

**Testimony Providing an Update on JOBS Act Implementation**

**by**

**Keith Higgins, Director  
Division of Corporation Finance**

***U.S. Securities and Exchange Commission***

**before the**

**United States Senate Committee on Banking, Housing, and Urban Affairs  
Subcommittee on Securities, Insurance, and Investment**

**October 30, 2013**

Chairman Tester, Ranking Member Johanns and Members of the Subcommittee:

I appreciate the opportunity to testify today on behalf of the U.S. Securities and Exchange Commission (Commission) regarding the Jumpstart Our Business Startups Act (JOBS Act).

Implementation of the JOBS Act is one of the Commission's top priorities, and my testimony will discuss the efforts of the Commission and staff since enactment of the JOBS Act last year.

The JOBS Act made significant changes to the federal securities laws, including:

- changing the initial public offering process for a new category of issuer, called an "emerging growth company," by, among other things, permitting these companies to submit draft registration statements for review on a confidential basis, providing exemptions for such companies from various disclosure and other requirements for up to five years following their initial public offerings and relaxing certain restrictions on communications by issuers and their underwriters;
- requiring the Commission to modify the prohibition against general solicitation and general advertising in Rule 506 of Regulation D and Rule 144A under the Securities Act of 1933 (Securities Act);
- requiring the Commission to implement exemptions under the Securities Act for crowdfunding offerings and for unregistered public offerings of up to \$50 million; and
- increasing the number of holders of record that triggers public reporting under Section 12(g) of the Securities Exchange Act of 1934 (Exchange Act) and increasing the number of holders that permits deregistration and suspension of reporting under the Exchange Act for banks and bank holding companies.

The JOBS Act also required the Commission to conduct several studies and prepare reports to Congress. In addition, the JOBS Act mandated that the Commission provide online information and conduct outreach to small and medium-sized businesses and businesses owned by women, veterans, and minorities about the changes made by the new statute.

As you know, certain provisions of the JOBS Act became effective immediately upon enactment, while others require Commission rulemaking. These rulemaking mandates are in addition to a significant volume of Commission rulemaking required by the Dodd-Frank Wall Street Reform and Consumer Protection Act.

The Commission staff has taken steps to inform the industry about the operation of the JOBS Act, beginning immediately after enactment. On the day of enactment, for example, staff in the Division of Corporation Finance provided information on the Commission's website that explained how emerging growth companies could submit draft registration statements for confidential non-public review as permitted by the JOBS Act.<sup>1</sup> On the same day, the staff received the first confidentially-submitted registration statement from an emerging growth company that used these new procedures.

Soon after enactment, the staff prepared and posted on the Commission's website answers to what the staff anticipated would be interpretive and implementation questions that companies and their advisors would have regarding the initial public offering "on-ramp" and the changes to the requirements for Exchange Act Section 12(g) registration and deregistration. The staff has continued to provide guidance, including by providing answers to frequently asked questions about the JOBS Act and its effect with respect to rules relating to research and research

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<sup>1</sup> See <http://www.sec.gov/divisions/corpfin/cfannouncements/draftregstatements.htm>.

analysts and about the crowdfunding and other provisions of the JOBS Act.<sup>2</sup> In addition, the staff has discussed and answered questions relating to the provisions of the JOBS Act with companies, their advisors and other interested parties at conferences and seminars.

For the JOBS Act provisions requiring Commission rulemaking, teams consisting of staff from across the Commission, including economists from the Division of Economic and Risk Analysis (DERA), have been working on rulemaking recommendations, including the assessment of their potential economic impact, for the Commission's consideration. The Commission has adopted rule amendments that lifted the restriction on general solicitation in offerings conducted pursuant to Rule 506 and Rule 144A, thereby implementing Title II. It also has proposed rules to implement a new exemption to permit crowdfunding in connection with the implementation of Title III.

To aid the rulemaking process and increase the opportunity for public comment, the Commission established a page on its website through which, prior to the issuance of proposed rules, interested parties are able to submit comments on the various provisions of the JOBS Act.<sup>3</sup> Since the webpage was established in April 2012, a wide range of interested parties have provided feedback and insights relating to the Commission's implementation of the JOBS Act, and these comments are publicly available on the Commission's website.<sup>4</sup> Commissioners and staff also have participated in meetings with a wide array of interested individuals and groups

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<sup>2</sup> See <http://www.sec.gov/divisions/corpfin/guidance/cfjobsactfaq-title-i-general.htm>, <http://www.sec.gov/divisions/corpfin/guidance/cfjobsactfaq-12g.htm>, <http://www.sec.gov/divisions/marketreg/tmjjobsact-researchanalystsfaq.htm>, <http://www.sec.gov/divisions/marketreg/tmjjobsact-crowdfundingintermediariesfaq.htm> and <http://www.sec.gov/divisions/marketreg/exemption-broker-dealer-registration-jobs-act-faq.htm>.

<sup>3</sup> See <http://www.sec.gov/spotlight/jobsactcomments.shtml>.

<sup>4</sup> See *id.* As of October 15, 2013, the Commission has received 230 comment letters relating to the provisions in Title I, 84 comment letters relating to the provisions in Title II, 216 unique comment letters and 126 form letters relating to the provisions in Title III, 25 comment letters relating to the provisions in Title IV, 27 comment letters relating to the provisions in Titles V and VI and six comment letters relating to Title VII.

regarding the implementation of the JOBS Act.<sup>5</sup> The input the Commission and the staff have received through these written submissions and meetings has been very helpful to the rulemaking teams as they work to comply with the JOBS Act's mandates.

Below is a more detailed description of the efforts taken to date to implement the various provisions of the JOBS Act.

### ***Title I***

Title I of the JOBS Act created a new category of issuer called an “emerging growth company,” which is defined as a company with total annual gross revenues of less than \$1 billion during its most recently completed fiscal year. Only companies whose first registered sale of common equity securities occurred after December 8, 2011 may be considered emerging growth companies. A company retains its status as an emerging growth company until the earliest of the following:

- the last day of its fiscal year during which its total annual gross revenues are \$1 billion or more;
- the date it is deemed to be a large accelerated filer under the Commission's rules;
- the date on which it has issued more than \$1 billion in non-convertible debt in the previous three years; or
- the last day of the fiscal year following the fifth anniversary of the first registered sale of its common equity securities.

As referenced above, emerging growth companies may confidentially submit draft registration statements to the Commission prior to the company's initial public offering date. All such submissions and amendments to those submissions must be filed publicly no later than 21

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<sup>5</sup> The comment file for each title provides information about JOBS Act-related meetings in which members of the Commission and the staff participated. See <http://www.sec.gov/spotlight/jobsactcomments.shtml>.

days before the date the issuer conducts a road show. To date, the Commission has received more than 300 confidentially-submitted draft registration statements for non-public review as permitted under Title I. Of those, more than 170 have completed their initial public offering.

Under Title I, emerging growth companies can take advantage of scaled disclosure and other requirements, including with respect to the Commission's financial statement and selected financial data requirements and certain executive compensation disclosures. Emerging growth companies are exempted from the audit of internal controls required under Section 404(b) of the Sarbanes-Oxley Act of 2002 and from any potential future rule the Public Company Accounting Oversight Board issues with respect to mandatory audit firm rotation or the auditor reporting model. In addition, under Title I, emerging growth companies cannot be required to comply with any new or revised financial accounting standard until the date that a non-issuer would be required to comply.

Title I also made important changes with respect to communications around securities offerings and the provision of research and securities analyst communications. The law provided a Securities Act exemption for emerging growth companies and persons authorized to act on their behalf to "test the waters" for an offering by communicating with potential investors that are qualified institutional buyers or institutional accredited investors prior to or following the filing of a registration statement. In addition, Title I provided an exemption under the Securities Act for the issuance of research reports before, during and following initial public offerings and other offerings for emerging growth companies by underwriters engaged in such offerings. It also prohibited the Commission and national securities associations from adopting or maintaining rules:

- 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;
- restricting a securities analyst from participating in communications with an emerging growth company's management team that also are attended by any other associated person of a broker, dealer, or member of a national securities association, whose functional role is not that of a securities analyst; and
- restricting brokers, dealers, or members of a national securities association, from publishing or distributing research reports or making public appearances with respect to the securities of an emerging growth company within a specified time period after the emerging growth company's initial public offering or prior to the expiration of a lock-up agreement.

The provisions of Title I were effective upon enactment without Commission rulemaking.<sup>6</sup> As noted above, immediately following enactment of the JOBS Act, the staff developed and published procedures for emerging growth companies to submit draft registration statements for confidential non-public review.<sup>7</sup> The staff has continued to work to simplify that process, and, since October 2012, companies have been required to submit their draft registration statements electronically on the Commission's EDGAR system.<sup>8</sup> As noted above, through the issuance of responses to frequently asked questions, the staff has provided guidance on the application of Title I in light of the Commission's existing rules, regulations and procedures. The staff is continuing to work with companies and practitioners when questions arise concerning the application of Title I and provides guidance when needed.

Title I also required the Commission to submit two reports to Congress. Section 106(b) required that the Commission, within 90 days of enactment of the JOBS Act, conduct a study and report to Congress on the transition to trading and quoting securities in one penny increments –

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<sup>6</sup> See <http://www.sec.gov/comments/jobs-title-i/general/general.shtml> for comments on Title I.

<sup>7</sup> See <http://www.sec.gov/divisions/corpfin/cfannouncements/draftregstatements.htm>.

<sup>8</sup> See <http://www.sec.gov/divisions/corpfin/cfannouncements/drsfilingprocedures101512.htm>.

also known as decimalization – and the impact decimalization has had on the number of initial public offerings since its implementation.<sup>9</sup> Section 106(b) also permitted the Commission, if it determined that the securities of emerging growth companies should be quoted and traded using a minimum increment of greater than \$0.01 to designate, by rule, a minimum increment for emerging growth companies that is greater than \$0.01 but less than \$0.10.

The report to Congress on the staff’s study under Section 106(b) was submitted on July 20, 2012.<sup>10</sup> In conducting the study, the staff reviewed empirical studies regarding tick size and decimalization, considered the views expressed about market structure at a June 2012 open meeting of the Commission’s Advisory Committee on Small and Emerging Companies and surveyed tick size regimes in non-U.S. markets. Based on the review, the staff found that “[a]lthough mandating an increase in tick sizes to levels greater than those that are presently dictated by market forces may provide more incentives to market makers in certain stocks, the full impact of such a change, including whether or not an increased tick size would indeed result in more IPOs, and whether there would be other significant negative or unintended consequences, is difficult to ascertain.”<sup>11</sup> The staff, therefore, recommended at that time that the Commission should not proceed with rulemaking to increase tick sizes, but should consider the steps needed to determine whether rulemaking should be undertaken in this area in the future. In this regard, the report noted the staff’s belief that the Commission should solicit the views of interested parties on the broad topic of decimalization, how to best study its effects on initial public offerings, trading and liquidity for small and middle capitalization companies and what, if

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<sup>9</sup> See <http://www.sec.gov/comments/jobs-title-i/tick-size-study/tick-size-study.shtml> for comments on Section 106(b) of Title I.

<sup>10</sup> See <http://www.sec.gov/news/studies/2012/decimalization-072012.pdf>.

<sup>11</sup> *Id.* at 22.

any, changes should be considered. The staff also recommended that a roundtable be convened to determine how to best structure a potential pilot program.

In February 2013, the staff held a roundtable to discuss the impact of decimal-based stock trading on small and middle capitalization companies, market professionals, investors and U.S. securities markets.<sup>12</sup> The staff is still considering the comments received at the roundtable, including those suggesting that the Commission evaluate the current “one-size-fits-all” approach to tick size through the implementation of a pilot program that would alter the minimum tick size for a control group of stocks of different types of companies. Although panelists expressed different views on the impact of tick sizes on initial public offerings, research coverage and market liquidity, most panelists supported the idea of a pilot program to empirically test the effects of increasing tick sizes to greater than one penny for the less-liquid stocks of smaller capitalization companies.

In addition, the SEC’s recently implemented Market Information and Data Analytics System (MIDAS)<sup>13</sup> provides depth of order book detail beyond the publicly posted best bid and ask prices, which, in the context of a tick size pilot, would enable SEC staff to better investigate the impact of increasing tick sizes on the liquidity provision across the entire limit order book. Posting the results of these investigations online also could allow the public to examine book liquidity measures over the period of a pilot program.

Currently, the staff is working with the exchanges as they develop and, if possible, present to the Commission for its consideration a plan to implement a pilot program that would allow smaller companies to use wider tick sizes.

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<sup>12</sup> For further information about the decimalization roundtable, see <http://www.sec.gov/spotlight/decimalization.shtml>.

<sup>13</sup> For further information about MIDAS, see <http://www.sec.gov/marketstructure/>.

Section 108 of the JOBS Act required the Commission, within 180 days of enactment of the JOBS Act, to conduct a review of Regulation S-K to determine how it may be modernized and simplified to reduce the costs and other burdens for emerging growth companies.<sup>14</sup> The Commission also is required to transmit a report to Congress on this review. The Commission's staff is finalizing this report and expects to make it public very soon.

## ***Title II***

Title II of the JOBS Act required the Commission to revise the Rule 506 safe harbor of Regulation D<sup>15</sup> from registration to allow general solicitation or general advertising for offers and sales made under Rule 506, provided that all securities purchasers are accredited investors. Title II stated that “[s]uch 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.” Title II also stated that Rule 506 will continue to be treated as a regulation issued under Section 4(a)(2) of the Securities Act, and that offers and sales under Rule 506 as revised will not be deemed public offerings under the federal securities laws as a result of general solicitation or advertising.

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<sup>14</sup> See <http://www.sec.gov/comments/jobs-title-i/reviewreg-sk/reviewreg-sk.shtml> for comments on Section 108 of Title I.

<sup>15</sup> 17 CFR 230.506. Rule 506 of Regulation D under the Securities Act is a non-exclusive safe harbor under Section 4(a)(2) (formerly Section 4(2)) of the Securities Act, which exempts transactions by an issuer “not involving any public offering” from the registration requirements of Section 5 of the Securities Act. Under Rule 506 prior to the amendments, an issuer could offer and sell securities, without any limitation on the offering amount, to an unlimited number of “accredited investors,” as defined in Rule 501(a) of Regulation D, and to no more than 35 non-accredited investors who meet certain “sophistication” requirements. The availability of the safe harbor was subject to a number of requirements and is conditioned on the issuer, or any person acting on its behalf, not offering or selling securities through any form of “general solicitation or general advertising.” The amendment to Rule 506 adopted by the Commission eliminated this prohibition on general solicitation and general advertising for offerings in which issuers take reasonable steps to verify that purchasers are accredited investors.

In addition, Title II required the Commission to revise Securities Act Rule 144A<sup>16</sup> to provide that securities sold under that rule may be offered to persons other than qualified institutional buyers, including by means of general solicitation or advertising, provided that the securities are sold only to persons reasonably believed to be qualified institutional buyers.

On July 10, 2013, the Commission implemented Title II by adopting amendments to Rule 506 and Rule 144A.<sup>17</sup> These amendments became effective on September 23, 2013 and issuers have begun making offerings under the new rules.<sup>18</sup>

Specifically, the Commission adopted new paragraph (c) to Rule 506, which permits issuers to use general solicitation and general advertising to offer securities under Rule 506,

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<sup>16</sup> 17 CFR 230.144A. Rule 144A is a non-exclusive safe harbor exemption from the registration requirements of the Securities Act for resales of certain “restricted securities” to qualified institutional buyers, or QIBs. Prior to the amendments adopted by the Commission, Rule 144A did not include an express prohibition against general solicitation, but did provide that offers of securities under Rule 144A must be limited to QIBs, which had the same practical effect. A QIB is defined in Rule 144A and includes specified institutions that, in the aggregate, own and invest on a discretionary basis at least \$100 million in securities of issuers that are not affiliated with such institutions. Banks and other specified financial institutions also must have a net worth of at least \$25 million. A registered broker-dealer qualifies as a QIB if it, in the aggregate, owns and invests on a discretionary basis at least \$10 million in securities of issuers that are not affiliated with the broker-dealer. The amendment to Rule 144A adopted by the Commission permits issuers to offer securities to persons other than QIBs provided that securities are sold only to persons the seller and any person acting on behalf of the seller reasonably believe are QIBs.

<sup>17</sup> Securities Act Release No. 33-9415 (Adopting Release), 78 Fed. Reg. 44771 (July 24, 2013), *available at* <http://www.sec.gov/rules/final/2013/33-9415.pdf>. Commissioner Luis A. Aguilar dissented from the Commission’s action. Statements from the July 10, 2013 Open Meeting regarding the Adopting Release are available on the SEC’s website at the following links:  
Chair White statement: <http://www.sec.gov/News/Speech/Detail/Speech/1370539689380>;  
Commissioner Aguilar’s dissenting statement: <http://www.sec.gov/News/Speech/Detail/Speech/1370539684712>;  
Commissioner Gallagher statement: <http://www.sec.gov/News/Speech/Detail/Speech/1370539665007>;  
Commissioner Paredes statement: <http://www.sec.gov/News/Speech/Detail/Speech/1370539701591>; and  
Commissioner Walter statement: <http://www.sec.gov/News/Speech/Detail/Speech/1370539699218>.

<sup>18</sup> Based on the information reported in the initial Form D filings reviewed by DERA, as of October 18, 2013, there have been 170 new offerings made in reliance on the new Rule 506 exemption that became effective on September 23, 2013, with approximately \$911 million in total amount sold in these offerings. In addition, 44 offerings that commenced in 2013, but before the effective date of the new Rule 506 exemption, were subsequently converted to offerings relying on the new exemption. Since the new rules became effective, the average offering size for Rule 506(c) offerings was \$6.1 million, as compared to \$22.8 million for Rule 506(b) offerings; the median offering size for Rule 506(c) offerings was \$1.3 million, as compared to \$1.8 million for Rule 506(b) offerings.

provided that all purchasers of the securities are accredited investors and the issuer takes reasonable steps to verify that the purchasers of the securities are accredited investors. The Adopting Release explained that, in determining the reasonableness of the steps that an issuer has taken to verify that a purchaser is an accredited investor, issuers should consider the facts and circumstances of the transaction, such as the type of purchaser and the type of accredited investor that the purchaser claims to be, the nature of the offering, and the amount and type of information that the issuer has about the purchaser.

In addition to this principles-based facts and circumstances method of verifying accredited investor status, the Adopting Release included a non-exclusive list of methods for verifying the accredited investor status of natural persons that issuers may rely upon to establish whether they have satisfied the verification requirement. The Adopting Release also preserved the existing portions of Rule 506 as a separate exemption so that issuers that wish to conduct Rule 506 offerings without the use of general solicitation and general advertising would not be subject to the new verification requirement.

With respect to Rule 144A, the Adopting Release amended the rule to provide that securities sold may be offered to persons other than qualified institutional buyers, including by means of general solicitation, provided that the securities are sold only to persons whom the seller and any person acting on behalf of the seller reasonably believe are qualified institutional buyers.

In addition to adopting these amendments to Rule 506 and Rule 144A, the Commission took two other actions on July 10, 2013. First, the Commission adopted rule amendments that disqualify felons and other “bad actors” from participating in Rule 506 offerings, as required by

the Dodd-Frank Act.<sup>19</sup> Second, the Commission proposed additional rule and form amendments related to offerings conducted in reliance upon Rule 506 that “are intended to enhance the Commission’s ability to evaluate the development of market practices in Rule 506 offerings and to address concerns that may arise in connection with permitting issuers to engage in general solicitation and general advertising under new paragraph (c) of Rule 506.”<sup>20</sup> To provide the public with additional time to consider the matters addressed by, and comments submitted on, the proposal, the Commission recently re-opened the comment period until November 4, 2013. To date, the Commission has received more than 440 unique comment letters and 45 form letters on the proposed amendments.

Finally, Title II amended Section 4 of the Securities Act to provide a narrow exemption from the requirement to register with the Commission as a broker-dealer in connection with certain limited activities related to Regulation D<sup>21</sup> offerings. In February 2013, the Commission’s Division of Trading and Markets posted on the Commission’s website answers to frequently asked questions about these provisions, including confirming that the exemption does not require the Commission to issue or adopt any rules.<sup>22</sup>

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<sup>19</sup> Securities Act Release No. 33-9414, 78 Fed. Reg. 44729 (July 24, 2013), *available at* <http://www.sec.gov/rules/final/2013/33-9414.pdf>.

<sup>20</sup> Securities Act Release No. 33-9416, 78 Fed. Reg. 44806 (July 24, 2013), *available at* <http://www.sec.gov/rules/proposed/2013/33-9416.pdf>. Commissioners Daniel M. Gallagher and Troy A. Parades dissented from the Commission’s action. Statements from the July 10, 2013, Open Meeting regarding the proposing release are available on the SEC’s website at the following links:  
Chair White statement: <http://www.sec.gov/News/Speech/Detail/Speech/1370539689380>;  
Commissioner Aguilar statement: <http://www.sec.gov/News/Speech/Detail/Speech/1370539698546>;  
Commissioner Gallagher’s dissenting statement: <http://www.sec.gov/News/Speech/Detail/Speech/1370539665007>;  
Commissioner Parades’ dissenting statement: <http://www.sec.gov/News/Speech/Detail/Speech/1370539701591>;  
and Commissioner Walter statement: <http://www.sec.gov/News/Speech/Detail/Speech/1370539699218>.

<sup>21</sup> 17 CFR 230.500 through 230.508.

<sup>22</sup> See <http://www.sec.gov/divisions/marketreg/exemption-broker-dealer-registration-jobs-act-faq.htm>.

### ***Title III***

Title III of the JOBS Act provided a new exemption from Section 5 of the Securities Act for offers and sales of securities through crowdfunding, an evolving method to raise capital using the Internet. Crowdfunding using donation-based or reward-based models has been used by small and start-up businesses to raise capital to start a business or develop a product and by individuals or entities seeking financial contributions to support artistic and charitable projects or causes. An entity or individual raising funds through donation-based or reward-based crowdfunding typically seeks relatively small, individual contributions from a large number of people.

To implement Title III, the Commission must create a new regulatory regime for issuers seeking to engage in crowdfunding transactions, including ongoing reporting requirements, and for intermediaries seeking to facilitate crowdfunding transactions. The new exemption provided in Title III would allow businesses to use crowdfunding to offer and sell securities without registration under the Securities Act, subject to certain conditions. Among its conditions, Title III limited the maximum amount that may be raised by an issuer and the maximum amount that an individual investor may invest in a 12-month period. Title III also required that an offering made in reliance on the exemption be conducted through an intermediary that is either a registered broker or a registered “funding portal.” A funding portal, which is a new entity under the federal securities laws, would be subject to an exemption from broker registration.

Title III included other requirements for issuers and intermediaries, including disclosure obligations and restrictions on advertising the terms of the offering. The Commission also was required to establish disqualification provisions for certain bad actors and exempt securities

issued in reliance on the crowdfunding exemption from the calculation of record holders for purposes of Section 12(g) of the Exchange Act.

On October 23, 2013, the Commission proposed rules that would implement Title III. Under the proposed rules, an issuer could raise a maximum aggregate amount of \$1 million pursuant to the exemption in any 12-month period. Investors would be permitted, during a 12-month period, to invest up to:

- \$2,000 or 5 percent of their annual income or net worth, whichever is greater, if both their annual income and net worth are less than \$100,000; or
- 10 percent of their annual income or net worth, whichever is greater, if either their annual income or net worth is equal to or more than \$100,000. During the 12-month period, these investors would not be able to purchase more than \$100,000 of securities through crowdfunding.

The proposed rules would exclude certain issuers from relying on the exemption, including non-U.S. issuers, Exchange Act reporting companies, investment companies, issuers that have not complied with annual reporting requirements under the proposed rules, and issuers that have no specific business plan or that have indicated their business plan is to engage in a merger or acquisition with an unidentified company or companies.

The proposed rules would set up a registration and regulatory framework for funding portals that limits their securities activities to acting as intermediaries in crowdfunding securities transactions and prohibits them from engaging in certain activities, such as offering investment advice or handling investor funds. Funding portals would be required to register with the Commission by filing a new form and to become a member of FINRA or any other registered national securities association.<sup>23</sup> The proposed rules also would require the funding portals to, among other things:

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<sup>23</sup> Today, FINRA is the only registered national securities association.

- provide investors with educational material that informs them about the risks associated with crowdfunding securities;
- obtain information about investor income, net worth, and other crowdfunding investments, for purposes of determining investment limitations;
- make available on its platform the information provided by the issuer;
- take steps to ensure the proper transfers of investor funds and securities; and
- comply with anti-money laundering and privacy requirements.

The proposed rules also would require eligible issuers to file specified disclosures with the Commission and provide the disclosures to both the intermediary and investors, including disclosures concerning the issuer's officers and directors, as well as owners of 20 percent or more of the issuer's securities; the issuer's business; the intended use of proceeds; the terms of the offering; and the financial condition of the company.

Consistent with Title III, issuers also would be required to provide financial statements. Financial statements would be required to be prepared in accordance with U.S. GAAP and cover the shorter of the two most-recently-completed fiscal years or the period since the issuer's inception. For offerings of \$100,000 or less, financial statements would be certified by the principal executive officer and issuers would be required to provide income tax returns for the most recently completed fiscal year. For offerings of more than \$100,000, but not more than \$500,000, the financial statements would need to be reviewed by an independent accountant. For offerings of more than \$500,000, the financial statements would need to be audited by an independent auditor.

Issuers also would be required to file annual reports with the Commission. The disclosure would be similar to that required when the issuer is offering securities, but would not include offering-specific information.

The proposed rules also contain measures intended to reduce conflicts of interest and the risk of fraud. Among other things, the proposed rules prohibit an intermediary from having any financial interest in an issuer using its services, and require background and regulatory checks on an issuer and each officer and director, and certain securityholders. The proposed rules also contain a safe harbor for certain insignificant deviations from the requirements; impose resale restrictions on securities purchased in crowdfunding transactions; disqualify certain bad actors from relying on the new exemption; and exempt securities issued in reliance on the new exemption from the record holder count for purposes of Exchange Act Section 12(g).

The comment period for the proposed rules will be open for 90 days after publication in the Federal Register. We look forward to receiving and considering public comment on all aspects of this proposal.

#### ***Title IV***

Title IV of the JOBS Act required Commission rulemaking to create a new exemption from Securities Act registration, similar to existing Regulation A,<sup>24</sup> which would allow certain “small issue” offerings of up to \$50 million in a 12-month period.<sup>25</sup> Title IV specified that the exemption include certain terms and conditions, including, among others, that the securities may be offered and sold publicly, the securities sold under the exemption will not be restricted securities and issuers of the securities will be required to file audited financial statements annually with the Commission. The Commission may add other terms, conditions and requirements that it determines necessary in the public interest and for the protection of

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<sup>24</sup> 17 CFR 230.251 through 230.263.

<sup>25</sup> See <http://www.sec.gov/comments/jobs-title-iv/jobs-title-iv.shtml> for comments on Title IV.

investors, which may include electronic filing of the offering documents, periodic disclosures by the issuer or disqualification provisions. Title IV also required the Commission to review the offering limit under the new exemption not later than two years after enactment of the JOBS Act and every two years thereafter. Staff have met with market participants, industry groups, state securities regulators and other interested parties about the implementation of Title IV.<sup>26</sup> Staff in the Division of Corporation Finance and DERA are finalizing rule recommendations under Title IV for the Commission's consideration.

### ***Titles V and VI***

Titles V and VI of the JOBS Act amended Section 12(g) of the Exchange Act, which sets forth certain registration requirements for classes of securities.<sup>27</sup> Prior to enactment of the JOBS Act, Section 12(g) and the rules issued thereunder required a company to register its securities with the Commission within 120 days after the last day of its fiscal year, if, at the end of the fiscal year, the securities were held of record by 500 or more persons and the company had total assets exceeding \$10 million.<sup>28</sup>

Title V amended Section 12(g) to raise the threshold for registration from 500 holders of record to 2,000 holders of record, of which no more than 500 holders of record can be investors who are not accredited investors. Title V also excluded from the calculation of the number of holders of record shares held by persons who received the shares pursuant to employee

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<sup>26</sup> See <http://www.sec.gov/comments/jobs-title-iv/jobs-title-iv.shtml>.

<sup>27</sup> See <http://www.sec.gov/comments/jobs-title-v/jobs-title-v.shtml> and <http://www.sec.gov/comments/jobs-title-vi/jobs-title-vi.shtml> for comments on Titles V and VI, respectively.

<sup>28</sup> See 15 U.S.C. §78l(g) and 17 CFR 240.12g-1.

compensation plans, and required Commission rulemaking to provide a safe harbor for the determination of whether such a holder is to be excluded.

Title VI applied only to banks and bank holding companies. It amended Section 12(g) to raise the registration threshold from 500 holders of record to 2,000 holders of record, and also changed the threshold for exiting the reporting system from 300 holders of record to 1,200 holders of record. Title VI required the Commission to write rules to implement this provision within one year of enactment of the JOBS Act.

Titles V and VI were effective immediately upon the enactment of the JOBS Act. In the days following enactment, the staff prepared and posted guidance on the Commission's website addressing anticipated questions related to the JOBS Act changes to the requirements for Section 12(g) registration and deregistration. To date, approximately 90 bank holding companies have deregistered.<sup>29</sup> The staff is preparing recommendations for rule proposals for the Commission's consideration to address the new requirements of Titles V and VI.

Title V also required the Commission to examine its authority to enforce the anti-evasion provisions of Exchange Act Rule 12g5-1<sup>30</sup> and submit recommendations to Congress within 120 days following enactment of the JOBS Act. Staff from the Division of Corporation Finance worked with staff from the Divisions of Enforcement, DERA and Trading and Markets to review the anti-evasion provision in Rule 12g5-1(b)(3) and the Commission's related enforcement authority and tools, and, on October 15, 2012, submitted their report to Congress.<sup>31</sup> The staff concluded that the current enforcement tools available to the Commission are adequate to

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<sup>29</sup> This reflects filings made with the Commission, which does not include deregistrations by banks that report to banking regulators.

<sup>30</sup> 17 CFR 240.12g5-1.

<sup>31</sup> See <http://www.sec.gov/news/studies/2012/authority-to-enforce-rule-12g5-1.pdf>.

enforce the anti-evasion provision of Rule 12g5-1 and determined not to make any legislative recommendations regarding enforcement tools relating to Rule 12g5-1(b)(3).

## ***Title VII***

Effective upon enactment, Title VII required the Commission to provide online information and conduct outreach to inform small and medium-sized businesses, as well as businesses owned by women, veterans and minorities, of the changes made by the JOBS Act.<sup>32</sup> Staff from the Division of Corporation Finance and the Office of Minority and Women Inclusion (OMWI), in collaboration with other Divisions and Offices, is leading the Commission's efforts in developing and implementing an outreach plan tailored to these business communities. For example, OMWI has expanded the content of existing programs for small, minority-owned and women-owned businesses to provide information about the JOBS Act and its potential benefits for businesses. This content will continue to be updated as the Commission proposes and adopts further JOBS Act rules.

## ***Conclusion***

While there is still much to be accomplished, the Commission and the staff have made significant progress on, and continue to work diligently in, implementing the JOBS Act mandates. It is a high priority to do so. The staff has either completed or is in the process of completing the studies mandated by the JOBS Act. The Commission and staff also have either completed or are moving forward expeditiously on the various rulemakings required by the JOBS Act. We look forward to completing the remaining provisions as soon as practicable.

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<sup>32</sup> See <http://www.sec.gov/comments/jobs-title-vii/jobs-title-vii.shtml> for comments on Title VII.

Thank you again for inviting me to testify today, and I am happy to answer any questions you may have.