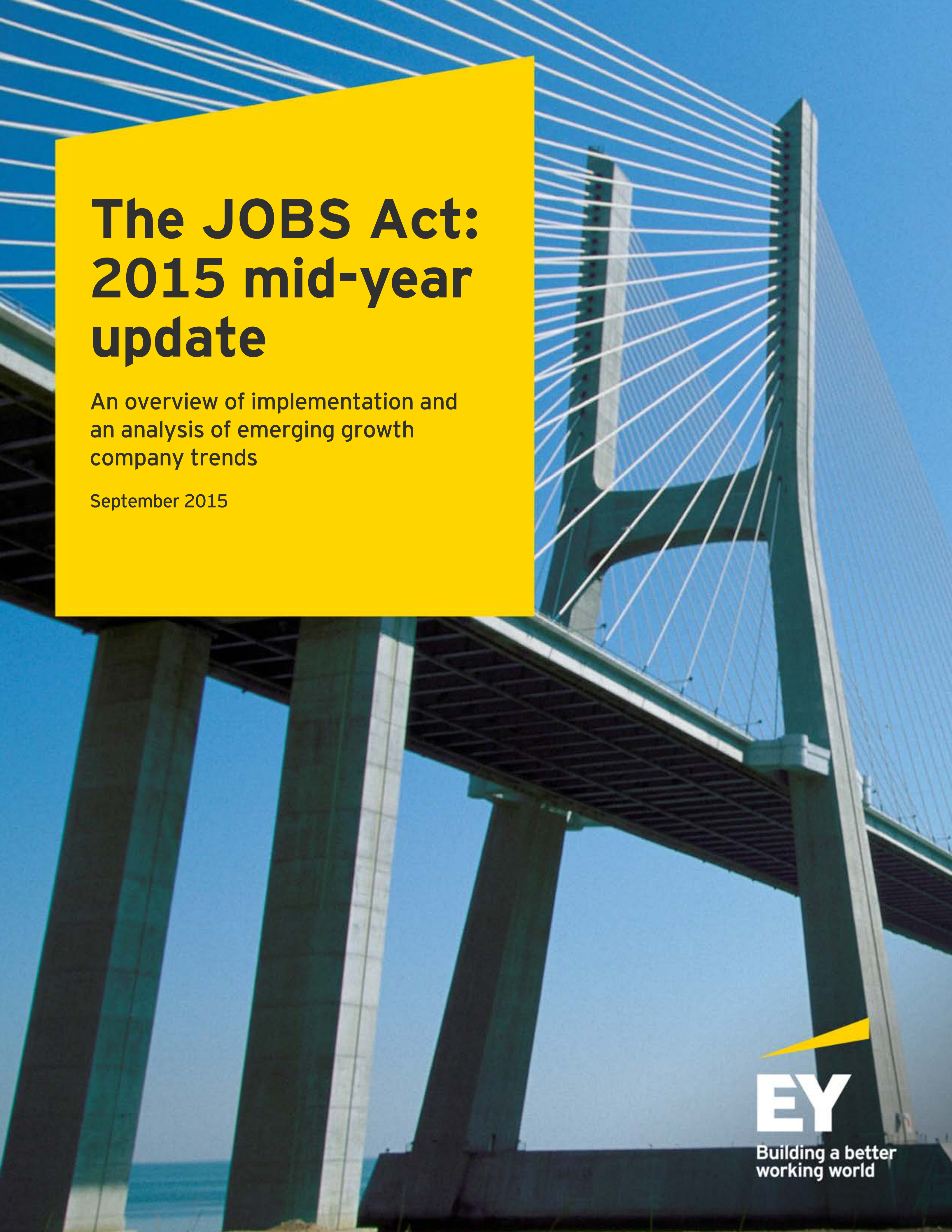
The JOBS Act: 2015 mid-year update

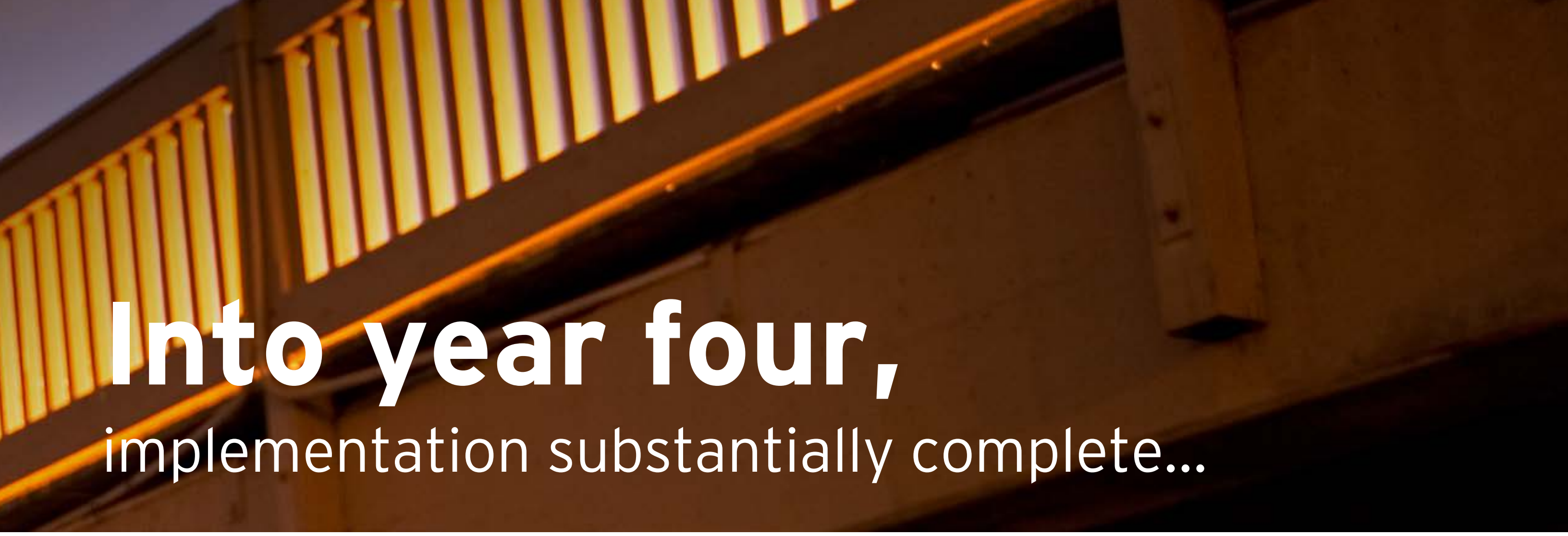
An overview of implementation and an analysis of emerging growth company trends

September 2015



EY

Building a better working world



Into year four,

implementation substantially complete…

The Jumpstart Our Business Startups Act (JOBS Act or Act)[1] was enacted on 5 April 2012 to give private companies greater access to capital and make it easier for certain companies to go public on US exchanges.

The Act created a new category of issuer called an emerging growth company (EGC) and provides regulatory relief to EGCs to encourage initial public offerings (IPOs). The Act also increased the number of record holders that triggers a company's obligation to register and report as a public company under the Exchange Act. In addition, the JOBS Act allows private companies to raise capital through new exemptions from registration.

Many provisions of the Act required rulemaking by the Securities and Exchange Commission (SEC or Commission). The SEC has made significant progress toward fulfilling its mandates under the JOBS Act by finalizing rules in 2014 to remove the long-standing ban on general solicitation and advertising in certain offerings of restricted securities that are exempt from registration.

EY resources

- To the Point, *Leading practices for a smooth IPO registration* (SCORE No. CC0349)
- Technical Line, *Implementing the JOBS Act* (SCORE No. CC0363)
- To the Point, *SEC allows general solicitation and disqualifies 'bad actors'* (SCORE No. CC0371)
- Technical Line, *Movin' on up to accelerated filer status: You'll need an audit of ICFR for this year* (SCORE No. CC0372)
- To the Point, *SEC proposes rules to permit crowdfunding* (SCORE No. CC0378)
- To the Point, *SEC adopts 'Regulation A+' to expand exempt offerings* (SCORE No. CC0408)
- Comment letter, *Crowdfunding* (SCORE No. CC0389)

The SEC also adopted rules in 2015 that promote capital formation through exempt offerings by increasing the offering threshold in existing Regulation A (creating what's known as "Regulation A+"). The SEC has yet to finalize its proposal that would permit "crowdfunding," or raising small amounts of capital from large pools of investors over the internet. SEC Chair Mary Jo White has said that finalizing the crowdfunding rule is one of her priorities this year.

After issuing its study on Regulation S-K disclosure requirements in 2013, the SEC staff launched its disclosure effectiveness initiative to conduct a comprehensive review of existing requirements in Regulations S-K and S-X to identify ways to reduce the costs and burdens on companies while still providing material information to investors.

In this publication, we look at the IPO market before and after the JOBS Act and analyze how EGCs are using the relief available to them under the Act. We also provide an update on what still must be done to finish implementing the JOBS Act.

While 2014 was one of the busiest years for the IPO market since 2000, US IPO activity slowed in the first half of 2015. The rush to take advantage of favorable market conditions in 2014 depleted the backlog of companies waiting to go public. However, barring increased market volatility, IPO activity is expected to pick up during the second half of 2015, buoyed by growth in the IPO pipeline.

Since the JOBS Act was enacted, EGCs have dominated the IPO market, representing 85% of IPOs that have gone effective. Most EGCs are taking advantage of the confidential review accommodation and reduced executive compensation disclosure relief available to them. The ability to provide only two years of audited financial statements and selected financial data has been particularly appealing to smaller EGCs.

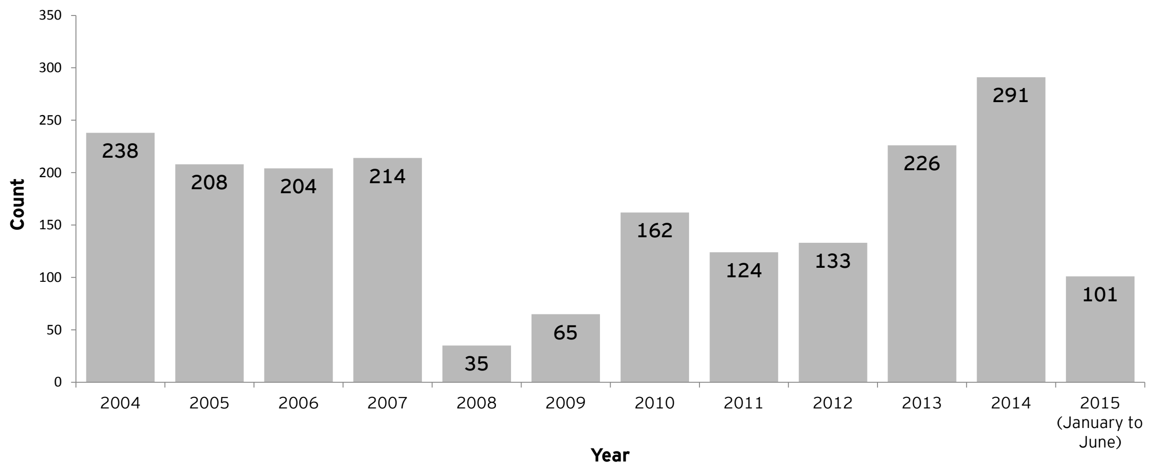
[1] The JOBS Act is available at http://www.gpo.gov/fdsys/pkg/BILLS-112hr3606enr/pdf/BILLS-112hr3606enr.pdf.

Overview of the IPO market

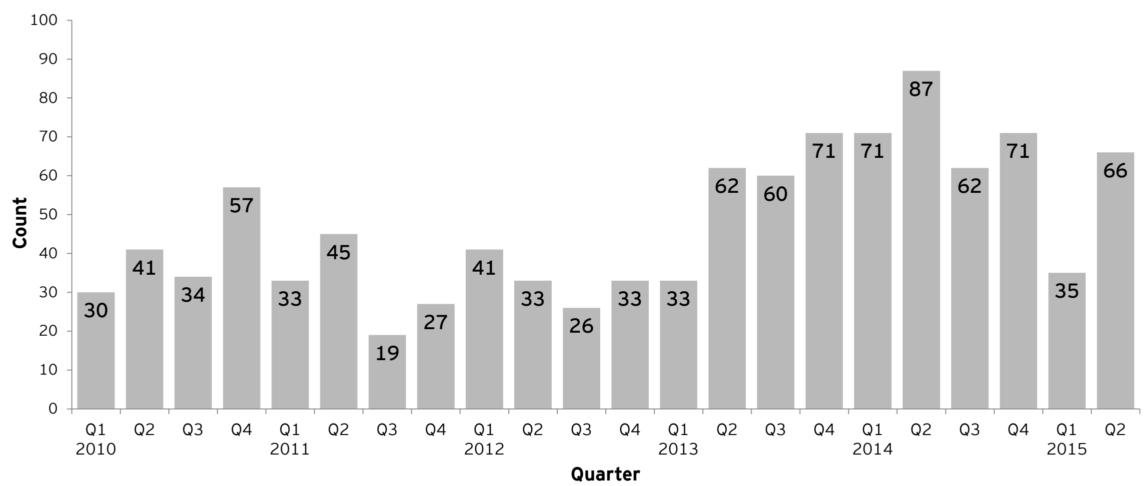
The JOBS Act was intended to promote job creation and economic growth by improving access to the capital markets for emerging, high-growth companies. The Act incorporated many recommendations from a task force formed in 2011 to address the decline in the number of IPOs since the technology boom of the late 1990s.[2]

The charts below show that IPO activity has rebounded since 2008, but it has slowed during the first half of 2015 after 2014 proved to be the strongest year by number of IPOs in the past 10 years. Although the JOBS Act may have accelerated the plans of some IPO candidates, the IPO market is affected by a number of factors, including macroeconomic conditions, equity market stability and investor confidence.

Number of effective IPOs by year (2004-2015*)



Number of effective IPOs by quarter (2010-2015*)



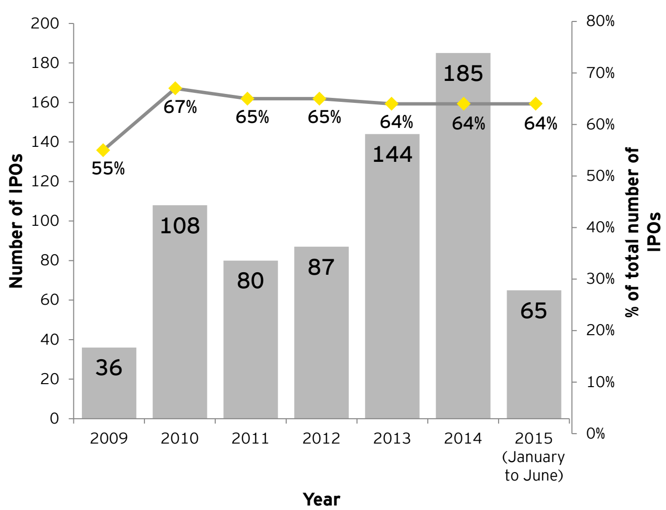
* Based on six-month year-to-date information for 2015.

2 The IPO Task Force report presented to the US Department of the Treasury, *Rebuilding the IPO On-Ramp — Putting Emerging Companies and the Job Market Back on the Road to Growth,* is available on the SEC's website at http://www.sec.gov/info/smallbus/acsec/rebuilding_the_ipo_on-ramp.pdf.

While there was no immediate increase in US IPO market activity after the JOBS Act was enacted, the market surged in the second quarter of 2013 through the end of 2014. It has slowed during the first half of 2015, when 101 IPOs became effective, down 24% from the second half of 2014. Nonetheless, the first half of 2015 exceeded the average number of IPOs for the half-year periods during the past five years, which averaged approximately 94 IPOs. The overall decrease in the first half of 2015 reflects the recent trend of pre-IPO companies pursuing a broader range of available funding options.

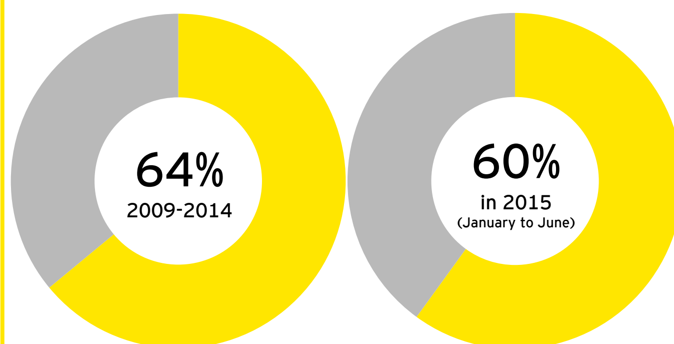
IPOs backed by financial sponsors (i.e., IPOs of companies owned by private equity firms) remained a primary driver of activity in the first half of 2015 accounting for 64% of IPOs by number of deals, which is consistent with recent years, and 60% of total capital raised, which is slightly lower than the average over the last six years.

Financial sponsor-backed IPO activity (2009-2015*)



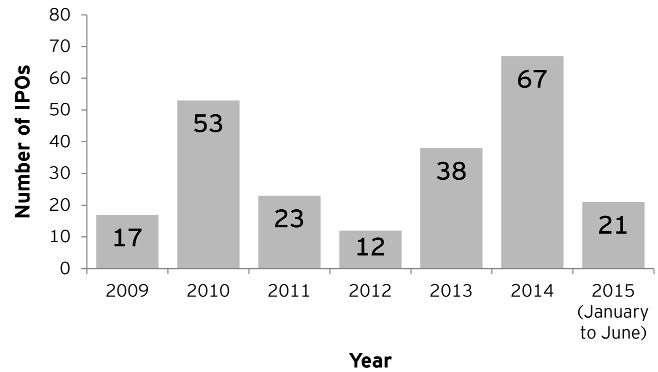
* Based on six-month year-to-date information for 2015.

Capital raised by financial sponsor-backed IPOs



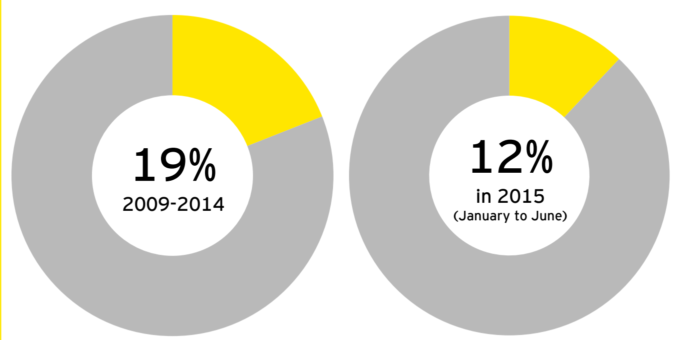
In recent years, IPOs by companies based in foreign jurisdictions (referred to as cross-border offerings) that raise capital on US stock exchanges have been a significant driver of the overall IPO market. There were 21 cross-border IPOs in the first half of 2015, which represented approximately 21% of total IPOs (similar to 2014 levels). In the past six and a half years, companies based in China, the United Kingdom and Israel accounted for the majority of cross-border IPOs in the US.

Cross-border IPO activity (2009-2015*)



* Based on six month year-to-date information for 2015. The term "cross-border" represents companies that are domiciled outside the US but conducted an offering on a major US stock exchange.

Capital raised by cross-border IPOs[3]



[3] IPO proceeds exclude the 2014 $25 billion Alibaba IPO (the largest IPO in history) and the 2012 $16 billion Facebook IPO. Including the Alibaba and Facebook IPOs, cross border offerings represented 25% of total IPO proceeds during 2009-2014.

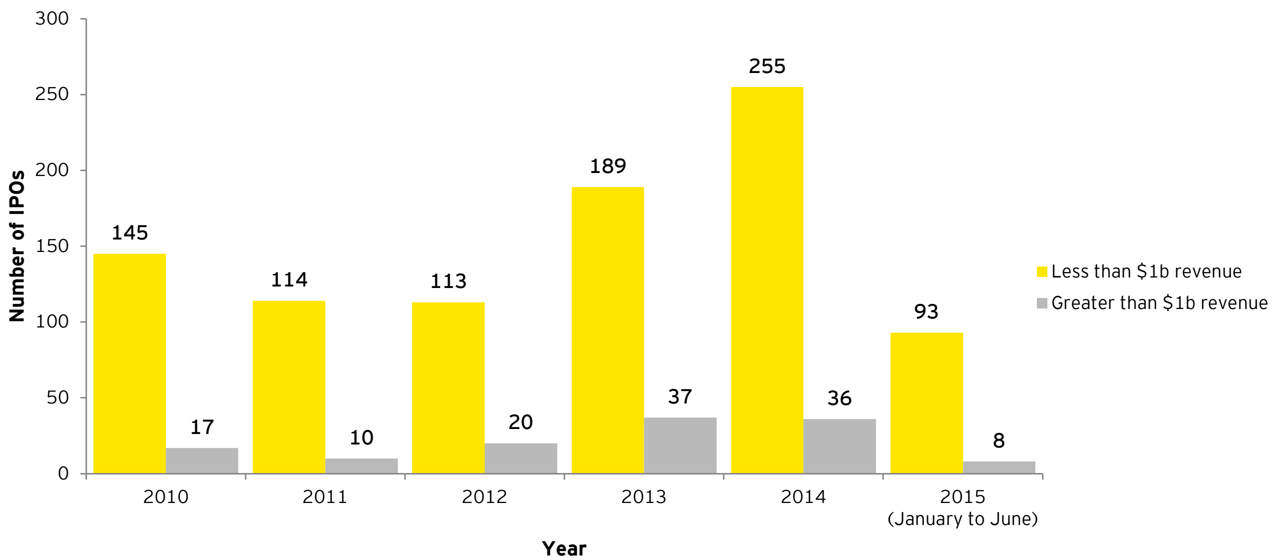
The typical company that conducts an IPO has annual revenues below $100 million. More than half of the companies that went public in 2015 had revenues below $33 million, continuing a steady trend of declining median revenue for IPOs since 2012. The decline in the revenue profile of IPOs in 2015 does not appear to significantly affect the amount of capital raised, as the median IPO capital raised through the first half of 2015 was $109 million, compared to $108 million in 2014.

Median IPO proceeds and revenue* by year

* Revenue refers to revenue in the last audited fiscal year presented in the registration statement.

When we take a closer look at the profile of companies that have gone public since 2010, substantially all of the IPO companies were EGCs (i.e., those with less than $1 billion in revenue in the last audited fiscal year presented in their registration statement) or would have qualified as EGCs had the JOBS Act been in place.

IPOs by year below and above $1 billion in revenue*



* $1 billion in revenue referes to revenue in the last audited fiscal year presented in the registration statement.

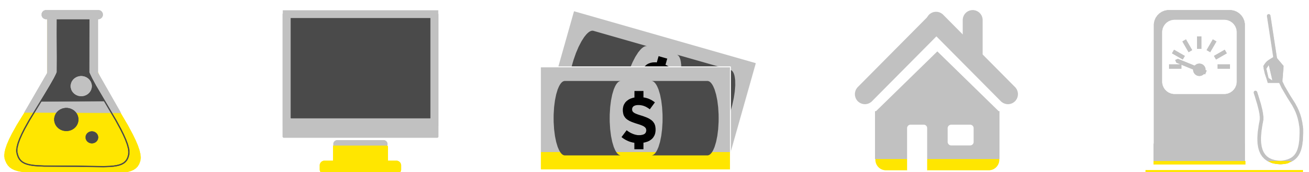
Emerging growth company trends

Under the JOBS Act, certain regulatory requirements are phased in for EGCs during a five-year period known as an IPO "on-ramp." In a major change from past practice, an EGC can also submit its IPO registration statement and subsequent amendments to the SEC on a confidential basis.

The provisions of the JOBS Act related to EGCs were effective immediately and did not require SEC rulemaking. Given the self-executing nature of the EGC provisions, the staff of the SEC's Division of Corporation Finance has issued a series of frequently asked questions (FAQs)[4] related to eligibility and disclosure considerations and the confidential submission of EGC registration statements.

Smaller companies that now qualify as EGCs continue to dominate the IPO market. Since April 2012 approximately 83% of all publicly filed IPO registration statements, and approximately 85% of the IPOs that have gone effective were filed by EGCs. EGCs that publicly filed IPO registration statements continue to be concentrated in the health care, technology, financial services, real estate, and oil and gas industries.

Top Industries — EGCs that have publicly filed IPO registration statements since the JOBS Act

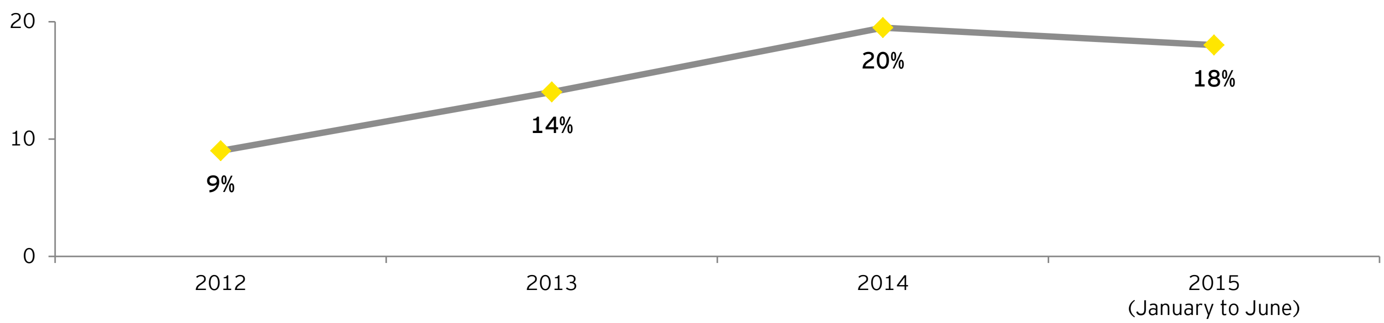


37%	17%	9%	8%	8%
Health care	Technology	Financial services	Real estate	Oil and gas

Since the JOBS Act was enacted, the number of foreign private issuer (FPI) registrants filing as EGCs has increased each year (through the end of 2014). FPIs represented approximately 9% of all EGC IPO registration statements filed in 2012, 14% of those filed in 2013, 20% of those filed in 2014 and 18% of those filed through the first half of 2015.

Unless otherwise noted, the statistics presented in this section are based on an EGC's initial IPO registration statement publicly filed between April 2012 and June 2015 and exclude IPO registration statements that were initially filed before the enactment of the JOBS Act.

Percentage of EGCs which are Foreign Private Issuers



[4] SEC staff guidance, including its FAQs about the JOBS Act, is available on the SEC's website at http://www.sec.gov./divisions/corpfin/cfjobsact.shtml.

EGC eligibility

An EGC is defined as a company with "total annual gross revenues" (i.e., total revenues presented on the income statement in accordance with US GAAP) of less than $1 billion in its most recently completed fiscal year. Companies that have issued more than $1 billion in nonconvertible debt securities over a rolling 36-month period would not qualify as an EGC. Under the JOBS Act, an issuer with EGC status loses its eligibility as an EGC five years after its common equity IPO or earlier if it meets any of the following criteria:

- Has annual revenues exceeding $1 billion
- Issues more than $1 billion in nonconvertible debt securities over a rolling 36-month period, including securities issued in registered or unregistered offerings
- Becomes a large accelerated filer (i.e., a seasoned issuer with public float of $700 million or more)

Reassessing EGC eligibility

Although issuers generally may retain EGC status for up to five years after their IPO, they should carefully monitor their eligibility. Changes in an EGC's business (e.g., increase in revenue, unexpected increase in public float) could lead to earlier-than-anticipated financial reporting obligations. A registrant that loses its EGC status would be required to file its annual report for that year as a non-EGC and comply with the rules and regulations applicable to its filing status. For example, if a calendar-year EGC has annual revenues of more than $1 billion in 2015 the EGC relief provisions would not apply to its 2015 Form 10-K. Once an issuer loses its EGC status, it cannot be reclaimed. For example, if after 2015, the calendar-year registrant's annual revenues fell below $1 billion, it would not regain EGC status.

Notably of the EGCs that have gone effective since the JOBS Act was enacted, approximately 13% lost EGC status as of the date of their most recent Form 10-K or Form 20-F. Although there is no requirement to disclose the reasons for the loss of EGC status, most ceased to be EGCs because they became large accelerated filers or exceeded the $1 billion revenue threshold.

EGCs should carefully monitor their eligibility because changes in their business (e.g., increase in revenue, unexpected increase in public float) could lead to earlier-than-anticipated financial reporting obligations.

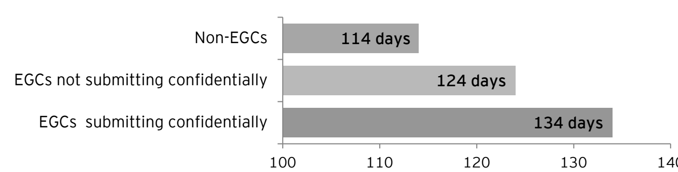
Confidential registration statement submission

Approximately 87% of the EGCs that have filed IPO registration statements since the JOBS Act was enacted have taken advantage of the confidential review accommodation. This accommodation allows EGCs to submit registration statements and subsequent amendments to the SEC on a confidential basis. The SEC staff can comment on the confidential submission, and the company can respond before filing publicly. EGCs are required to publicly file all prior confidential submissions no later than 21 days before their road show (or no later than 21 days before the anticipated effective date of the registration statement if they are not conducting a road show). For those EGCs that have elected the confidential review accommodation and have priced their IPO, their average initial public filing date is 53 days from the date of pricing. While the date of the road show is not publicly disclosed, IPOs are generally priced within two weeks after launching the road show.

Confidentially submitted registration statements are expected to be substantially complete, and the SEC staff reviews them using the same process and timetable as it does for publicly filed registration statements. The SEC staff generally has a target of less than 30 days to issue comments on all initial Securities Act filings, including confidentially submitted registration statements. According to the SEC's Annual Performance Report, the SEC staff issued initial comments on Securities Act registration statements within an average of 25.8 days in 2014, up slightly from 25.6 days in 2013.

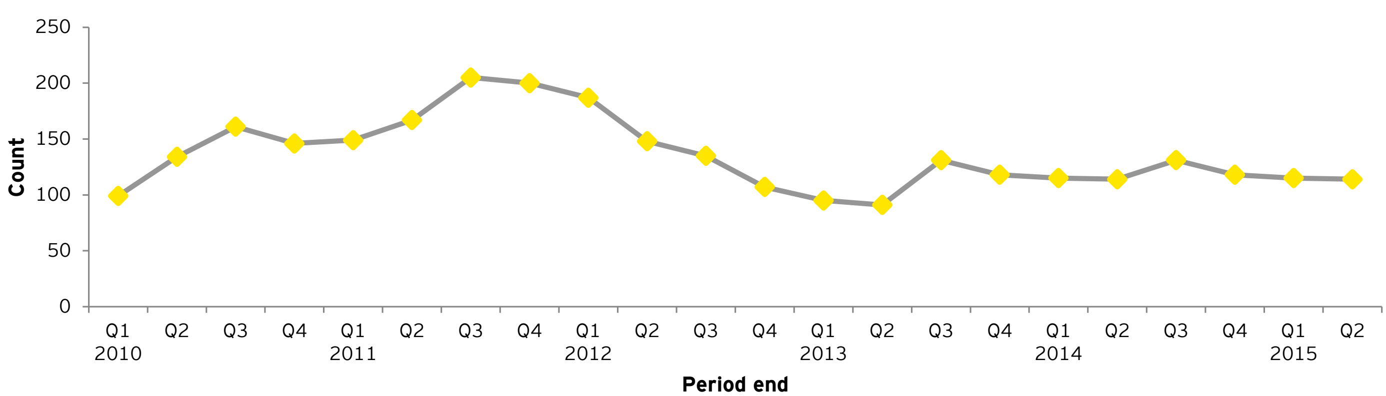
Separate from the SEC staff's process to review registration statements, there are many factors, internal and external, affecting the period between initial submission or filing date and the IPO date. These factors include the ability to timely file amendments in response to SEC staff comments and market conditions affecting the decision to conduct an IPO. That said, on average, we observe the period between the initial submission or filing date and the IPO date is 10 days longer for the 13% of EGCs not submitting confidentially compared to non-EGCs. On average, the period between the initial submission and the IPO date is 10 additional days longer for the 87% of EGCs submitting confidentially.

Average number of days from initial submission to IPO date



One consequence of the JOBS Act provision allowing confidential submissions is reduced visibility into the IPO pipeline. As the graph demonstrates, the number of pre-effective IPO registration statements in public registration with the SEC has declined significantly since the JOBS Act was enacted. The SEC does not publish any statistics on the number of confidential submissions of IPO registration statements. Thus, it has become much harder to determine how many companies are preparing IPOs.

IPOs in registration at period end



EGC scaled disclosures during IPO on-ramp period

Since enactment, EGCs haven't taken advantage of all of the scaled disclosures allowed by the JOBS Act. However, many EGCs have elected to provide only two years of audited financial statements, and most EGCs have elected to provide reduced executive compensation disclosures in their IPO registration statements.

An EGC may take an "à la carte" approach, providing some EGC scaled disclosures but not using the relief available to satisfy other SEC disclosure requirements.

Use of disclosure relief

95%
Reduced executive compensation disclosures*

59%
Two years of audited financial statements**

16%
Adopt new accounting standards using private company effective dates

* Excludes EGCs that also qualify as a smaller reporting company or a foreign private issuer.

** Excludes EGCs that also qualify as a smaller reporting company or have a reporting history of less than two years.

The following table summarizes some of the scaled disclosures available for EGCs during their IPO on-ramp period:

Requirements for registrants*	Scaled requirements available to EGCs
Three years of audited financial statements in common equity IPO registration statement	Two years of audited financial statements in common equity IPO registration statement
Five years of selected financial data in IPO registration statement, subsequent registration statements and periodic reports	Two years of selected financial data in IPO registration statement; selected financial data in subsequent registration statements and periodic reports begins with earliest audited period presented in IPO registration statement
Compensation, discussion and analysis section and compensation disclosure for five named executive officers in IPO registration statement and subsequent annual reports	No compensation, discussion and analysis section and compensation disclosure for three named executive officers in IPO registration statement and subsequent annual reports
Management assessment and auditor attestation of internal control over financial reporting beginning with second Form 10-K following IPO	Only management assessment of internal control over financial reporting beginning with second Form 10-K following IPO
Follow public company effective dates for new or revised accounting standards	Follow private company effective dates for new or revised accounting standards

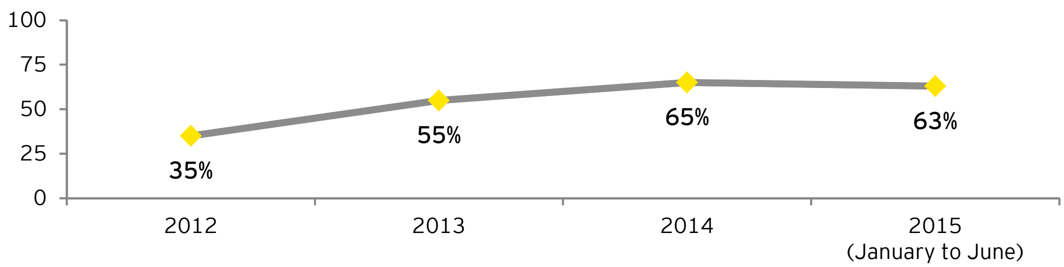
* Represents requirements for registrants other than those that meet the definition of a smaller reporting company or an EGC.

Number of audited financial statement periods and selected financial data

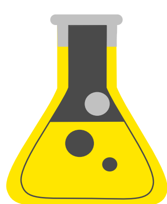
An EGC is not required to provide more than two years of audited financial statements in the registration statement for an IPO of its common equity securities. So far, approximately 59% of EGCs elected to take advantage of this relief. Use of this relief is becoming more popular, especially among smaller EGCs. The majority of EGCs in the health care, oil and gas, and real estate sectors provide only two years of audited financial statements. More than 70% of EGCs electing this relief had revenues of less than $100 million.

Use of relief for number of audited financial statement periods provided*

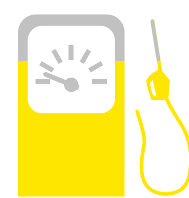
Two years of audited financial statements



Percentage of EGCs in the top four sectors providing two years of audited financial statements*

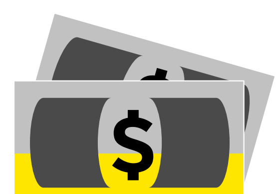


83%
Health care



79%
Oil and gas

68%
Real estate



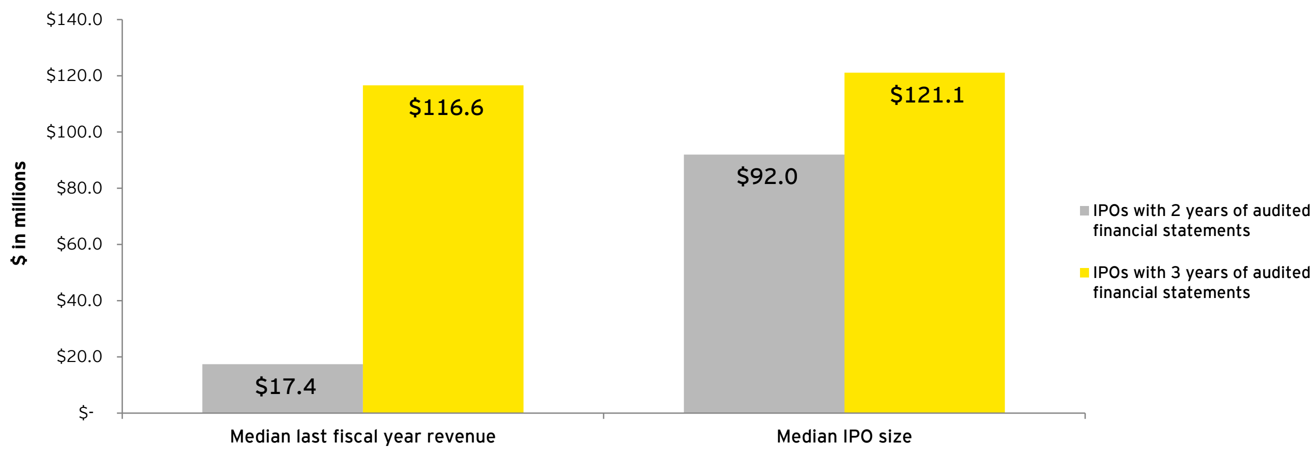
40%
Financial services

* Excludes EGCs that also qualify as a smaller reporting company or have a reporting history of less than two years.

In their common equity IPO registration statements, subsequent registration statements and periodic reports, EGCs also are not required to include selected financial data for periods before the earliest audited period presented in their IPO registration statements. So, for an EGC that elects to provide audited financial statements for 2014 and 2013 in its IPO registration statement, selected financial data would not be required for years 2010 through 2012. Similar to the percentage of EGCs that elect to take advantage of the reduced audited financial statement requirements, there also has been a consistent percentage of EGCs that have elected to present reduced selected financial data disclosures. Of the EGCs that presented two years of audited financial statements, only approximately 10% elected to provide selected financial data for earlier periods. Of EGCs that have elected to provide a full three years of audited financial statements, approximately 66% provided less than five years of selected financial data.

There are a number of factors that may influence an EGC's decision to present a reduced number of periods of audited financial statements and selected financial data, including its operating history and whether its historical performance and trend information is necessary for an investor's understanding of current performance and future prospects.

Effective EGC IPOs, including two years versus three years of audited financial statements*



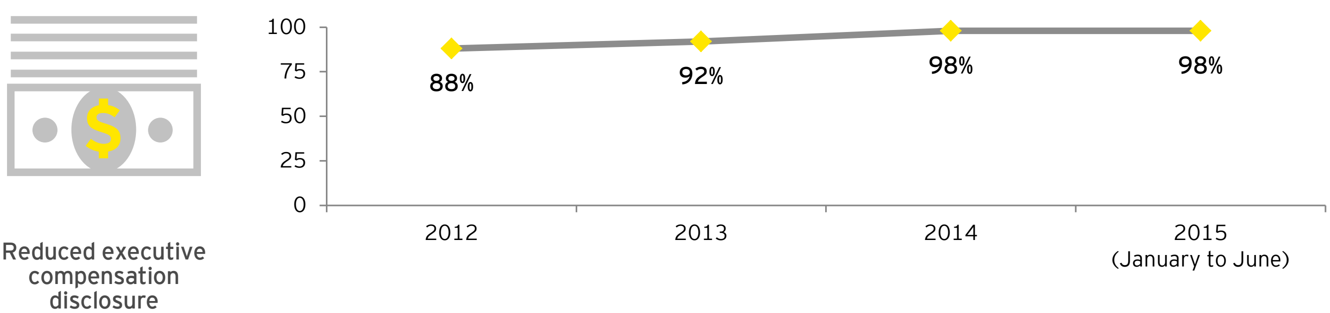
* The above data excludes EGCs that also qualify as a smaller reporting company or have a reporting history of less than two years. If companies with less than $10 million of last fiscal year revenue were excluded, the median last fiscal year revenue and IPO size would be $57.6 million and $123.6 million for IPOs with two years of audited financial statements and $120.7 million and $126.6 million for IPOs with three years of audited financial statements.

Executive compensation disclosures

EGCs may provide executive compensation disclosures in a manner consistent with a smaller reporting company. Thus, EGCs are not required to provide a compensation discussion and analysis (CD&A), and most have elected to omit CD&A from their IPO registration statements. The tabular executive compensation disclosure requirements also are significantly reduced for EGCs. For example, EGCs are required to provide compensation disclosure for only three named executive offers (i.e., the CEO and the two other highest-paid executives), while non-EGCs are required to provide disclosure for five named executive officers (i.e., CEO, CFO and the three other highest-paid executives). Since April 2012, approximately 95% of EGCs elected to provide reduced executive compensation disclosures. This trend has continued through the first half of 2015.

Once they go public, EGCs also are not required to comply with certain executive compensation requirements mandated by the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act). EGCs are not subject to the "say-on-pay" provisions of the Dodd-Frank Act, which require companies to hold a shareholder advisory vote on executive compensation and golden parachutes. They also will not be not subject to the SEC's new "pay ratio" rules that require most registrants to calculate and disclose the ratio of their principal executive officer's total annual compensation to that of the median employee. However, exchange-listed EGCs would be subject to the SEC's proposed "clawback" requirements, meaning they would have to recover excess incentive-based compensation from current and former executives in the event of an accounting restatement.[5]

Use of executive compensation disclosure relief by year*



* Excludes EGCs that also qualify as a smaller reporting company or a foreign private issuer.

Compliance with auditor attestation of internal control over financial reporting

No IPO registration statement is required to include a report by management assessing the effectiveness of the company's internal control over financial reporting (ICFR) or its independent auditor's assessment of its ICFR under Sections 404(a) and 404(b) of the Sarbanes-Oxley Act, respectively. Section 404(a) requires registrants to provide a report by management assessing the effectiveness of the company's ICFR generally beginning with their second annual report after becoming a public company. Unless an EGC elects to comply voluntarily, it may defer the requirement to comply with Section 404(b). Nearly all of the companies that went public in 2012 and 2013 and filed their second annual report on Form 10-K as EGCs have taken advantage of the JOBS Act's deferral of the requirement to have their independent auditor assess their ICFR.

Although EGCs include general disclosures about the relief available under the JOBS Act in their IPO registration statements, the majority of EGCs did not disclose whether they plan to take advantage of the relief on auditor attestation. However, in their IPO registration statements, no EGCs indicated their intent to opt out of the auditor attestation deferral. That is, in their IPO registration statements, no EGCs have committed to comply with Section 404(b) earlier than required. Only non-accelerated filers (i.e., public companies with a public float of less than $75 million) are permanently exempt from Section 404(b).

[5] To the Point: *SEC proposes requiring 'clawback' policies and disclosures* is available on the AccountingLink website at http://www.ey.com/Publication/vwLUAssetsAL/TothePoint_CC0413_Clawback_9July2015/$FILE/TothePoint_CC0413_Clawback_9July2015.pdf

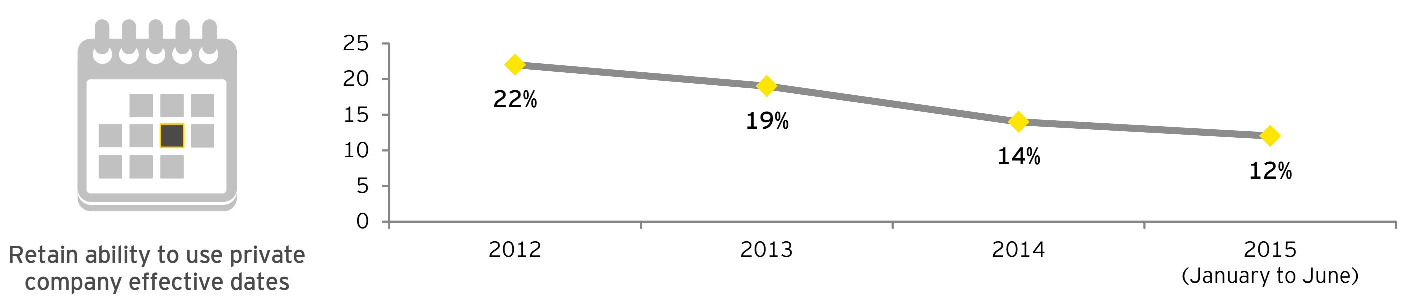
Accounting standards issued after the JOBS Act

In their IPO registration statements, approximately 84% of EGCs opted out of the extended accounting standard transition relief that allows EGCs to adopt new or revised accounting standards when they are effective for private companies. That is, only 16% of EGCs decided to retain the ability to adopt accounting standard updates using delayed effective dates afforded to private companies. This trend has continued through the first half of 2015, presumably because many EGCs want to assure investors their financial statements will remain comparable to those of other public companies.

Under Section 107(b) of the JOBS Act, an EGC's election to opt in to public company transition is irrevocable and applies to all new or revised accounting standards. The SEC staff has indicated that it will not object if an EGC initially decides to retain the ability to take advantage of the extended transition period but subsequently elects to follow the requirements for public companies. An EGC that elects to follow private company effective dates may still early adopt a new or revised accounting standard, if the standard allows early adoption by private companies. This won't affect the EGC's ability to follow the extended private company transition relief in other standards issued by the Financial Accounting Standards Board (FASB).

The SEC staff also expects EGCs electing to use private company transition to disclose additional risk factors. Such disclosures must explain that the election allows the company to delay adoption of new or revised accounting standards that have different transition dates for public and private companies and, as a result, that the company's financial statements may not be comparable to those of companies that comply with public company effective dates.

Use of relief for accounting standards issued after the JOBS Act by year



Update on other key provisions of the Act

In this section, we summarize what has happened and what's yet to come related to some of the other key provisions of the JOBS Act.

Amendments to Exchange Act Section 12(g)

Many of the amendments to the Exchange Act registration thresholds were effective immediately after the law was enacted.

The JOBS Act amended Exchange Act Section 12(g) and increased the number of record holders that triggers a company's obligation to register with the SEC and report as a public company to 2,000 people (or 500 people who are not accredited investors). Previously, the record holder trigger for registration was 500 people, even if all were accredited investors. For a bank or bank holding company, the trigger is now 2,000 people, even if none are accredited investors.

The JOBS Act also amended Sections 12(g) and 15(d) of the Exchange Act to raise the threshold below which a bank or bank holding company may terminate registration and suspend its reporting obligation to 1,200 record holders from 300. The current threshold of 300 record holders for non-banks and non-bank holding companies remains unchanged.

The Act requires the SEC to revise the definition of "held of record" to exclude people who receive securities under an employee compensation plan in transactions exempted from the registration requirements of Section 5 of the Securities Act. Although the SEC has proposed revisions to this definition, the change went into effect immediately after enactment. That is, an issuer (including a bank holding company) may exclude people who received securities under an employee compensation plan in Securities Act exempt transactions, regardless of whether they are still employees. This change gives private companies more flexibility to issue stock to employees as compensation because these shareholders are no longer counted among record holders who could trigger public registration.

In addition, the Act required the SEC to further revise the definition of "held of record" to exclude investors who acquire securities through crowdfunding, which the Act authorizes the SEC to permit. However, the crowdfunding exemption will not be effective until the SEC issues final rules implementing the Act's crowdfunding provisions.

Certain provisions of the JOBS Act, such as increasing Exchange Act registration thresholds, Regulation A+ and lifting the ban on general solicitation and advertising in certain exempt offerings, are now effective and allow private companies to remain private longer while broadening their access to the capital markets.

Other exempt offerings

General solicitation and advertising in certain exempt offerings

An SEC rule went into effect on 23 September 2013 allowing general solicitation and advertising in certain offerings of restricted securities that are exempt from registration if all purchasers are accredited investors.

The new Rule 506(c) of Regulation D allows any company (whether public, private, established or start-up) to expand its pool of potential investors without SEC registration. Rule 506(c) also is available for use by hedge funds, venture capital funds and private equity funds. Companies issuing restricted securities under the rule are permitted to solicit investors and advertise offerings, as long as they take reasonable steps to verify that the purchasers are accredited investors. The SEC did not specify what the steps would be, but the rule includes a list of methods that satisfy the verification requirements for individual investors. The SEC expects issuers to determine what steps are reasonable based on the facts and circumstances. The rule also applies to resales of restricted securities to qualified institutional buyers under Rule 144A of the Securities Act.

The SEC also proposed amendments to Regulation D that would require issuers to provide more information about exempt offerings that use general solicitation to allow the SEC to evaluate emerging market practices and their effects on capital formation and investor protection.

The SEC staff has issued a number of compliance and disclosure interpretations providing guidance on Rule 506(c) offerings. The SEC staff also issued a small entity compliance guide and investor alert for the new rules on general solicitation.[6] The SEC also created a submission portal for registrants to voluntarily submit general solicitation materials used in Rule 506(c) offerings.

When the SEC approved the general solicitation and advertising rule, it finalized its proposal to disqualify issuers from using any exemption under Rule 506 of Regulation D if the offering involves certain felons and other bad actors, as mandated by the Dodd-Frank Act.

Regulation A+ exempt offerings

Another SEC rule went into effect on 19 June 2015 that increases the offering threshold in existing Regulation A (creating what's referred to as Regulation A+). The rule establishes two tiers under Regulation A. Tier 1, which covers exempt public offerings of up to $20 million within a 12-month period, retains many of the previous requirements of Regulation A. Tier 2 allows exempt public offerings of up to $50 million within 12 months but requires more robust initial and ongoing reporting.

Companies rarely used the previous Regulation A exemption for public offerings. The JOBS Act required the Comptroller General of the Government Accountability Office (GAO) to study the effect of state securities laws on Regulation A offerings. In its report to Congress, the GAO discussed factors that contributed to the limited use of Regulation A, including the small size of the offerings, the significant time and cost of complying with both federal and state securities laws and the availability of other offering exemptions (e.g., Regulation D).

Tier 2 offerings are intended to address several factors raised by the GAO by preempting state securities laws known as Blue Sky laws. Tier 1 offerings will continue to be subject to state securities law registration and qualification requirements. However, Tier 1 issuers may be able to benefit from the multistate review program the North American Securities Administrators Association Inc. recently implemented to accelerate the review of Regulation A filings subject to Blue Sky laws.

As required by the JOBS Act, the SEC will review the new offering limits every two years. The first review is expected to be completed by April 2016. SEC Chair Mary Jo White also directed the SEC staff to report to the Commission within five years its findings about the effects of the new rules on capital formation.

The SEC staff has issued a number of compliance and disclosure interpretations to provide guidance on the new rules under Regulation A and also issued an investor bulletin on the rules.[7]

[6] The small entity compliance guide for the general solicitation final rule is available at http://www.sec.gov/info/smallbus/secg/general-solicitation-small-entity-compliance-guide.htm.

[7] The investor bulletin on the new rules on Regulation A is available at http://www.sec.gov/oiea/investor-alerts-bulletins/ib_regulationa.html

An issuer that has not previously filed a qualified offering statement under Regulation A or a registration statement under the Securities Act can submit draft offering statements for nonpublic review by the SEC staff, provided a public filing is made at least 21 days before qualification. So far under Regulation A+, there have been fewer than 20 offering statements filed publicly with approximately 40% representing Tier 2 offerings.

Crowdfunding

In October 2013, the SEC proposed rules that would allow start-ups and other small businesses to raise small amounts of capital from potentially large pools of investors through the internet in a process known as crowdfunding. US companies (including their predecessors and any commonly controlled companies) could raise a maximum of $1 million (subject to inflation adjustments at least every five years) in any 12-month period.

Companies would be required to disclose certain financial and other information about these offerings and report to investors annually. Generally, the extent of information required to be filed with the SEC (including potentially obtaining an independent audit or review) would depend on the offering size.

The proposal requires that such transactions be handled by an intermediary registered with the SEC. In addition, the proposal limits the amount of securities that could be sold to individual investors under crowdfunding exemptions over a 12-month period.

The SEC is expected to act on its proposed rulemaking this year. While the proposal closely aligns with the provisions of the JOBS Act and in certain cases includes investor protections that go beyond them, it has garnered mixed reactions. Some constituents are concerned that its investor protections are not strong enough. Others suggest the extent of information requirements for issuers of crowdfunding securities will be so significant that few will be willing to conduct crowdfunding offerings. In the meantime, the SEC staff has reminded companies that the use of the crowdfunding exemption is unlawful until the SEC adopts final rules.[8]

[8] The SEC staff notice related to the use of crowdfunding is available at http://www.sec.gov/spotlight/jobsact/crowdfundingexemption.htm.

Required studies

The JOBS Act required the SEC to conduct studies examining the impact of certain items on EGCs, such as decimalization and the burdens associated with complying with the nonfinancial disclosure requirements of Regulation S-K.

Regulation S-K study

The JOBS Act required the SEC to conduct a study on how to simplify the Regulation S-K nonfinancial disclosures for EGCs. In December 2013, the SEC staff issued its Report on Review of Disclosure Requirements in Regulation S-K.[9] Although the JOBS Act mandate pertains only to EGCs, the SEC staff evaluated Regulation S-K for areas of potential simplification for all public companies.

The SEC staff recommended that the Commission undertake a comprehensive review of its disclosure regime for all companies, rather than take a targeted approach. This comprehensive analysis would include reviewing requirements in Commission forms, rules (including Regulations S-K and S-X), industry guides and related interpretive guidance. The staff believes that such a review also should consider how information is delivered and presented to investors.

SEC Chair Mary Jo White has directed the SEC staff to undertake a comprehensive review of the existing disclosure requirements and make specific recommendations. The SEC staff continues to review SEC disclosure requirements and reach out to companies, investors and other market participants for ideas about how to streamline disclosures and make them more meaningful. The SEC is expected to make proposals and/or formally solicit comments on disclosure effectiveness later this year.

Keith Higgins, Director of the Division of Corporation Finance, has said the staff is reviewing the requirements of Regulations S-K and S-X to identify ways to reduce the costs and burdens on companies while still providing material information to investors. However, reducing the volume of disclosures is not the SEC staff's sole objective. If the SEC staff identifies potential gaps in disclosure or opportunities to increase the transparency of disclosures, it may recommend new or enhanced disclosure requirements. In addition, the SEC staff will consider how technology can be used to improve the focus and navigability of disclosures (e.g., use of structured data, hyperlinks, topical indexes for ease of navigation).

Preparers, investors and other constituents continue to submit their suggestions on how to make disclosures more effective through the spotlight page on the SEC's website.[10] The staff will use this page to communicate information about future public roundtables and other news about the project.

Many stakeholders continue to debate how best to streamline disclosure requirements. Some of the suggestions submitted to the SEC staff include the following:

- Emphasize the concept of materiality, meaning that required disclosures should be important to a reasonable investor
- Revise the dollar thresholds for disclosures that have not changed since they were initially adopted
- Develop a principles-based disclosure framework to allow more flexibility and judgment in determining the disclosures necessary to communicate material information to investors
- Eliminate disclosure of information that has become obsolete due to changes in technology (e.g., historical stock price disclosures, selected financial data)
- Enhance coordination with the FASB and eliminate duplicative disclosures arising from the overlap of SEC and FASB disclosure rules
- Clarify the disclosure objectives of similar SEC and FASB requirements to determine whether they remain valid and provide guidance about how those disclosures should interact, so that information being provided is useful to investors
- Eliminate the requirement to provide a discrete management's discussion and analysis comparing the second- and third-year results and focus instead on trends over a three-year period

9 The SEC staff report is available at: http://www.sec.gov/news/studies/2013/reg-sk-disclosure-requirements-review.pdf.

10 The SEC's disclosure effectiveness spotlight page is at: http://www.sec.gov./spotlight/disclosure-effectiveness.shtml.

- Change the SEC's EDGAR system to provide information to investors more effectively and efficiently and leverage advances in technology to modernize the delivery of information to investors in the longer term
- Include sunset provisions in new rules that require the SEC staff to conduct a post-adoption review and assess whether the disclosures continue to be relevant given the changes in economic, business or regulatory factors

The SEC staff has highlighted the efforts by some companies to improve their disclosures and has offered to discuss any significant contemplated changes before companies make their filings.

We applaud the SEC for recognizing the need to address disclosure effectiveness, and we believe there are significant changes that can be made to Regulations S-K and S-X (e.g., the requirements with respect to filing financial statements of an acquired business under Rule 3-05) to simplify the existing disclosure regime and focus on material information for investors.

EY resources

- To the Point, *The SEC's opportunity to consider disclosure overload* (SCORE No. CC0359)
- Disclosure effectiveness — What companies can do now (SCORE No. CC0403)
- Disclosure effectiveness — What investors, company executives and other stakeholders are saying (SCORE No. CC0404)
- Comment Letter, Section 108 of the JOBS Act — Regulation S-K Review (SCORE No. CC0356)
- The audit committee's role in disclosure effectiveness (SCORE No. CJ0245)
- Unlocking the potential of disclosure committees: Leading practices and trends (SCORE No. BB2881)

Decimalization study

The Act required the SEC to conduct a study examining the effects of trading and quoting securities in one-penny increments, known as decimalization or tick sizes, on IPOs and small and mid-sized companies. The SEC staff completed its study in July 2012. The SEC staff recommended that the Commission seek the opinions of key stakeholders, including companies, investors, market makers and academics, on the broad topic of decimalization, how best to study its effects on IPOs, trading and liquidity for small and middle capitalization companies, and potential policy alternatives.

The SEC staff hosted a roundtable in February 2013 to discuss the effect of decimalization on small and mid-sized companies, market professionals, investors and US securities markets. Some participants in the roundtable suggested that the SEC launch a pilot program to examine whether changes to current trading increments would benefit the US marketplace. In addition, the SEC's Investor Advisory Committee and the Advisory Committee on Small and Emerging Companies discussed tick sizes and made related recommendations.

In June 2014, the SEC ordered the national securities exchanges and the Financial Industry Regulatory Authority (FINRA) to submit a detailed plan to implement a pilot program to increase the tick sizes of registrants that meet certain criteria. In May 2015, the SEC approved a plan by the national securities exchanges and FINRA to implement a two-year pilot program to increase the tick sizes of certain registrants. Companies included in the program must have:

- Market capitalizations of $3 billion or less
- Average daily trading volumes of 1 million shares or less
- Daily volume weighted average share price of $2 per share or more

The current tick size in which shares are quoted and traded is one cent. In the pilot, a control group consisting of 1,400 securities will continue to be quoted and traded at the current tick size of one cent, and three test groups with 400 securities each will be quoted at five-cent increments, with different trading rules applied to each test group. The results of the pilot will be used to assess whether wider tick sizes improve the trading in the securities of smaller companies. The pilot program is expected to begin by May 2016, and the data for the first year will be released on an aggregated basis 18 months after the program begins.

What's next
for JOBS Act implementation?

The JOBS Act requires the SEC to adopt rules to implement crowdfunding, the only major provision of the Act left to be finalized. The comment period for the proposal has ended. Given the focus on completing JOBS Act rulemaking and the fact that this proposal is on the SEC's 2015 rulemaking agenda, the prospects for final rules on crowdfunding this year are promising.

The SEC staff has been reviewing SEC disclosure requirements and reaching out to companies, investors and other market participants for ideas about how to streamline disclosures and make them more meaningful. Chair White has indicated that this project is a priority, and we are hopeful that the Commission will make proposals and formally solicit comments on disclosure effectiveness in the near future.

Appendix: Status of SEC action items required by the JOBS Act

Title and section	SEC action item	Deadline	Status
Amendments to Exchange Act Section 12(g):			
Title V — Section 503	Revise the definition in Exchange Act Section 12(g)(5) of "held of record" to exclude securities received under an employee compensation plan in transactions exempt from registration and adopt safe harbor provisions to follow when determining whether securities were received in such transactions	None	The amendment to the definition of "held of record" in Exchange Act Section 12(g)(5) was immediately effective; safe harbor provisions are still to be adopted by the Commission. Proposed rule issued 18 December 2014, awaiting final rule
Title VI — Section 602	Adopt rules to implement amendments to Exchange Act Sections 12(g) and 15(d) to raise the threshold to 1,200 record holders below which a bank or bank holding company may terminate registration and suspend its reporting obligation	1 year after enactment or 5 April 2013	While the Commission has not yet adopted rules, the amendments to these sections of the Exchange Act were effective immediately after enactment. Proposed rule issued 18 December 2014, awaiting final rule
Other exempt offerings:			
Title II — Section 201	Adopt rules to allow companies to solicit investors and advertise offerings of restricted securities that are exempt from registration if sales are limited to accredited investors (or resales are limited to qualified institutional buyers under Securities Act Rule 144A)	90 days after enactment or 4 July 2012	Final rule approved 10 July 2013 and effective 23 September 2013
Title IV — Section 401	Adopt rules to add a new category of public offerings exempt from registration of up to $50 million raised over a 12-month period (also known as Regulation A+)	None	Final rule approved 25 March 2015 and effective 19 June 2015
Crowdfunding:			
Title III — Section 302	Adopt rules to allow up to $1 million of securities to be sold in a rolling 12-month period and to establish disqualification provisions for using crowdfunding	270 days after enactment or 31 December 2012	Proposed rule issued 23 October 2013, awaiting final rule
Title III — Section 303	Adopt rules to amend Exchange Act Section 12(g) to exclude investors who buy securities through crowdfunding from the record holder count that triggers Exchange Act registration	270 days after enactment or 31 December 2012	Proposed rule issued 23 October 2013, awaiting final rule
Title III — Section 304	Adopt rules to amend Exchange Act Section 3 to exempt registered funding portals that meet certain requirements from the requirement to register as a broker or dealer under Exchange Act Section 15(a)(1)	270 days after enactment or 31 December 2012	Proposed rule issued 23 October 2013, awaiting final rule
Studies:			
Title I — Section 106	Conduct a study of penny trading increments (also called decimalization) and its effects on IPOs and on liquidity for small and mid-cap companies	90 days after enactment or 4 July 2012	Study completed 20 July 2012 with recommendation to not immediately increase the penny pricing increment for any companies and to consider additional steps to determine whether future rulemaking is warranted
Title I — Section 106	Adopt, if determined necessary, rules changing current decimalization rules for EGCs	180 days after enactment or 2 October 2012	The SEC approved a plan by the national securities exchanges and FINRA to implement a two-year pilot program to study the effects of increased trading increments which is expected to begin by May 2016.
Title I — Section 108	Conduct a review of Regulation S-K to analyze the current requirements and determine how it can be updated to modernize and simplify the registration process for EGCs	180 days after enactment or 2 October 2012	Study completed 20 December 2013; disclosure effectiveness initiative is ongoing and the SEC is expected to issue proposed rules and/or concept releases later this year for public input
Title V — Section 504	Examine the Commission's authority to enforce Exchange Act Rule 12g5-1 to determine whether new enforcement tools are needed to enforce the anti-evasion provision in subsection (b)(3) of the rule	120 days after enactment or 3 August 2012	Study completed 15 October 2012 that concluded existing tools are in place for enforcement of Exchange Act Rule 12g5-1.
Other:			
Title VII — Section 701	Provide online information and outreach to inform affected businesses about the changes made in the JOBS Act	None	Ongoing

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Sources

For purposes of this report, an IPO is defined as a company's first registered offering of equity securities to the public.

This report discusses only IPOs for which the data provider Dealogic offers data on the issue date (the day the offer is priced and allocations are subsequently made), the trading date (the date on which the security first trades) and proceeds (funds raised, including any overallotment sold). Companies with the following Standard Industrial Classification (SIC) codes also are excluded from our study:

- 6091: Financial companies that conduct trust, fiduciary and custody activities
- 6371: Asset management companies such as health and welfare funds, pension funds and their third-party administration as well as other financial vehicles
- 6722: Companies that are open-end investment funds
- 6726: Companies that are other financial vehicles
- 6732: Companies that are grant-making foundations
- 6733: Asset management companies that deal with trusts, estates and agency accounts
- 6799: Special Purpose Acquisition Companies

We have included only IPOs on the three major US exchanges: New York Stock Exchange (NYSE), NASDAQ and NYSE MKT.

Revenue data used in this report was obtained from data provider S&P Capital IQ.

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