HAS THE JOBS ACT OF 2012 HELPED START-UPS?
Chair: Marc Paul, Partner, Baker McKenzie LLP

Panelists:
- *David R. Knop, Executive Director, Process Development, Applied Genetic Technologies Corporation*
- *Kevin Laws, CEO, AngelList*
- *Martha Legg Miller, Advocate for Small Business Capital Formation, U.S. Securities and Exchange Commission*
- *Michael Piwowar, Executive Director, Milken Institute Center for Financial Markets; Former Commissioner, U.S. Securities and Exchange Commission*

The Jumpstart Our Business Startups (JOBS) Act of 2012 created unprecedented opportunities for small businesses to raise capital. Among other things, the act lifted the ban on general solicitation, enabled equity crowdfunding and increased limits on the shareholders of record in private companies. Yet we know little about whether these changes have resulted in job creation, innovation and increased entrepreneurship. Additionally, what changes could be made to the JOBS Act that would augment its effectiveness?

Marc Paul led off the discussion by giving an overview of the provisions of the JOBS Act of 2012 and how later revisions address some of the shortcomings of the initial act. Now, $1.07 million can be raised through equity crowdfunding every 12 months, general solicitation can occur through TV, the internet and other means, and emerging growth companies (EGCs) have relaxed requirements for IPOs, such as no longer having to provide auditor attestation under Sarbanes Oxley (SOX).

Greg Weaver gave a clear example of how the changes in the JOBS Act influenced his company, Eloxx Pharmaceuticals. He explained that most biotech companies are pre-revenue, and thus must raise significant capital in order to develop drugs over a 10-15 year period. The exemption from SOX 404(b) auditor attestation requirements enabled Eloxx to save approximately $800,000 a year in compliance costs. Weaver explained that since biotech EGCs increase employment by 178% during the five years after an IPO on average, the smaller regulatory burden created by the JOBS Act resulted in a large boon for job growth.

Kevin Laws, CEO of AngelList, experienced benefits from the JOBS Act in a different way. Before the JOBS Act, companies were not allowed to conduct general solicitation, so AngelList was created to bring investors to companies directly. Yet in order to operate at a profit and grow to reach more entrepreneurs, AngelList would have had to be registered with the Financial Industry Regulatory Authority (FINRA), a burdensome requirement. Combining the online platform rule 201(c) with a No Action letter from the Securities and Exchange Commission enabled AngelList to operate as a venture capital firm and write much larger checks to entrepreneurs. AngelList now has more than $1.8 billion under management and reached over 1,500 startups in 2019, indicating that the reduced regulation has made a big impact on funding early stage startups.

However, Laws believes that the JOBS Act still needs further revisions. “One of the things I want to see changed is to allow more secondary options for early angel investors.” Successful angel investors still have their capital locked up for decades. Since 50% of their investors’ returns go back into new startups, enabling more liquidity would result in further entrepreneurial investment.

While the regulatory changes that arose from the JOBS Act have made a direct impact on funding entrepreneurs, Michael Piwowar, former SEC commissioner, explained that the act resulted in another type of impact: refocusing the SEC on enabling the capital formation process. The mission of the SEC is to protect investors, regulate the market and promote a fair capital formation process.

Piwowar believes that the JOBS Act helped the SEC refocus on the capital formation part of the mission. The act made Congress “wake up” and see that a “cheerleader within the SEC was needed to promote this mission.” The result was the creation of the position of Advocate for Small Business Capital Formation, currently held by panelist Martha Legg Miller. In a nod to his fellow panelist, Piwowar said, “So, in terms of ‘What are some of the positive outcomes of the jobs act?’ Well, she is sitting right there.”

While appreciative of the introduction, Legg Miller shared that she was aware of hesitation that small businesses might feel when thinking of the SEC working to promote capital formation. She cited a quote from Ronald Regan, saying, “The most terrifying words in the English language are ‘I'm from the government and I'm here to help.’”

Despite reservations, Legg Miller explained that her office tries to help “small” businesses – startups to small public companies and everything in between. She and her colleagues reach out to businesses that wouldn’t otherwise be heard from in Washington. Legg Miller shared that, while the JOBS Act has enabled crowdfunding through Regulation CF, the most common private placement still occurs through Rule 506(b).

Legg Miller said that the SEC is working to help smaller businesses for many reasons, not the least of which is the changing nature of publicly traded companies. The number of traded companies has dropped over time, from 8,090 in 1996 to 4,397 in 2018. Yet the market cap of these companies has grown, from roughly $5 trillion in 1996 to more than $30 trillion in 2018. So, fewer companies are publicly traded, but they are much larger on average.

After each panelist was given a chance to share, the question was raised to the group: How has the JOBS Act of 2012 influenced job creation? Piwowar acknowledged that we are still missing data on this. He encouraged academics to research the question in order to inform policymakers of the efficacy of this significant piece of legislation.