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OUTSIDE THE BOX

JOB Act eases financing for many small businesses



DAVID NEWSOME

With little fanfare Washington recently enacted the Jumpstart Our Business Startups Act. The so-called JOBS Act eased some of the regulatory burdens on private securities offerings and initial public offerings - the life blood of small business growth.

The JOBS Act breaks the wall of silence surrounding public offerings by allowing a company to test the waters before spending the time and money necessary to prepare a prospectus to sell stock. This change gives small businesses the chance to look before they leap and is reason enough to applaud the bill.

A new category of small business - the emerging growth company - was created. A business with less than \$1 billion in revenues for its most recent fiscal year qualifies. For such companies the act relaxes offering, disclosure and compliance rules. As one example, the audit requirements for

such companies are shortened from three years to two, a significant change for a new company seeking to go public.

Once an emerging growth company does go public, the JOBS Act removes some of the regulatory burdens on public companies for up to five years.

Perhaps the most important change for small businesses is the liberalization of SEC Regulation D. Regulation D lays out a recipe followed in virtually every private financing by small businesses. For decades private offerings have had to be very private. No public advertising for potential investors could take place. The Internet, affinity groups and virtually every form of mass marketing were forbidden.

These restrictions will become history. The JOBS Act requires the SEC to rewrite its rules to allow private offerings to be much more public when the offerings are limited to accredited investors. With this change, a small business can use Facebook, Twitter or whatever the Internet might offer in the future as financing pathways without running afoul of the SEC (of course, you still have to give disclosures about the investment).

By combining the "test the waters" change for potential public offerings with the expansion of Rule 506 to allow public advertising for private offerings to accredited investors, a small business is given valu-

able tools to fashion a financing plan. In a sense, some of the depression-era securities laws have caught up with life in 2012.

In a new approach to capital formation derived from the Internet, the JOBS Act authorizes a new type of capital formation known as "crowdfunding". Crowdfunding is the formation of a pool of capital raised in small increments from contributions by many people, generally over the Internet.

This innovation will permit companies to raise up to \$1 million per year without going through the full registration process for their securities. Crowdfundings must be done through a broker-dealer or a new entity - a "funding portal." There are disclosure requirements for companies which use crowdfundings and investments by individuals are limited.

Whether crowdfunding is a creative new financing method for small businesses or an invitation to chicanery by promoters remains to be seen.

There are many other changes brought about by the JOBS Act. The bill was passed without the fireworks that we have come to expect from Washington. The results should give all involved something to brag about. <

P. David Newsome is a shareholder at the law firm of Hall Estill.

EDITORIAL

Oklahoma scores in aerospace arena

...this month led ... Oklahoma has positioned itself as a ... announcing that it will open a U.S. pro-