

FAST Relief from Some Securities Law Requirements

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The Fixing America's Surface Transportation Act (FAST Act), which became law in December 2015, contained important federal securities law changes.

- Among other changes, it further reduced the burdens on emerging growth companies, as defined in the Jumpstart Our Business Startup Act of 2012 (EGCs), in conducting initial public offerings. As to such offerings, the FAST Act:
- Reduces the required waiting period between the public filing of the offering with the SEC and the commencement of any "road shows," or, if no road show, the pre-effectiveness filing period, from 21 to 15 days;
- Enables an issuer that qualified as an EGC at the commencement of the offering process to maintain that status for up to an additional year even though the issuer may subsequently during that process exceed the \$1 billion maximum revenue threshold for EGCs; and

Subject to specified conditions, it obviates the need for EGCs to file historical financial information for periods that would not be required to be included in the definitive prospectus as of the expected time of the offering.

The FAST Act also adds a new Section 4(a)(7) to the Securities Act of 1933 that could be viewed as codifying what has been referred to as the common law "Section 4(a)(1-1/2)" exemption. "Section 4(a)(1-1/2)" refers to the informal practice of relying on the Section 4(a)(2) private offering exemption for resales of securities by persons that have purchased them in private offerings, notwithstanding that the literal terms of Section 4(a)(2) apply only to offerings by the securities' issuer. To rely on Section 4(a)(7), several conditions must be carefully considered and satisfied. Nevertheless, in many cases Section 4(a)(7) will be a useful addition to the alternatives available for unregistered sales of securities by persons other than the issuer.

Other significant FAST Act provisions:

- Allows smaller reporting companies (SRCs) to incorporate by reference into Form S-1 their SEC filings made after the effective date of the Form S-1, a practice not previously permitted by SRCs and one that may prove useful for registered offerings by selling shareholders of SRCs;
- Directs the SEC, by June 1, 2016, to simplify and modify the disclosure requirements of Regulation S-K; and
- Amends Sections 12(g) and 15(d) of the Securities Exchange Act of 1934 to provide for savings and loan holding companies to be treated in a manner similar to bank holding companies for purposes of registration, termination of registration, or suspension of reporting requirements under that act.