

Memorandum

JOBS Act 2.0 – Provisions of the FAST Act Facilitate Initial Public Offerings by Emerging Growth Companies

Division of Corporation Finance of SEC Issues Interpretive Guidance

December 11, 2015

On December 4, 2015, President Obama signed into law the Fixing America's Surface Transportation Act (the "FAST Act"). While unrelated to transportation, certain provisions of the FAST Act build on the Jumpstart Our Businesses Startups Act (the "JOBS Act") enacted in 2012 to further enhance access to the IPO market by emerging growth companies ("EGCs").¹

Reduction in Required Time Period Between Public Filing and Roadshow

The FAST Act reduces from 21 to 15 the number of days prior to a roadshow that an EGC must publicly file its registration statement with the Securities and Exchange Commission. This change became effective upon the signing of the FAST Act by President Obama on December 4, 2015.

Grace Period for Loss of EGC Status During IPO Process

The FAST Act establishes a grace period for companies that lose their EGC status during the IPO process. If a company was an EGC at the time that its registration statement was first submitted to the SEC for review (whether through confidential submission or public filing), but thereafter ceases to be an EGC, it will still be treated as an EGC for the purposes of the IPO process through the earlier of (1) the date the it consummates its IPO and (2) one year after it has lost its EGC status. While the FAST Act only expressly amends the statutory provision relating to confidential submission, we are optimistic that the SEC will permit companies that use the grace period to also continue to take advantage of the special disclosure rules for EGCs. This change also became effective upon the signing of the FAST Act by President Obama on December 4, 2015.

¹ An EGC is generally defined to be an issuer with total annual gross revenues of less than \$1 billion during its most recently completed fiscal year.

Omission of Financial Information That Will Roll Off Prior to Circulation of Preliminary Prospectus

The FAST Act permits an EGC that files a registration statement (or submits a registration statement for confidential review) on Form S-1 or Form F-1 to omit financial information for historical periods otherwise required under Regulation S-X if (1) the omitted financial information relates to a historical period that the issuer reasonably believes will not be required to be included in its registration statement at the time of the contemplated offering and (2) prior to the distribution of a preliminary prospectus to investors, the registration statement is amended to include all financial information required by Regulation S-X at the time of the amendment.

On December 10, 2015 the Division of Corporation Finance of the SEC issued interpretive guidance confirming that this provision permits an EGC to omit not only an earlier year of its own audited annual financial statements from filings or submissions where the requirement to include such year will roll off before the circulation of the preliminary prospectus, but also financial statements of other entities (such as acquired businesses) if it reasonably believes that those financial statements will not be required at the time of the offering. The guidance also clarifies that an EGC may not omit financial statements for an interim period that will be included within required financial statements for a longer interim or annual period at the time of the offering, even though the shorter period will not be presented separately at that time. At the same time that it issued this interpretive guidance, the Division of Corporation Finance also announced that it will not object if EGCs apply this provision immediately notwithstanding that the FAST Act provision by its terms is effective only beginning 30 days following enactment.

The applicable text of the FAST Act can be accessed by [clicking here](#). The Division of Corporation Finance's interpretive guidance can be accessed by [clicking here](#).

Please contact any of the members of our Capital Markets group for more information.

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