



Written by [Bob Adelman](#) on May 28, 2012

## **JOBS Act Is Starting to Work**

ClearSign Combustion in Seattle, Washington, is [one of the first](#) small “early-stage” companies to raise public capital under the JOBS Act enacted in early April. The company’s core expertise is in using computer technology to make boilers, furnaces, turbines, and other combustion systems more efficient. It sold three million shares at \$4 each, raising \$12 million in the process. After expenses and underwriters’ fees, the company expects to net about \$9.5 million. But without the JOBS Act it might not even have bothered.



Allowed to avoid temporarily some of the Sarbanes-Oxley Act’s more draconian reporting requirements — e.g., providing two years’ worth of financials instead of five, and avoiding other reporting requirements that cost public companies more than \$1 million a year to complete — ClearSign offered its shares through the “cloud,” making it easier for the small investor to climb aboard. The company plans to use \$5 million of the IPO proceeds for research and development and related capital expenditures, another \$1 million to secure patents on its unique computer technology, \$1.25 million for marketing purposes, and the balance for working capital.

While far from insuring the company’s success, the insertion of this capital into ClearSign at this time breathes new life into a company that was on the verge of disappearing altogether. At the end of 2010 the company had just \$25.00 in its corporate checking account. It was able to raise \$3 million through a private offering last year, but that wasn’t enough to push the company into profitability.

But when investors were informed about the company’s prospects through the offering memoranda that the new rules allowed, the initial offering was oversubscribed and the stock price soared to \$10 per share just a few days after the offering was completed.

SolarCity is [another small start-up company](#) that announced it is taking advantage of the reduced restrictions under the JOBS Act. Under the act’s rules, SolarCity will be allowed to go on a “road show” (including using the Internet) to offer its shares to the public. It will avoid the onerous costs of preparing a 150-page prospectus and will instead provide the essential information most investors demand three weeks before the offering date. It is free to withdraw its IPO if its “road show” fails to generate sufficient interest without generating negative publicity. If it moves ahead with its offering, it won’t have to register with the Securities and Exchange Commission’s requirements for five years, unless it reaches \$1 billion in annual revenues, exceeds 1,000 shareholders, or reaches a market valuation of \$700 million before then.

BlackStratus is going through [the same process](#): testing the water for its initial public offering of up to \$20 million of its stock.

While it may not be subject to the same disclosure requirements that were demanded prior to passage of the JOBS Act, the company will still have to disclose enough of its financial situation to inform potential investors of the risks involved. Its revenues fell from \$11.8 million in 2010 to \$9.2 million last



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year, but its net loss shrank from \$3.5 in 2010 to a loss of \$2.7 million last year.

When the JOBS Act was passed by Congress and signed into law by the President earlier this year, expectations were muted. House Minority Leader Nancy Pelosi, who voted for the bill, said “It’s so meager...[it’s a] jobs bill lite.” Senator Pat Toomey (R-Pa.) opined: “Small- and medium-sized businesses will have greater access to privately raised capital and greater opportunities for growth.”

The potential for job growth through relaxing IPO rules was first promoted by the President’s Job Council. In its [interim report](#) issued last October the council said: “Well-intentioned regulations aimed at protecting the public from the misrepresentations of a small number of large companies have unintentionally placed significant burdens on the large number of small companies.” It added:

As a result, fewer high-growth entrepreneurial companies are going public....

This hurts job creation, as the data clearly shows that job creation accelerates when companies go public.

John Berlau, a Senior Fellow at the Competitive Enterprise Institute, [said](#) that “the great virtue of the JOBS Act is more investor freedom. Fraud will still be vigorously prosecuted under federal and state law, but investors will be more able to choose the level of risk they wish to assume.”

Unspoken is the real reason that regulations in general fail to protect the investing public: They remove much incentive for investors to do their own homework before investing, perceiving that the government is already protecting them from fraud and deceit. Now, with the JOBS Act those investors know that they are much more on their own and must do their own investigating before investing. It’s called “caveat emptor” — let the buyer beware. The JOBS Act is now allowing those investors to provide much needed capital to small companies that wouldn’t otherwise be available to them. In other words, the act is now allowing the capitalist system to work better.



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