

# Executive Pay Disclosure Trends of Emerging Growth Companies

In recognition of the one-year anniversary of the Jumpstart Our Business Startups (“JOBS”) Act in April, Compensia has examined the executive compensation disclosures of nearly 50 technology and life sciences companies that were eligible to take advantage of the streamlined compliance requirements of the JOBS Act for “emerging growth companies” during 2012 to determine the level of disclosure they provided about their executive compensation programs.

This Thoughtful Pay Alert summarizes our findings, based on our review of these companies’ federal securities law filings (specifically, their registration statements on Form S-1 filed in connection with their initial public offerings of securities (“IPOs”) and their definitive proxy statements filed in connection with their initial annual meetings of shareholders). We plan to update this article later in the

year to report our findings as additional emerging growth companies conduct their annual meetings of shareholders.

## Emerging Growth Companies

To stimulate the initial public offering of equity securities by privately-held companies, the JOBS Act created a new category of issuer – the “emerging growth company” (that is, a company with annual gross revenue of less than \$1 billion (adjusted for inflation every five years)) – and provided incentives for these companies to “go public” by:

- permitting them to file their offering documents with the SEC confidentially;
- allowing them to communicate with certain prospective investors and other parties while still in registration;

## Three Things That Technology and Life Sciences Companies Should Know About the Executive Compensation Disclosure Practices of Emerging Growth Companies

- 1. Most Companies are Taking Advantage of the Streamlined Executive Compensation Disclosure Requirements in Their IPO Registration Statements.** Virtually all of the technology and life sciences companies that filed their IPO registration statements after the JOBS Act was enacted in April 2012 relied on the streamlined disclosure requirements available to emerging growth companies to present information about their executive compensation programs in these documents. Companies that didn’t take advantage of this reduced disclosure opportunity in 2012 either saw their IPOs go effective before the JOBS Act was signed into law or filed their initial registration statements before that date; thereby making it impractical to scale back their executive compensation disclosure.
- 2. Most Companies are Taking Advantage of the Streamlined Executive Compensation Disclosure Requirements in Their Annual Meeting Proxy Statements.** Most of the technology and life sciences companies that filed proxy statements after the JOBS Act was enacted in April 2012 relied on the streamlined disclosure requirements available to emerging growth companies to present information about their executive compensation programs in these documents, including fully half of the companies that filed their IPO registration statements before the JOBS Act became law.
- 3. Most Emerging Growth Companies are Not Conducting Say-on-Pay Votes at Their Initial Annual Meeting of Shareholders.** Only approximately 24% of the technology and life sciences companies that qualified as emerging growth companies have conducted or are conducting Say-on-Pay votes at their initial Annual Meeting of Shareholders; and all but one of these companies provided full Item 402 disclosure in their definitive proxy statements.

## Executive Pay Disclosure Trends of Emerging Growth Companies (continued)

- exempting them from certain financial disclosure requirements, and permitting them to phase in the requirement that their auditors provide an attestation report on internal controls; and
- allowing them to disclose information about their executive compensation program on an abbreviated basis.

### Executive Compensation Disclosure Requirements

As provided by the JOBS Act, an emerging growth company is permitted to comply with the executive compensation disclosure requirements of the federal securities laws (as set out in Item 402 of Regulation S-K) by disclosing the same information as a “smaller reporting company” (that is, a company with a common equity “public float” of less than \$75 million or, if unable to calculate its public float, annual revenue of \$50 million or less).

### IPO Registration Statements

In its IPO registration statement, an emerging growth company need only provide the following information about its executive compensation program:

- A Summary Compensation Table (but covering only three (rather than five) named executive officers (including the Chief Executive Officer, but not necessarily the Chief Financial Officer) and limited to two (rather than three) fiscal years' information);
- An Outstanding Equity Awards at Fiscal Year-End Table; and
- A Director Compensation Table.

Significantly, an emerging growth company is not required to prepare a Compensation Discussion and Analysis, nor is it required to provide four of the six tabular disclosures otherwise required of regular issuers. Finally, it need not prepare the disclosure about potential payments upon a termination of employment or a change in control of the company.

### Annual Meeting Proxy Statements

Once an emerging growth company has become a public reporting company, it is eligible for the following relaxed disclosure and governance requirements with respect to executive compensation matters:

- It is permitted to comply with the executive compensation disclosure requirements of the federal securities laws by disclosing the same information as a “smaller reporting company” (as described above);
- It is exempt from the shareholder advisory vote requirements of Section 14A of the Exchange Act for a minimum of three years (that is, the shareholder advisory vote on executive compensation (“Say-on-Pay”), the shareholder advisory vote on the frequency of future Say-on-Pay votes, and the shareholder advisory vote on “golden parachute” compensation); and
- It is exempt from the “pay for performance” and “CEO-employee pay ratio” disclosures requirements of Section 953 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (when the SEC eventually adopts rules implementing each of these provisions).

The JOBS Act provides that an Emerging Growth Company may elect not to take advantage of one or more of the relaxed disclosure requirements. In other words, such a company may opt to provide full executive compensation disclosure in the proxy materials for its annual meeting of shareholders, while still taking advantage of the exemption from conducting a Say-on-Pay vote.

### Companies Reviewed

As of April 30, 2013, we had examined the federal securities law filings of 49 technology and life sciences companies that had not previously sold securities to the public pursuant to a registered offering before December 8, 2011 and, thus, qualified as emerging growth companies that were eligible to take advantage of the streamlined executive compensation disclosure requirements of the JOBS Act. (The identities of these companies, 36 of which were technology companies and 13 of which were life sciences companies, are set out in Exhibit A to this Thoughtful Pay Alert.)

### Executive Compensation Disclosure in IPO Registration Statements

Of the 49 companies examined, 32 (63.3%) provided full Item 402 executive compensation disclosure in their IPO registration statements. Given that the JOBS Act was not signed into law until April 5, 2012 – more than three months into the year, however, these numbers are somewhat misleading.

**Executive Pay Disclosure Trends of Emerging Growth Companies (continued)**

**Companies with Pre-JOBS Act IPOs**

Fully 18 of these 32 companies saw their IPOs become effective before the JOBS Act became law. (The only company that had its IPO declared effective before April 5, 2013 that used streamlined executive compensation disclosure in its IPO registration statement (Cempra, Inc.) was a smaller reporting company at the time of its IPO and, thus, already eligible to take advantage of the streamlined executive compensation disclosure requirements.)

Interestingly, of the five of these 18 companies that conducted a follow-on offering of their securities in 2012, two (ExactTarget, Inc. and Millennial Media, Inc.) scaled back their executive compensation disclosure in their subsequent registration statements.

**Companies with Post-JOBS Act IPOs**

Of the companies that went public after the JOBS Act became law, 16 of 30 companies (53.3%) took advantage of the streamlined executive compensation disclosure requirements available to emerging growth companies. Perhaps more importantly, however, of the 14 companies that provided full Item 402 executive compensation disclosure, 13 had filed their initial IPO registration statement prior to the enactment of the JOBS Act. Consequently, it was not practical, from either a legal or an investor relationships perspective, to modify their executive compensation disclosure to take advantage of the streamlined disclosure requirements. Only one company, Trulia, Inc., which filed

its initial IPO registration statement on August 17, 2013, provided the full Item 402 executive compensation disclosure in this document.

Of the eight of these 14 companies that conducted a follow-on offering of their securities since their IPO, three (Durata Therapeutics, Inc., Infoblox, Inc., and Tesaro, Inc.) scaled back their executive compensation disclosure in their subsequent registration statements.

**Disclaiming CD&A Status**

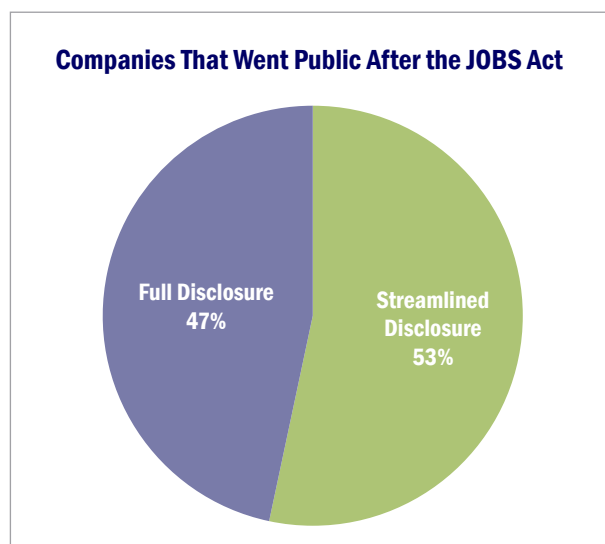
While almost every company that provided streamlined executive compensation disclosure also provided some narrative discussion of its executive compensation process, virtually none of these discussions would be mistaken for a Compensation Discussion and Analysis. Interestingly, Tesaro, which provided a “Compensation Review” at the beginning of its executive compensation disclosure, went out of its way to make clear that this disclosure did not constitute a CD&A:

In reviewing this Compensation Review, please note that we are an emerging growth company and under the JOBS Act are not required to provide a “Compensation Discussion and Analysis” of the type required by Item 402 of Regulation S-K. This Compensation Review is intended to supplement the SEC-required disclosure, which is included below this section, and it is not a Compensation Discussion and Analysis.

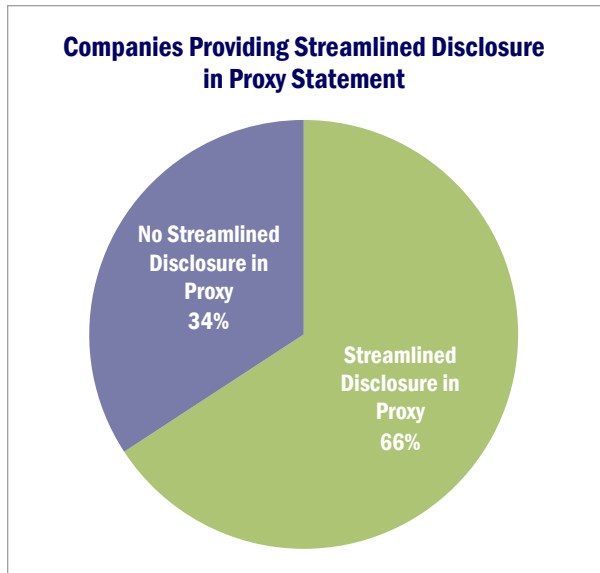
**Executive Compensation Disclosure in Proxy Statements**

Of the companies examined, 38 filed proxy statements for their 2012 or 2013 Annual Meeting of Shareholders. (Two companies, Eloqua, Inc. and KAYAK Software Corporation, were acquired following their IPOs and, thus, were excluded from this aspect of our review.) Overall, of these companies, 25 (65.8%) provided streamlined executive compensation disclosure in their proxy statements.

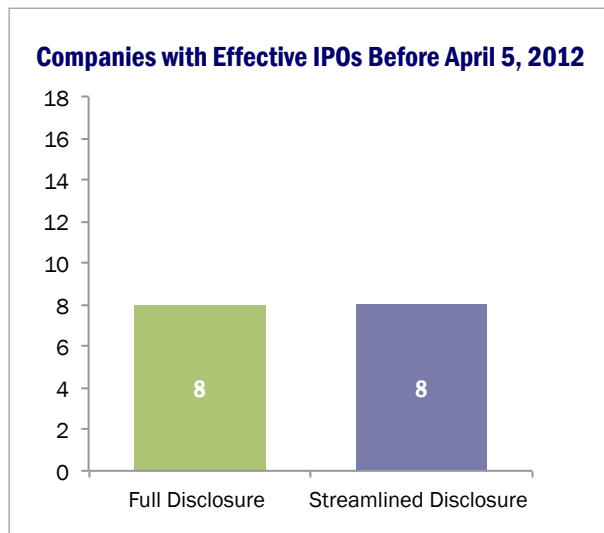
Looking more closely at when each company went public, the numbers are a bit more revealing. Of the 18 companies that saw their IPOs become effective before the JOBS Act became law, 16 had filed definitive proxy statements as of the date of this Thoughtful Pay Alert. Only eight of these companies (50%) provided full Item 402 executive compensation disclosure in their proxy statements; the



**Executive Pay Disclosure Trends of Emerging Growth Companies (continued)**

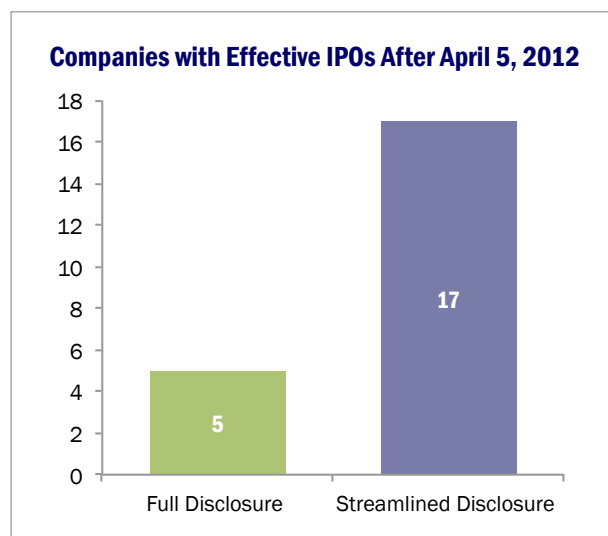


other eight provided the streamlined disclosure permitted of emerging growth companies.



Of the 22 companies that saw their IPOs become effective after the JOBS Act became law and had filed definitive proxy statements as of the date of this Thoughtful Pay Alert, 17 (77.3%) took advantage of the streamlined disclosure available to emerging growth companies. Only five companies provided full Item 402 executive compensation disclosure; and, of these companies, four had filed their IPO

registration statements containing full Item 402 disclosure. Thus, to be consistent, they decided to continue providing full Item 402 disclosure. Trulia, Inc., which saw its IPO become effective in September 2012 also provided full Item 402 executive compensation disclosure in the definitive proxy statement for its upcoming Annual Meeting of Stockholders in June 2013.



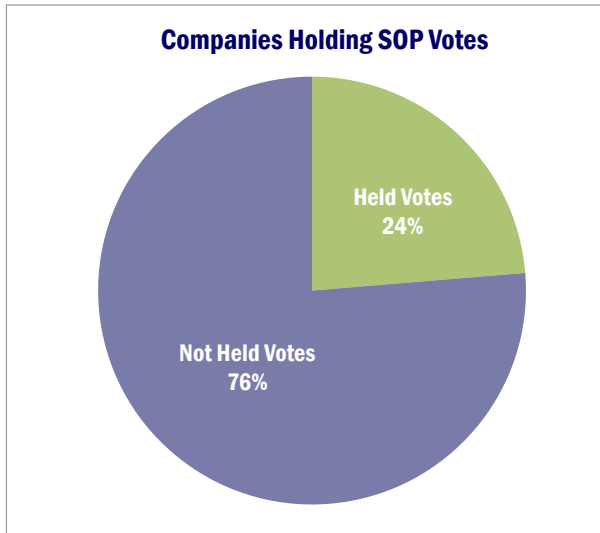
It should be noted that, although not required, several companies provided supplemental narrative information to accompany the required compensation tables and narrative disclosure. This disclosure ranged from a simple description of the role of the board compensation committee and how executive pay decisions were made (see the CafePress, Inc. definitive proxy statement filed March 19, 2013) to a “quasi-Compensation Discussion and Analysis” (see the Audience, Inc. definitive proxy statement filed April 24, 2013).

**Conducting Shareholder Advisory Vote on Executive Compensation at Annual Meeting**

In addition to providing streamlined executive compensation disclosure, emerging growth companies are not required to conduct a shareholder advisory vote on executive compensation (a “Say-on-Pay” vote) at their annual meeting of shareholders. Of the 38 companies that have filed proxy statements for their 2012 or 2013 annual meet-

**Executive Pay Disclosure Trends of Emerging Growth Companies (continued)**

ing of shareholders, 9 (23.6%) are conducting (or have conducted) a Say-on-Pay vote.



sation Overview” preceding the required compensation tables and the supporting statement accompanying its Say-on-Pay proposal, the company has provided much of the information that would be found in a Compensation Discussion and Analysis.

**Need Assistance?**

Compensia has extensive experience in helping companies draft the executive compensation disclosure in the proxy materials for their annual meetings of shareholders and analyze the potential impact on the disclosure requirements for emerging growth companies. If you would like assistance in preparing your executive compensation disclosure, or if you have any questions on the subjects addressed in this Thoughtful Pay Alert, please feel free to contact Mark A. Borges. ■

Of these nine companies, only one (Globus Medical, Inc.) hasn’t provided full Item 402 executive compensation disclosure in its IPO registration statement and definitive proxy statement. And, even here, between the “Compen-

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Compensia, Inc. is a management consulting firm that provides executive compensation advisory services to Compensation Committees and senior management.

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**Executive Pay Disclosure Trends of Emerging Growth Companies (continued)**

**Exhibit A**  
**Technology and Life Sciences: Emerging Growth Companies**

Ambarella, Inc.	KYThERA BioPharmaceuticals, Inc.
Audience, Inc.	LifeLock, Inc.
Bazaarvoice, Inc.	M/A-Com Technology Solutions Holdings, Inc.
Brightcove, Inc.	Merrimack Pharmaceuticals, Inc.
CafePress, Inc.	Millennial Media, Inc.
Cempra, Inc.	Palo Alto Networks, Inc.
ChemoCentryx, Inc.	Peregrine Semiconductor Corporation
Clearsign Combustion Corporation	Performant Financial Corporation
Demandware, Inc.	Proofpoint, Inc.
Durata Therapeutics, Inc.	Qualys, Inc.
E2open, Inc.	Regulus Therapeutics, Inc.
Eloqua, Inc.	Wireless, Inc.
Enphase Energy, Inc.	ServiceNow, Inc.
Envivio, Inc.	Shutterstock, Inc.
EPAM Systems, Inc.	SolarCity, Inc.
Exa Corporation	Splunk, Inc.
ExactTarget, Inc.	Supernus Pharmaceuticals, Inc.
Globus Medical, Inc.	Synacor, Inc.
Greenway Medical Technologies, Inc.	Tesaro, Inc.
Guidewire Software, Inc.	Trulia, Inc.
Hyperion Therapeutics, Inc.	Verastem, Inc.
Infoblox, Inc.	Vocera Communications, Inc.
Intercept Pharmaceuticals, Inc.	Workday, Inc.
Jive Software, Inc.	Yelp, Inc.
KAYAK Software Corporation	