

The Jumpstart Our Business Startups Act or JOBS Act was signed into law by President Obama in April 2012. The law was passed with bipartisan support and is intended to encourage funding small businesses by easing numerous securities regulations that were previously required for companies seeking public capital.

The current economic climate has amplified the barriers of entry for businesses to raise capital. From piles of paperwork and required compliance programs to restrictions on pooling a large number of small time investors, this law appears to alleviate some of the obstacles businesses are facing to raise that much need capital.

The legislation provides new public companies with the following:

- › delay the compliance with certain requirements of the Sarbanes-Oxley Act from two to five years, with the most significant relief provided by the exemptions from Section 404;
- › allow the increase in the number of shareholders a company may have before being required to register its common stock with the SEC and become a public reporting company. The current requirement is generally triggered when a company's assets reach \$10 million and 500 shareholders of record. The new law would allow for the company to have up to 1,000 shareholders;
- › provide a new exemption from the requirement that all public offerings must be registered with the SEC. The exemption provides for government registered internet "funding portals" to be utilized in private placement offerings. This creates what is known as "crowdfunding" which will allow small businesses to raise capital quickly from a pool of investors. The law allows companies to pool \$1 million from

investors without registering with the SEC, or up to \$2 million if the company provides investors with audited financial statements. Investors will only be allowed to contribute \$10,000 or 10% of the investor's annual income, whichever is less;

- › lift the ban on using advertisements to solicit potential investors in private placement of securities;
- › raise the limit of securities offerings exempted under Regulation D from \$5 million to \$50 million;
- › raise the number of shareholders permitted in community banks from 500 to 2,000.

For a more detailed summary of the law including specific House Act references, follow this link: <http://majorityleader.gov/uploadedfiles/JOBSACTOnePager.pdf>.

The most interesting aspect of this law is the lifted ban on crowdfunding. Crowdfunding has opened the door not only for businesses seeking capital and investors looking to supply that capital but also provided for the creation of a new funding intermediary, the online "funding portal." If a company is seeking to raise capital without registering with the SEC, the JOBS Act requires the issuer to use an intermediary that is either a broker registered with the SEC or a funding portal. Funding portals are still required to register with the SEC and FINRA but are not upheld to the same stringent standards as brokers/dealers in securities.

A Richmond based firm, WealthForge LLC is serving as an online based broker registered with the SEC and FINRA, that is leveraging social media such as Facebook and LinkedIn to match up businesses seeking capital and investors looking to invest in startups and locally based businesses. For more information on WealthForge visit their website at, <http://www.fundroom.com/>.

Stay in touch >  

Information provided by Keiter is intended for reference only. The information contained herein is designed solely to provide guidance to the reader, and is not intended to be a substitute for the reader seeking personalized professional advice based on specific factual situations. This information does NOT constitute professional accounting, investment, tax or legal advice and should not be interpreted as such.

Although Keiter has made every reasonable effort to ensure that the information provided is accurate, Keiter, and its shareholders, managers and staff, make no warranties, expressed or implied, on the information provided. The reader accepts the information as is and assumes all responsibility for the use of such information. All information contained is protected by copyright and may not be reproduced in any form without the expressed, written consent of Keiter. All rights are reserved.

IRS Circular 230 Disclosure:

To ensure compliance with requirements imposed by the IRS, we inform you that any tax advice contained in this communication (including any attachments) is not intended or written to be used, and cannot be used, for the purpose of (i) avoiding any penalties under the Internal Revenue Code or (ii) promoting, marketing or recommending to another party any transaction (s) or tax-related matter(s) addressed herein.