayed effective dates afforded to private companies. It appears that many EGCs want to assure investors that their financial statements will remain comparable to those of other public companies.

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

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

Update on other key provisions of the Act

In this section, we summarize what's happened and what's yet to come related to some of the other key provisions of the JOBS Act.

Amendments to Exchange Act Section 12(g)

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

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

The JOBS Act also amended Sections 12(g) and 15(d) of the Exchange Act to raise the threshold below which a bank or bank holding company may terminate registration and suspend its reporting obligation to 1,200 record holders from 300. The current threshold of 300 record holders for non-banks and non-bank holding companies remains unchanged. Since the law was enacted, approximately 100 banks (mostly small community banks) have suspended their reporting obligations under the new thresholds.

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

In addition, the Act required the SEC to further revise the definition of "held of record" to exclude investors who acquire securities through crowdfunding, which the Act authorizes the SEC to permit. As discussed below, the crowdfunding exemption will not be effective until the SEC issues final rules implementing the crowdfunding provisions of the JOBS Act.

The amendments to the Exchange Act registration thresholds were effective immediately, allowing private companies to remain private longer. Once the SEC adopts rules allowing general solicitation and advertising in certain exempt offerings, it also will enhance the ability of private companies to identify and attract accredited investors.

Other exempt offerings

The JOBS Act requires the SEC to adopt or amend SEC regulations to encourage capital formation without requiring an SEC registration statement. These exemptions, referred to as "Regulation A+," create a new category of public offerings exempt from SEC registration of up to $50 million raised over a 12-month period through issuance of equity securities, debt securities or debt securities convertible or exchangeable to equity interests, including any guarantees of such securities. Regulation A currently provides a similar exemption for public offerings up to $5 million over 12 months.

To protect investors, the Act requires companies that make offerings under Regulation A+ to file audited financial statements with the SEC on an annual basis and gives the SEC the ability to require these issuers to make periodic disclosures about their operations, financial condition, use of proceeds and other information it deems appropriate.

The SEC has not proposed rules to implement Regulation A+, and the JOBS Act did not set a deadline for the adoption of these rules. Legislation was recently introduced in the US House of Representatives that, if enacted, would require the SEC to finalize Regulation A+ by 31 October 2013.[6] The SEC, however, already has missed several deadlines mandated by the JOBS Act.

Allowing general solicitation and advertising in certain exempt offerings

The JOBS Act requires the SEC to issue a rule to allow companies to solicit investors and advertise offerings of restricted securities that are exempt from registration because all purchasers are accredited investors. The SEC released a proposed rule in August 2012, but hasn't yet issued a final rule.

Under the SEC proposal, Rule 506(c) of Regulation D would allow any company (public, private, established or start-up) to expand its pool of potential investors without SEC registration. Rule 506(c) also would be available for use by hedge funds, venture capital funds and private equity funds. Issuers relying on the Rule 506(c) exemption would be permitted to advertise their offerings if they take reasonable steps to verify that actual purchasers are accredited investors, as defined in Rule 501(a) of Regulation D. The proposed rule also would apply to resales of restricted securities to qualified institutional buyers under Rule 144A of the Securities Act.

The SEC staff has said that it would like the Commission to finalize the "bad actor" rule[7] before considering a final rule on general solicitation. In 2011, the SEC proposed a rule, as required by the Dodd-Frank Wall Street Reform and Consumer Protection Act, barring offerings that rely on the exemption from registration in Rule 506 of Regulation D if they involve a felon or other "bad actor."

Crowdfunding

The JOBS Act allows private companies to raise small amounts of equity capital from a potentially large pool of investors (e.g., through the internet), a process commonly referred to as "crowdfunding." Under the Act, no more than $1 million of securities can be sold through crowdfunding in a rolling 12-month period. The aggregate amount sold to any single investor during that period also is capped, based on the annual income or net worth of the investor. Issuers relying on the crowdfunding exemption will be subject to certain informational and other requirements, including an obligation to file financial statements, which may require independent audit or review, depending on the offering size.

The SEC has yet to propose a rule to adopt the crowdfunding exemption, which the JOBS Act required to be in place by 31 December 2012. With the many personnel changes at the SEC and the Commission's rulemaking backlog, it is unclear when the SEC will propose crowdfunding rules. The SEC staff has said it would like the SEC to finalize the "bad actor" rule before allowing crowdfunding. The SEC staff has reminded companies that, until the Commission adopts final rules, use of the crowdfunding exemption is unlawful.[8]

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[6] The text of the legislation is available at http://www.gpo.gov/fdsys/pkg/BILLS-113hr701ih/pdf/BILLS-113hr701ih.pdf.

[7] The proposed rule is available at: http://www.sec.gov/rules/proposed/2011/33-9211.pdf

[8] The SEC staff notice related to the use of crowdfunding is available at: http://www.sec.gov/spotlight/jobsact/crowdfundingexemption.htm.

Required studies

The JOBS Act requires the SEC to conduct studies examining the impact of certain items on EGCs, such as decimalization and the burdens associated with complying with the nonfinancial disclosure requirements of Regulation S-K.

Regulation S-K study

The JOBS Act requires the SEC to conduct a study on how to simplify the Regulation S-K nonfinancial disclosures for EGCs. Although the Act required the study to be completed by 2 October 2012, the SEC staff is still working on it. As part of its review, the SEC requested public comment on how to make public registration requirements in Regulation S-K less burdensome for EGCs.

In our comment letter[9] to the SEC, we recommended that the SEC broaden the scope of its review and eliminate redundant or outdated disclosures for *all* issuers. We also recommended that informational disclosures that are not specific to a reporting period should appear in a company profile and that periodic reports should include only information specific to that fiscal period. In addition, we recommended that the SEC adopt a "sunset" provision — of 5 or 10 years, for example — for significant new disclosure requirements. Under such a provision, new disclosure mandates would expire unless the SEC takes action to indefinitely extend or modify them. Such sunsets would require the SEC to consider changes in the economic, business and regulatory landscape when assessing whether new requirements should become permanent.

We expect the SEC to provide a report with its findings to Congress in the near future. The SEC could implement changes to the disclosure requirements without additional legislation, but any proposed changes would be subject to the SEC's rulemaking process.

Ernst & Young resources

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

SEC Chief Accountant Paul Beswick also has said the staff plans to host a roundtable in late spring or early summer to explore whether disclosure gaps exist and what types of information should appear in the financial statements versus the broader financial reporting package, such as Management's Discussion and Analysis. The SEC staff plans to involve the Public Company Accounting Oversight Board (PCAOB) and Financial Accounting Standards Board (FASB) in the roundtable, along with representatives of the accounting profession, preparers, investors, the legal community and other regulators.

Decimalization study

The Act required the SEC to conduct a study examining the effects of trading and quoting securities in one-penny increments, known as decimalization, on IPOs and small and mid-sized companies. The SEC staff completed its study on 20 July 2012 and recommended that the SEC not immediately propose to increase the penny pricing increment for any companies. Instead, the staff recommended that the SEC consider additional steps to determine whether future rulemaking is warranted. The SEC staff recommended the Commission seek the opinions of key stakeholders, including companies, investors, market makers and academics, on the broad topic of decimalization, how best to study its effects on IPOs, trading and liquidity for small and middle capitalization companies, and potential policy alternatives.

The SEC staff hosted a roundtable on 5 February 2013 to discuss the effect of decimalization on small and mid-sized companies, market professionals, investors and US securities markets. Some participants in the roundtable suggested that the SEC launch a pilot program to examine whether changes to current trading increments would benefit the US marketplace.

[9] Our comment letter is available on our AccountingLink website at: http://www.ey.com/Publication/vwLUAssetsAL/CommentLetter_CC0356_EGCRegulationS-K_11September2012/$FILE/CommentLetter_CC0356_EGCRegulationS-K_11September2012.pdf.

Other SEC activities
affecting small and emerging companies

The SEC Advisory Committee on Small and Emerging Companies (the Committee), which was established in 2011 to advise the Commission on issues related to companies with less than $250 million in market capitalization, recently recommended that the SEC increase the public float threshold for smaller reporting companies (SRC) to $250 million from $75 million and expand the financial reporting and disclosure relief for SRCs. The Committee wants the SEC to permanently extend to SRCs some of the temporary relief provided under the JOBS Act to EGCs (i.e., exemptions from Section 404(b) auditor attestation on internal control over financial reporting, shareholder say-on-pay, public company accounting standards transition, any new PCAOB rules requiring mandatory audit firm rotation or auditor discussion and analysis). In addition, the relief recommended by the Committee would exempt all SRCs from some of the executive compensation disclosures required by the Dodd-Frank Act (i.e., CEO pay ratio, relationship of executive compensation to financial performance), exempt SRCs from the requirement to file their financial information in XBRL format and limit the Regulation S-K exhibit filing requirement to material contracts.

The Committee also recommended to the SEC that it (1) permit increased trading price increments for smaller exchange-listed companies and (2) promote the creation of a new US equity market for small and emerging companies that would be limited to sophisticated investors. In addition, the Committee recommended that the Commission, as it deems appropriate, share with certain members of Congress its belief that specialized disclosures required by the Dodd-Frank Act (including those related to conflict minerals and payments by resource extraction issuers) impose disproportionate costs on small businesses without providing decision-useful information to investors and have a negative effect on capital formation.

Given the Commission's rulemaking backlog, it is unclear whether or how the SEC will address the Committee's recommendations.

What's next
for JOBS Act implementation?

The JOBS Act requires the SEC to adopt rules to implement crowdfunding, Regulation A+ and general solicitation and advertising in certain exempt offerings. As previously discussed, the SEC has not yet proposed rules to address crowdfunding and Regulation A+ and has proposed but not finalized a rule to implement general solicitation and advertising in certain exempt offerings. We expect the SEC to adopt a final rule on general solicitation and advertising in certain exempt offerings after it finalizes the "bad actor" rule required by the Dodd-Frank Act.

In addition to rulemaking, the SEC must complete its study on how to simplify the Regulation S-K nonfinancial disclosures for EGCs. It also plans to continue to evaluate its rules, regulations and policies (e.g., decimalization rules) related to emerging and smaller reporting companies.

It is unclear how quickly the SEC will be able to act to address its remaining obligations under the JOBS Act or whether the JOBS Act will achieve its objective of increasing IPO activity. However, with rulemaking topping SEC chairman Mary Jo White's list of priorities, we could see significant activity from the Commission during 2013 and 2014 related to JOBS Act rulemaking.

Appendix: Status of SEC action items required by the JOBS Act

Title and section	SEC action item	Deadline	Status
Amendments to Exchange Act Section 12(g):			
Title V — Section 503	Revise the definition in Exchange Act Section 12(g)(5) of "held of record" to exclude securities received under an employee compensation plan in transactions exempt from registration and adopt safe harbor provisions to follow when determining whether securities were received in such transactions	None	The amendment to the definition of "held of record" in Exchange Act Section 12(g)(5) was immediately effective; safe harbor provisions are still to be adopted by the Commission
Title VI — Section 602	Adopt rules to implement amendments to Exchange Act Sections 12(g) and 15(d) to raise the threshold to 1,200 record holders below which a bank or bank holding company may terminate registration and suspend its reporting obligation	1 year after enactment or 5 April 2013	While the Commission has not yet adopted rules, the amendments to these sections of the Exchange Act were effective immediately after enactment
Other exempt offerings:			
Title II — Section 201	Adopt rules to allow companies to solicit investors and advertise offerings of restricted securities that are exempt from registration if sales are limited to accredited investors (or resales are limited to qualified institutional buyers under Securities Act Rule 144A)	90 days after enactment or 4 July 2012	Proposed rule issued 29 August 2012, awaiting final rule
Title IV — Section 401	Adopt rules to add a new category of public offerings exempt from registration of up to $50 million raised over a 12 month period (also known as Regulation A+)	None	No rules proposed to date
Crowdfunding:			
Title III — Section 302	Adopt rules to allow up to $1 million of securities to be sold in a rolling 12-month period through crowdfunding	270 days after enactment or 31 December 2012	No rules proposed to date
Title III — Section 302	Adopt rules to establish disqualification provisions for using crowdfunding	270 days after enactment or 31 December 2012	No rules proposed to date
Title III — Section 303	Adopt rules to amend Exchange Act Section 12(g) to exclude investors who buy securities through crowdfunding from the record holder count that triggers Exchange Act registration	270 days after enactment or 31 December 2012	No rules proposed to date
Title III — Section 304	Adopt rules to amend Exchange Act Section 3 to exempt registered funding portals that meet certain requirements from the requirement to register as a broker or dealer under Exchange Act Section 15(a)(1)	270 days after enactment or 31 December 2012	No rules proposed to date
Studies:			
Title I — Section 106	Conduct a study of penny trading increments (also called decimalization) and its effects on IPOs and on liquidity for small and mid-cap companies	90 days after enactment or 4 July 2012	Study completed 20 July 2012 with recommendation to not immediately increase the penny pricing increment for any companies and to consider additional steps to determine whether future rulemaking is warranted
Title I — Section 106	Adopt, if determined necessary, rules changing current decimalization rules for EGCs	180 days after enactment or 2 October 2012	Study completed 20 July 2012 with recommendation to not immediately increase the penny pricing increment for any companies; therefore, no further action from the Commission is required
Title I — Section 108	Conduct a review of Regulation S-K to analyze the current requirements and determine how it can be updated to modernize and simplify the registration process for EGCs	180 days after enactment or 2 October 2012	In process, no study issued to date
Title V — Section 504	Examine the Commission's authority to enforce Exchange Act Rule 12g5-1 to determine whether new enforcement tools are needed to enforce the anti-evasion provision in subsection (b)(3) of the rule	120 days after enactment or 3 August 2012	Study completed 15 October 2012 that concluded existing tools are in place for enforcement of Exchange Act Rule 12g5-1; therefore, no further action from the Commission is required
Other:			
Title VII — Section 701	Provide online information and outreach to inform affected businesses about the changes made in the JOBS Act	None	Ongoing

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Sources
For purposes of this report, an IPO is defined as a company's first registered offering of equity securities to the public.

This report discusses only IPOs for which the data provider Dealogic offers data on the issue date (the day the offer is priced and allocations are subsequently made), the trading date (the date on which the security first trades) and proceeds (funds raised including any overallotment sold). Postponed IPOs or those that have not yet been priced aren't included in our study. Companies with the following Standard Industrial Classification (SIC) codes also are excluded from our study:

- 6091: Financial companies that conduct trust, fiduciary and custody activities
- 6371: Asset management companies such as health and welfare funds, pension funds and their third-party administration as well as other financial vehicles
- 6722: Companies that are open-end investment funds
- 6726: Companies that are other financial vehicles
- 6732: Companies that are grant-making foundations
- 6733: Asset management companies that deal with trusts, estates and agency accounts
- 6799: Special Purpose Acquisition Companies

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

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