

JOBS Act, IPO Timeline and SEC Hot Topics

January 13, 2014

JOBS Act

The JOBS Act is designed to spur IPO activity

Principal goal is to encourage private companies to raise capital through an initial public offering of their common equity!

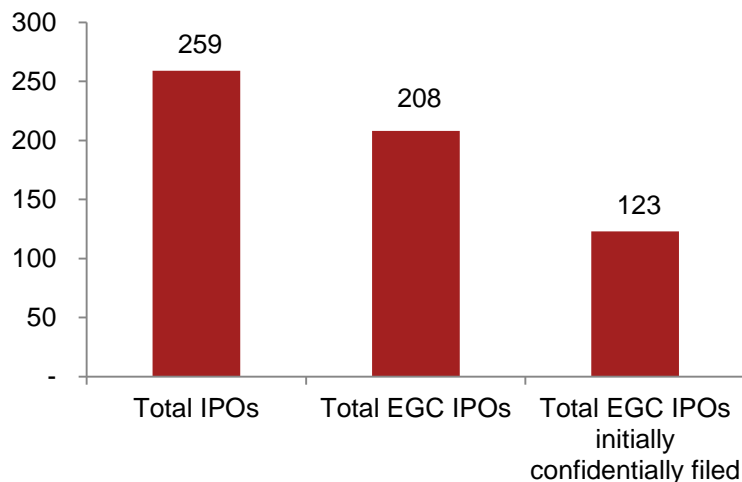
- The 2 main thrusts of the Act are to:
 - Create an “IPO on-ramp” which reduces the filing and disclosure burdens associated with undertaking an IPO
 - Provide for easier and broader access to capital markets
- The Act applies to “Emerging Growth Companies” (EGCs) for up to a maximum of 5 years, which are broadly defined as:
 - < \$1 billion in gross revenue;
 - < \$1 billion in issues of non-convertible debt in a 3-year period, and;
 - Generally <\$700 million in public float (not a large accelerated filer)

Since the JOBS Act was enacted in Apr 2012, EGCs have accounted for 80% of IPOs

Of the 259 IPOs between Apr 2012 and Sept 2013, 208 or 80% have been from EGCs. Of the 208 EGCs who completed IPOs, 123 or 59% initially filed confidentially with the SEC.

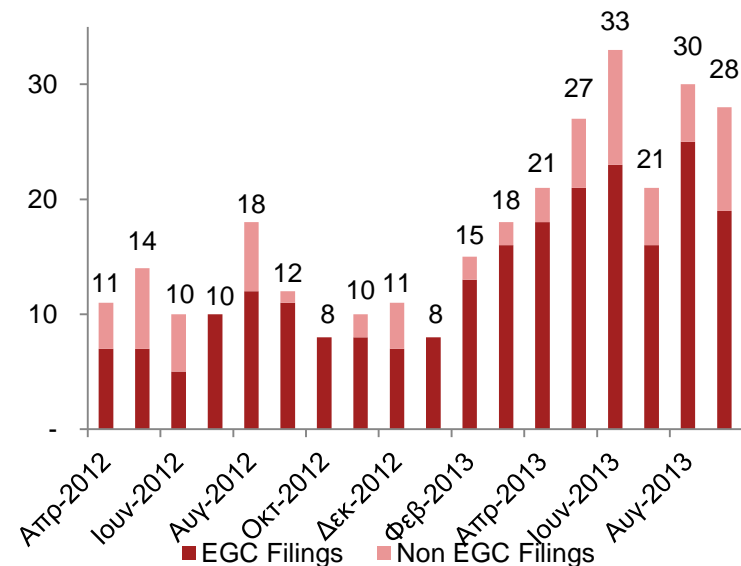
The percentage of filings from EGCs compared to non EGCs has steadily increased over the last several months, with EGCs now accounting for the majority of filing activity in the US.

The EGC Impact: IPOs From Apr 2012 – Sept 2013



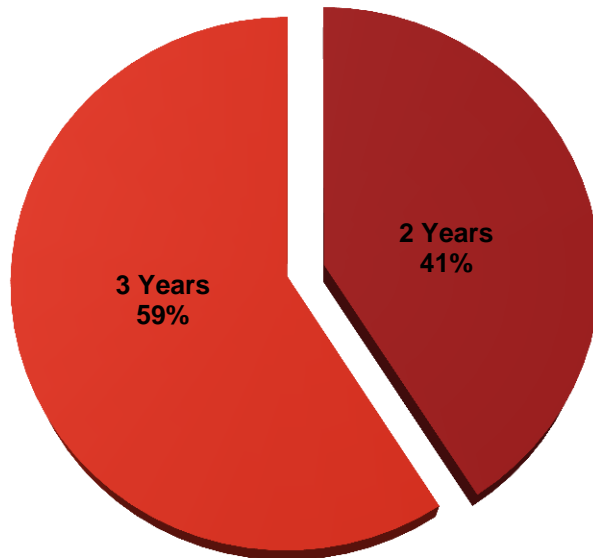
Source: SEC Filings
Completed IPOs and filings from Apr 6, 2012 to Sept 30, 2013

Monthly Filing Activity: Apr 2012 – Sept 2013



The majority of EGCs include 3 years of audited financial statements

Proportion of total EGC IPOs that Included 2 years vs. 3 years of audited financial statements (Apr 2012 – Sept 2013)



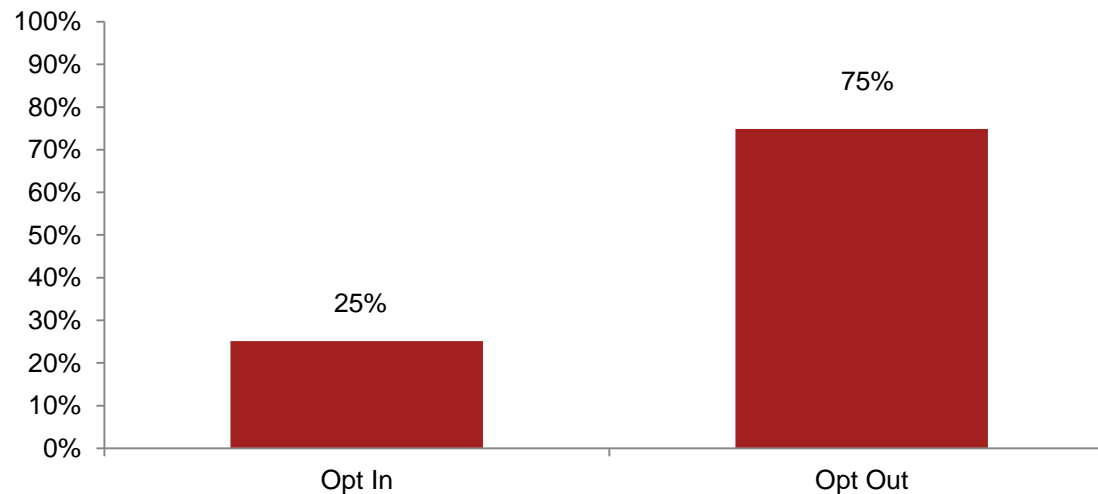
Only 41% of EGCs chose to adopt the JOBS Act provision which allows for the inclusion of 2 years of audited financials as opposed to the previous requirement of 3 years.

Source: SEC Filings
Completed IPOs and filings from Apr 6, 2012 to Sept 30, 2013

Most EGC filers are not “opting in” to the private company timeline for new or revised accounting standards

From Apr 2012 through Sept 2013, the majority of EGCs elected not to “opt in” to the private company timeline for new or revised accounting standards. As this is an irrevocable election, filers may be concerned about the decreased level of comparability between their financial statements and those of their peers.

Proportion of total EGC IPOs that opted in/out to the private company timeline for new or revised accounting standards (Apr 2012 – Sept 2013)



Source: SEC Filings
Completed IPOs and filings from Apr 6, 2012 to Sept 30, 2013

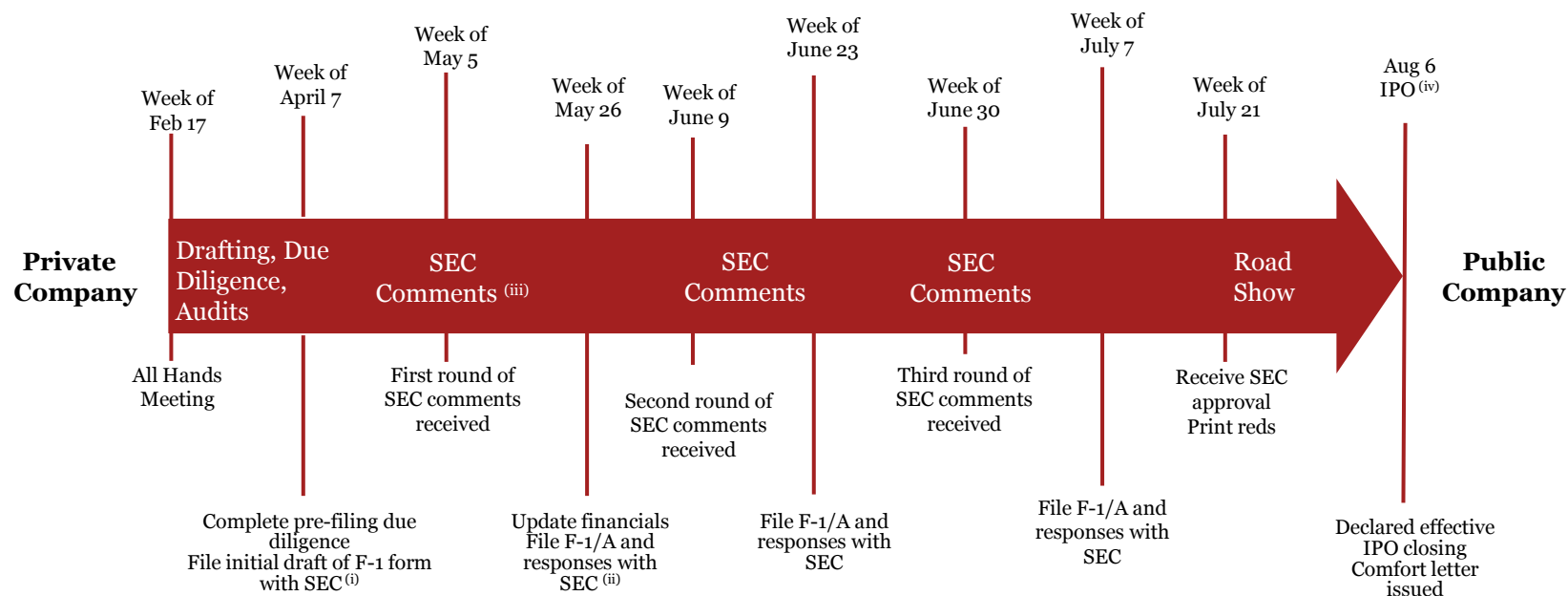
JOBS Act – key takeaways

- Most companies preparing for an IPO qualify as EGCs
- Recent trends show ~80% of EGCs are initially filing confidentially with the SEC
- The confidential filing provision has made it difficult to accurately gauge the IPO pipeline
- Most EGCs are taking advantage of at least one provision of the JOBS Act
- 75% of EGCs are “opting out” of the private company timeline for the adoption of new or revised accounting standards
- There is diversity in practice surrounding the number of years of audited financial statements and selected financial data, with individual facts and circumstances coming into play

IPO process

Example filing timeline for discussion purposes

Assumes calendar Q3 2014 IPO



(i) Financial information required includes audited financial statements for 2013 and 2012.

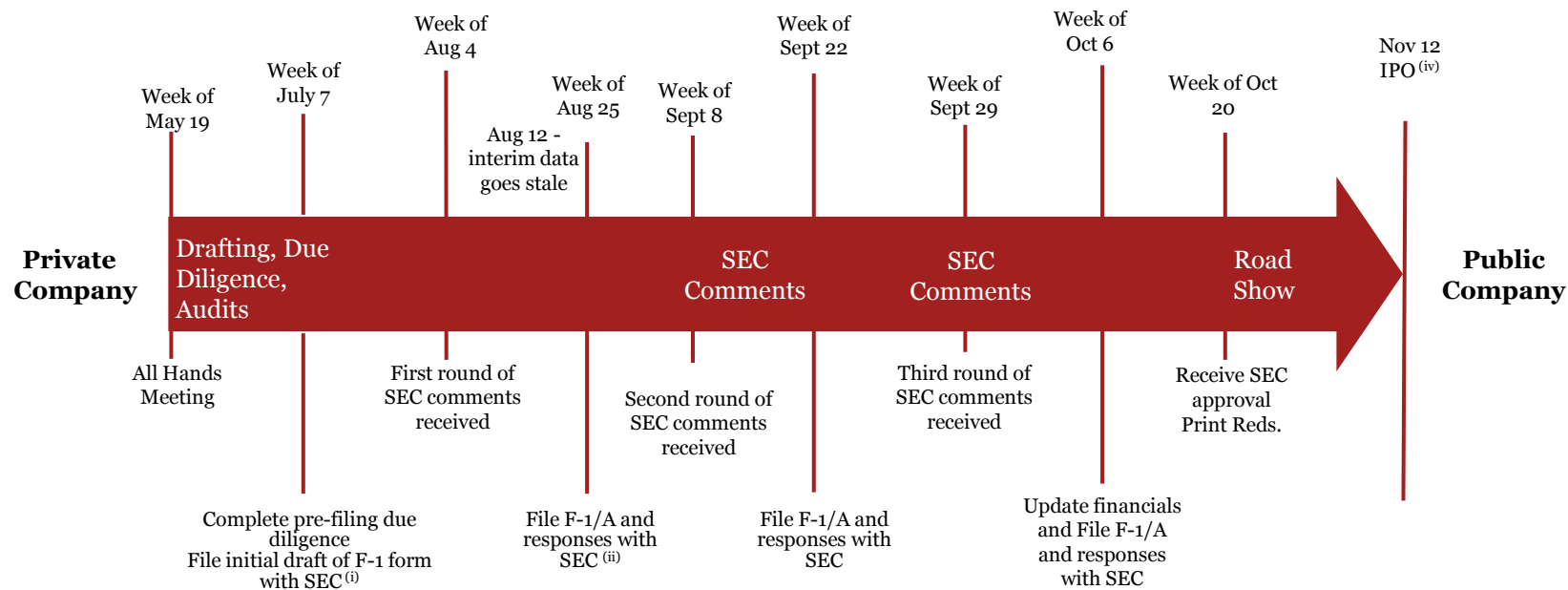
(ii) Financial information required includes audited financial statements for 2013 and 2012 and reviewed financial statements for three-months ended March 31, 2014 and 2013.

(iii) Time for SEC to respond with comments: assume 4 weeks for 1st round, 2 weeks for 2nd round and 1 week for final comments.

(iv) Timeline could be pulled forward by fewer comments from the SEC, faster response times, or shorter road show.

Example filing timeline for discussion purposes

Assumes calendar Q4 2014 IPO



(i) Financial information required includes audited financial statements for 2013 and 2012.

(ii) Financial information required includes audited financial statements for 2013 and 2012 and reviewed financial statements for six months ended June 30, 2014 and 2013.

(iii) Time for SEC to respond with comments: assume 4 weeks for 1st round, 2 weeks for 2nd round and 1 week for final comments.

(iv) Timeline could be pulled forward by fewer comments from the SEC, faster response times, or shorter road show.

Key steps in the IPO process

- Initial meetings (“all-hands” meeting) and planning
- F-1 drafting and printer sessions
- Respond to SEC comment letters and prepare draft amendments
- Prepare preliminary prospectus (file “red herring”)
- Complete financial analysts’ meetings (“road show”)
- Perform keeping current procedures
- Price (“offering date”)
- Address over-allotment options (“green shoe”)
- Close (“closing date”)
- File first interim (6-K) or annual report (20-F)

Initial meetings (“all-hands” meeting) and planning

- Meetings with the company, counsel, banks and audit team to discuss upfront issues, including:
 - Nature of transaction and offering characteristics
 - Timing
 - Roles and responsibilities, PMO
 - Financial statement requirements
 - Critical path items and key milestones
 - Potential technical issues and other hurdles
 - SOX-related issues (if applicable)
 - Corporate governance (e.g., Audit Committee)
 - Comfort letter expectations

F-1 drafting and printing sessions

- Prospectus and registration statement primarily drafted by legal counsel and the company, except for the business section and box, which are drafted by the banks
- Company counsel usually leads drafting sessions
 - “All-hands” working meetings
 - Sessions held once document in “reasonable shape”
 - Can result in lengthy sessions at the lawyers / printers

Respond to SEC comment letters and prepare draft amendments

- The SEC will review the initial and subsequent submissions of the registration statement and provide comments in the form of a letter, which the company will respond to in the form of a response letter and by submitting an amended registration statement.
- SEC response times vary based on the complexity of the filing, state of the market, and other factors. However, the SEC typically takes 4 weeks to respond to the initial registration statement, 2 weeks to respond to the second, 1 week to respond to the third, and several days for subsequent amendments.
- Company response time to these SEC comments varies; however, companies typically respond within two to four weeks of receiving the initial comment letter.
- Companies should expect to receive at least two rounds of SEC comments (*but could be more!*) and the comment letter will contain comments on all aspects of the document, including legal, business, accounting, and financial reporting matters.

Preliminary prospectus (“red herring”)

- Printed with red text on cover indicating it's preliminary
- Annual and interim (if required) historical financial statements
- Summary and selected financial information
- Risk factors
- Use of proceeds
- Capitalization
 - Pro forma shareholders' equity
 - Pro forma debt for debt converted, issued or repaid upon IPO
 - Pro forma EPS, if required
- Dilution
 - Reflect dilution to investor interest to the extent of the difference between the offering price per share and the as adjusted net tangible book value

Preliminary prospectus (“red herring”) (continued)

- Pro forma financial statements, if required
- MD&A
- Business
- Management and board info and executive compensation
- Related party transactions
- Principal (and selling) shareholders
- Description of stock
- Other legal disclosures

Financial analysts' meetings (“road show”)

- The road show represents a critical part of the selling efforts
 - Company's management and underwriters make presentations to potential investors, brokers, and dealers to facilitate a securities offering
 - A quality road show should leave an unsatisfied demand level that will further help the after-market support and performance of the registrant's stock
- Can be a grueling process for management and may last up to two weeks

SEC Hot Topics

SEC Hot Topics

Overall themes highlighted throughout the SEC Conference were those of quality and transparency. Topics on quality included financial reporting and auditing, while transparency was discussed in the context of regulatory practices, audits and disclosures.

- Renewed enforcement focus on financial accounting fraud
- Comment letter trends
 - While most of the matters discussed were generally consistent with previous comment letter trends, the remarks provided a reminder that the Staff continues to focus on clear and transparent disclosures, particularly in areas of significant judgment (i.e. MD&A).
- Disclosure overload! The SEC wants to see high-quality and concise disclosures.

FASB and the IASB

- FASB and IASB convergence projects:
 - Revenue recognition - Final standard expected Q1 2014 and applicable for annual periods, and interim periods therein, beginning after December 15, 2016.
 - Leases – A final standard is not expected before 2014 and an effective date is unlikely before 2017.
- IFRS is not expected to be adopted in the US any time soon....continue to focus on convergence!

Thank you!

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