

# FAST Act Makes Changes to the JOBS Act and SEC Disclosure Requirements

**December 8, 2015** — On December 4, 2015, President Obama signed the FAST Act<sup>1</sup> into law. Among its many provisions, the Act amends the JOBS Act<sup>2</sup> and certain SEC disclosure requirements. It also establishes a new statutory exemption for private resales of securities.

The [text](#) of the FAST Act is available on the Transportation and Infrastructure Committee's Web site. Some of the Act's key provisions are summarized below.

## JOBS Act Changes for Initial Public Offerings of Emerging Growth Companies

Among its changes related to initial public offerings (IPOs) and emerging growth companies (EGCs), the FAST Act:

- Reduces from 21 to 15 the number of calendar days before EGCs can commence a roadshow after publicly filing a registration statement with the SEC. This provision is effective immediately.
- Provides a grace period during which an EGC can continue to receive EGC treatment for certain purposes if it loses its EGC status during the SEC review process. The grace period ends on the earlier of (1) the consummation of the issuer's IPO under the relevant registration statement or (2) one year after the issuer ceased to be an EGC. This provision is effective immediately.
- Permits EGCs to omit financial information from registration statements on Form S-1 or Form F-1 filed before an IPO (or confidentially submitted to the SEC for review) for historical periods required by Regulation S-X if the EGC reasonably believes that these historical periods will not be required to be included at the time of the contemplated offering. This provision is intended to apply in situations in which the SEC review process is likely to extend through a financial statement staleness date. Before the EGC distributes the preliminary prospectus to investors, the registration statement must be amended, if necessary, to include all financial information required by Regulation S-X as of the date of that amendment. The SEC has 30 days from the enactment date to promulgate rules effecting this change. However, issuers may omit such financial information starting on the 31st day after enactment.

## Form 10-K and Regulation S-K Disclosure Changes

The FAST Act amends certain disclosure requirements related to Form 10-K and Regulation S-K. For example, the Act:

- Allows all issuers to submit a summary page on Form 10-K if each item on the summary page contains a cross-reference (which can be in the form of a hyperlink) to the material in the 10-K. The SEC has 180 days from enactment to implement this provision.

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<sup>1</sup> Fixing America's Surface Transportation Act.

<sup>2</sup> Jumpstart Our Business Startups Act.

- Directs the SEC to simplify Regulation S-K and eliminate duplicative, overlapping, or otherwise unnecessary requirements for all issuers. The SEC has 180 days from enactment to implement this provision.
- Requires the SEC to study the requirements of Regulation S-K, report to Congress, and commence rulemaking on ways to (1) modernize and simplify Regulation S-K in a manner that reduces all costs and burdens on issuers, (2) emphasize a company-by-company approach that eliminates boilerplate language and static requirements, and (3) evaluate methods of information delivery and presentation that discourage repetition and the disclosure of immaterial information. The SEC has 360 days from enactment to submit the study findings and suggestions to Congress.

### **New Section 4(a)(7) Exemption for Private Resales**

Private placement resales by persons other than the issuer, such as holders of restricted securities or affiliates of the issuer, were not eligible for Section 4(a)(2) of the Securities Act of 1933 or Regulation D, which exempt private placements by issuers. New Section 4(a)(7) of the Securities Act of 1933 provides a statutory exemption for private resales of restricted and control securities under certain conditions. Securities acquired in reliance on Section 4(a)(7) will be subject to transfer restrictions and covered securities will be exempt from certain “blue sky” laws. This provision is effective immediately.

### **Incorporation by Reference for Smaller Reporting Companies**

The FAST Act allows smaller reporting companies (entities that, as of the last business day of their second fiscal quarter, have a public float of less than \$75 million) to automatically update information in a Form S-1 resale prospectus by incorporating by reference any documents filed with the SEC after the Form S-1 registration statement becomes effective. This method of updating information was previously available only to Form S-3 filers. The SEC has 45 days from enactment to implement this provision.

### **Amendment to Registration Thresholds Applicable to Savings and Loan Holding Companies**

The FAST Act expands Section 12(g)(1)(B) of the Securities Exchange Act of 1934 to include “savings and loan holding companies” (as defined in Section 10 of the Home Owners’ Loan Act), effectively (1) raising the threshold for mandatory SEC registration of savings and loan companies from 500 shareholders of record to 2,000 shareholders of record (with no limitation on the number of nonaccredited investors) and (2) raising the threshold for a savings and loan company to terminate its registration from 300 to 1,200 shareholders of record. This provision is effective immediately.

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