

# What Is the JOBS Act?

## And Will Your Company Face New Risks?



Passage in 2012 of the Jumpstart Our Business Startups (JOBS) Act makes it easier for companies to raise capital with securities exempt from registration with the Securities and Exchange Commission (SEC).

### The JOBS Act: New Opportunities ... and New Risks

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Three Titles of the JOBS Act present new opportunities for private companies to raise capital without registering securities with the SEC. Those opportunities, however, may have significant implications on the potential liability exposure of private companies and their directors and officers.

JOBS Act Title	Key provisions of Title	Potential heightened D&O liability
<b>TITLE II</b> <b>Access to Capital for Job Creators</b> (General solicitation and advertising of private placements)	<ul style="list-style-type: none"><li>• Lifts ban on general solicitation for certain types of private placements.</li><li>• Requires issuers to take reasonable steps to verify accredited investor status (income or net worth).</li></ul>	<ul style="list-style-type: none"><li>• Allegations of fraud (Rule 10b-5 actions).</li><li>• Exposures resulting from rescission of the offering if non-accredited investors participate.</li><li>• Trading on private networks may trigger shareholder disputes.</li></ul>
<b>TITLE III</b> <b>Crowdfunding</b>  (In effect)	<ul style="list-style-type: none"><li>• Companies can raise up to \$1 million in a 12-month period.</li><li>• Securities are exempt from registration with the SEC (but certain disclosures must be filed with the SEC).</li><li>• Investors can invest small amounts based on their income.</li></ul>	Private right of action similar to Securities Act of 1933 Section 12 liability. <ul style="list-style-type: none"><li>• Allegations of fraud (Rule 10b-5 actions).</li><li>• Illiquid shares that are difficult to value may trigger shareholder disputes.</li></ul>
<b>TITLE IV</b> <b>Small Company Capital Formation</b> (“Regulation A+ offerings,” or “mini-IPOs”)  (In effect)	<ul style="list-style-type: none"><li>• Companies can raise up to \$50 million in a 12-month period without registering securities with the SEC.</li><li>• Securities are exempt from registration with the SEC (but certain disclosures must be filed with the SEC).</li><li>• Investors can invest small amounts based on their income.</li></ul>	Section 12 liability. <ul style="list-style-type: none"><li>• Misrepresentations or omissions in offering disclosures or in subsequent periodic reports.</li><li>• Allegations of fraud (Rule 10b-5 actions).</li></ul>

## Should Your Company Be Concerned About the JOBS Act?

Your company may need to be concerned about potential exposures created by the JOBS Act if it can answer “yes” to any of the following questions.

### Is the company contemplating:

- A private placement offering under Title II of the JOBS Act?
- If “yes,” will the company use any methods of general solicitation or advertising in connection with the offering?
- A crowdfunding offer under Title III of the JOBS Act?
- A “Regulation A” offering under Title IV of the JOBS Act?
- Any other kind of offering?

## Chubb’s Response

Chubb, an industry leader in directors and officers (D&O) liability insurance, addresses the new D&O liability exposures resulting from the JOBS Act in a new **JOBS Act Endorsement**.

Intended for private companies, community banks, insurance companies and health care organizations, the endorsement insures securities offerings created pursuant to Titles II, III and IV\* of the JOBS Act through our ForeFront Directors & Officers and Entity Liability Insurance policies, which include:

- ForeFront Portfolio 3.0
- ForeFront Portfolio 3.0 for Health Care Organizations
- ForeFront for Community Banks
- ForeFront for Insurance Companies

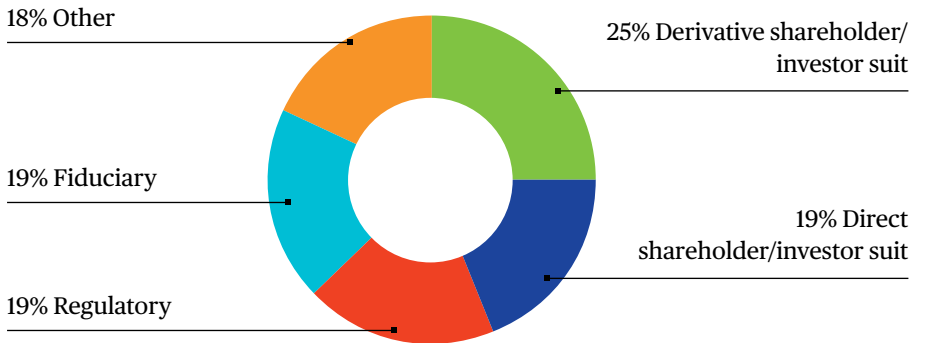
\* A \$250,000 sublimit applies to Title IV offerings. Coverage is available where permitted by states.

### Learn More

Go to [www.chubb.com](http://www.chubb.com) or call your agent or broker.

## Facts Your Company Should Know About D&O Lawsuits:

The most common D&O claims against **private companies** in the past 10 years:



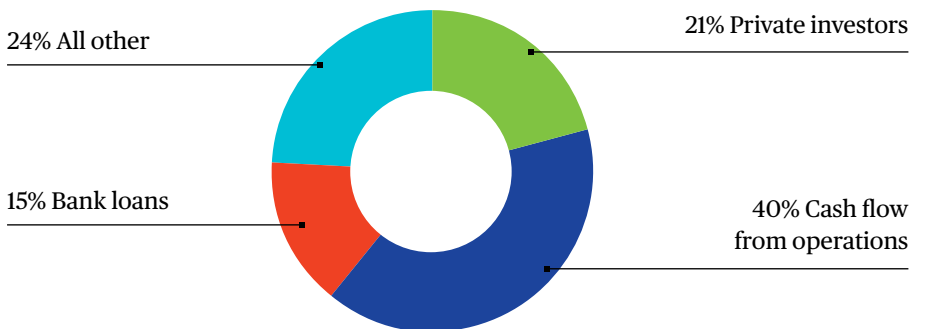
Source: Towers Watson (2012)

## In the past 10 years, D&O lawsuits against private companies occurred nearly as often as suits against public companies:



Source: Towers Watson (2013)

The most common Sources of Funding for Private Companies, according a survey of their CEOs, are:



Source: KPMG (2013)

Chubb. Insured.<sup>SM</sup>