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JOBS ACT of 2012: What People Are Saying

In an effort to promote capital investment into U.S. companies in 2012, Congress passed the Jumpstart Our Business Startups Act of 2012 (JOBS Act). The legislation requires that the implementing agency seek out public comment on certain initiatives. Existing comments can be found on the website of the U.S. Securities and Exchange Commission (SEC), and are considered as the SEC develops the rules around crowd funding and the like. To date, it appears that input on these issues has been very robust, with comments coming from many interested parties, like investors, start-up companies, professors, industry groups, and even members of Congress. Such commentary is a vital part of the process, and while this law appears to have its advocates and opponents, this brief attempts to set forth just some of the themes that the current set of comments has raised to date.

Disclosure: A consistent theme in many of the comments reviewed is disclosure to investors to ensure that the investing public is protected from fraud, going as far as asking for the equivalent of a “surgeon general’s warning” related to certain types of investments. As such, public suggestion includes a high standard of information sharing about companies and associated business plans.

Definitions: Presumably the final rules will present terms and definitions associated with the spirit of the legislation. Certain comments seek such clarity. For example, one comment sought what will be deemed to be “reasonable steps” in determining the accreditation of various types of investors related to the law. Undoubtedly, numerous other terms will need to be vetted and defined.

Recordkeeping: A related concern is that of recordkeeping. Comments point out that certain companies may not maintain the assistance of professionals experienced in maintaining full and appropriate records, including stock transfer documentation, and that the investors in those same companies may not be of a sufficient sophistication level to demand such documentation.

Secondary Markets: This point considers what happens when individuals look to sell their early interest in these start-up companies and the possible development of a secondary market. Certain comments seek clarity on rules surrounding that potential eventuality for those looking for liquidity via an exchange or other type of outlet.

Concerns of Start-Ups: The start-up companies themselves were for the most part very supportive of the law, as one would imagine. However, they also provided feedback about their own concerns about the operational capacity of the law and a desire for limitations on certain mandates which might add to operational expense of the companies. For example, a requirement of audited financials could add significant expense to a shoe-string start-up, particularly when the founders had invested most, if not all, of the funding to date.

Power of the SEC: Obviously, the SEC is the implementing agency for these rules, and as such appears to maintain relevant jurisdiction at this point. To that end, one comment advised that the SEC should have blanket authority to remove

an investment from any crowd funding portal. While examples of circumstances were put forth, it would appear that there would be more of a general public safety standard applied in such circumstances.

Concerns of Angel Investors: The comments also included thoughts from current angel investors. While support did exist, there was some criticism, namely a concern that the existence of multiple unsophisticated investors may make certain companies less attractive for a second round of angel investment due the existing pool of investors.

To be clear, these are just a sampling of some of the comments available to be viewed on the SEC website. If you wish to discuss opportunities under the JOBS Act, please contact your Butzel Long attorney or the author of this client alert.

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