



Securities Law ADVISORY ■

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SEC Adopts JOBS Act Amendments to Forms and Rules, EGC, and Crowdfunding Inflation Adjustments

On March 31, 2017, [the Securities and Exchange Commission \(SEC\) adopted](#) technical amendments to several rules and commonly used forms, including Forms S-1, S-3, and S-4 under the Securities Act and Forms 8-K, 10-Q, and 10-K under the Exchange Act, pursuant to the Jumpstart Our Business Startups Act (JOBS Act), as amended by the Fixing America's Surface Transportation Act (FAST Act). The SEC also adopted inflation adjustments for the definition of emerging growth companies (EGCs) and the dollar amounts used in connection with Regulation Crowdfunding. These new thresholds were effective April 12, 2017.

Technical Amendments to Securities Act and Exchange Act Forms and Rules

Title I of the JOBS Act provides relief from a number of accounting and disclosure requirements for issuers that qualify as EGCs. While these changes were self-executing and became effective when the JOBS Act was signed into law, several rules and forms had not previously been updated to reflect these changes.

Key takeaways

Companies should be aware that the cover pages of Securities Act registration statements and Exchange Act periodic reports should now include two new check boxes for a company to indicate:

- Whether, at the time of filing, the company is an EGC.
- Whether it has elected not to use the extended transition period for an EGC to comply with new or revised accounting standards.

All companies should update their forms accordingly.

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Inflation Adjustment to EGC Definition

Section 101(a) of the JOBS Act defines an EGC as an issuer with less than \$1 billion in total annual gross revenues during its most recently completed fiscal year and provides that an issuer maintains its status as an EGC until certain milestones occur. Title I of the JOBS Act requires the SEC to index to inflation the annual gross revenue amount used to determine EGC status every five years.

Key takeaways

Pursuant to Title I of the JOBS Act, the SEC raised the annual gross revenue threshold used to determine eligibility for benefits offered to EGCs under the JOBS Act from \$1 billion to \$1.07 billion. However, it should be noted that an EGC will still lose its status on the date on which it has issued more than \$1 billion in nonconvertible debt in a three-year period since that threshold has not changed.

Inflation Adjustments for Regulation Crowdfunding

In 2015, the SEC adopted [Regulation Crowdfunding](#) to implement an exemption from the registration requirements for certain crowdfunding transactions created pursuant to Title III of the JOBS Act. The JOBS Act also requires the SEC to adjust the dollar amounts used in connection with this exemption at least once every five years.

Key takeaways

The SEC amended the following Regulation Crowdfunding thresholds to adjust for inflation:

- Raised the amount of money companies can raise through Regulation Crowdfunding in a 12-month period from \$1 million to \$1.07 million.
- Raised the threshold for assessing an investor's annual income or net worth to determine investment limits from \$100,000 to \$107,000.
- Raised the threshold of Regulation Crowdfunding securities permitted to be sold to an investor if the investor's annual income or net worth is less than \$107,000 from \$2,000 to \$2,200.
- Raised the amount that can be sold to an investor under Regulation Crowdfunding in a 12-month period from \$100,000 to \$107,000.

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