

SEC Issues and Requests Comments on Interim Final Rules Implementing Certain FAST Act Provisions

January 15, 2016 — The SEC recently issued [interim final rules and form amendments](#)¹ to implement certain provisions of the Fixing America's Surface Transportation (FAST) Act.² The rules and amendments will be effective upon publication in the *Federal Register*. The SEC is requesting comments on any aspects of the interim final rules, including whether those rules should be extended to other registrants or forms. Comments are due 30 days after the date of publication of the rules in the *Federal Register*.

The amendments:

- Revise Form S-1 and Form F-1 to allow an emerging growth company (EGC)³ to omit financial information from registration statements on Form S-1 or Form F-1 filed before an initial public offering (or confidentially submitted to the SEC for review) for historical periods required by Regulation S-X if the EGC reasonably believes that it will not be required to include these historical periods at the time of the contemplated offering. Before the EGC distributes a preliminary prospectus to investors, however, it must amend the registration statement, if necessary, to include all financial information required by Regulation S-X as of the date of that amendment.
- Revise Form S-1 and amend Regulation S-K to permit a smaller reporting company (SRC)⁴ “to incorporate by reference into its registration statement any documents filed by the issuer subsequent to the effective date of the registration statement.” To do so, an SRC will need to satisfy existing eligibility requirements for historical incorporation by reference on Form S-1. For example, it must be current in filing (1) its annual report for the most recently completed fiscal year and (2) all reports and materials required to have been filed under the Securities Exchange Act of 1934 (the “Exchange Act”) during the 12 months immediately preceding the Form S-1 filing. In addition, any incorporated Exchange Act reports and other materials must be readily available and accessible on the SRC's Web site and the SRC must also disclose in its prospectus that such materials will be provided upon request.

¹ SEC Interim Final Temporary Rule Release No. 33-1003, *Simplification of Disclosure Requirements for Emerging Growth Companies and Forward Incorporation by Reference on Form S-1 for Smaller Reporting Companies*.

² The rules and amendments implement Sections 71003 and 84001 of the FAST Act.

³ The Securities Act of 1933 (the “Securities Act”) defines an EGC as an issuer with less than \$1 billion in total annual gross revenues during its most recently completed fiscal year.

⁴ The Securities Act defines a “smaller reporting company” as an issuer that had a public float of less than \$75 million as of the last business day of its most recently completed second fiscal quarter or had annual revenues of less than \$50 million during the most recently completed fiscal year for which audited financial statements are available.

For more information about the FAST Act's effects on securities laws and regulations, see Deloitte's December 8, 2015, [journal entry](#). Also, the SEC staff recently issued compliance and disclosure interpretations related to the FAST Act. See our [January 12, 2016](#), and [December 18, 2015](#), journal entries for more information.

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