U.S. Securities and Exchange Commission

Fixing America's Surface Transportation (FAST) Act

Updated: August 17, 2017

These Compliance and Disclosure Interpretations relate to the FAST Act, which affected various provisions of the federal securities laws. The bracketed date following each C&DI is the latest date of publication or revision. See also Division Announcement: Recently Enacted Transportation Law Includes a Number of Changes to the Federal Securities Laws (Dec. 10, 2015).

The Frequently Asked Questions of General Applicability on Title I of the JOBS Act and Frequently Asked Questions on Confidential Submission Process for Emerging Growth Companies have been updated to reflect enactment of the FAST Act.

Question 1

Question: What financial information may an Emerging Growth Company omit from its draft and publicly filed registration statements?

Answer: Under Section 71003 of the FAST Act, an Emerging Growth Company may omit from its filed registration statements annual and interim financial information that "relates to a historical period that the issuer reasonably believes will not be required to be included…at the time of the contemplated offering." Interim financial information that will be included in a longer historical period relates to that period. Accordingly, interim financial information that will be included in a historical period that the issuer reasonably believes will be required to be included at the time of the contemplated offering may not be omitted from its filed registration statements. However, under staff policy, an Emerging Growth Company may omit from its draft registration statements interim financial information that it reasonably believes it will not be required to present separately at the time of the contemplated offering.

For example, consider a calendar year-end Emerging Growth Company that submits a draft registration statement in November 2017 and reasonably believes it will commence its offering in April 2018 when annual financial information for 2017 will be required. This issuer may omit from its draft registration statements its 2015 annual financial information and interim financial information related to 2016 and 2017. Assuming that this issuer were to first publicly file in April 2018 when its annual information for 2017 is required, it would not need to separately prepare or present interim information for 2016 and 2017. If this issuer were to file publicly in January 2018, it may omit its 2015 annual financial information, but it must include its 2016 and 2017 interim financial information in that January filing because that interim information relates to historical periods that will be included at the time of the public offering. See also Question 101.05 for guidance related to registration statements submitted or filed by non-EGCs. [Aug. 17, 2017]

Question 2

Question: May an EGC issuer omit financial statements of other entities from its filing or submission if it reasonably believes that those financial statements will not be required at the time of the offering?

Answer: Yes.

Section 71003 of the FAST Act is not by its terms limited to financial statements of the issuer. Thus, the issuer could omit financial statements of, for example, an acquired business required by Rule 3-05 of Regulation S-X if the issuer reasonably believes those financial statements will not be required at the time of the offering. This situation could occur when an issuer updates its registration statement to include its 2015 annual financial statements prior to the offering and, after that update, the acquired business has been part of the issuer's financial statements for a sufficient amount of time to obviate the need for separate financial statements. See Section 2030.4 of the Division of Corporation Finance's Financial Reporting Manual. [Dec. 10, 2015]

Question 3

Question: How did the FAST Act affect Section 12(g) and Section 15(d) of the Exchange Act?

Answer: Section 85001 of the FAST Act amended Section 12(g) and Section 15(d) of the Exchange Act so that savings and loan holding companies are treated in a similar manner to bank holding companies for the purposes of registration, termination of registration or suspension of their Exchange Act reporting obligation. In particular, the FAST Act amends Section 12(g) and Section 15(d) of the Exchange Act as follows:

- Savings and loan holding companies, as such term is defined in Section 10 of the Home Owners' Loan Act, will have a Section 12(g) registration obligation as of any fiscal year-end after December 4, 2015 with respect to a class of equity security held of record by 2,000 or more persons.
- The holders of record threshold for Section 12(g) deregistration for savings and loan holding companies has been increased from 300 to 1,200 persons.
- The holders of record threshold for the suspension of reporting under Section 15(d) for savings and loan holding companies has been increased from 300 to 1,200 persons. [Dec. 21, 2015]

Question 4

Question: How do the amendments to Section 12(g)(1)(B) affect the obligations of savings and loan holding companies to register a class of equity security under Section 12(g) where such obligations were triggered as of a fiscal year-end on or before December 4, 2015?

Answer: Under Section 12(g)(1)(B), a savings and loan holding company will have a Section 12(g) registration obligation if, as of any fiscal year-end after December 4, 2015, it has total assets of more than $10 million and a class of equity security held of record by 2,000 or more persons. We consider that the effect of this provision is to eliminate, for savings and loan holding companies, any Section 12(g) registration obligation with respect to a class of equity security as of a fiscal year-end on or before December 4, 2015. Therefore, if a savings and loan holding company has filed an Exchange Act registration statement and the registration statement is not yet effective, then it may withdraw the registration statement. If a savings and loan holding company has registered a class of equity security under

Section 12(g), it would need to continue that registration unless it is eligible to deregister under Section 12(g) or current rules. [Dec. 21, 2015]

Question 5

Question: On or after December 4, 2015, how can a savings and loan holding company terminate the registration of a class of equity security under Section 12(g)?

Answer: If the class of equity security is held of record by less than 1,200 persons, the savings and loan holding company may file a Form 15 to terminate the Section 12(g) registration of that class. Until rule amendments are made to reflect the change to Section 12(g)(4), the savings and loan holding company should include an explanatory note in its Form 15 indicating that it is relying on Exchange Act Section 12(g)(4) to terminate its duty to file reports with respect to that class of equity security.

Pursuant to Section 12(g)(4), the Section 12(g) registration will be terminated 90 days after the savings and loan holding company files a Form 15. Until that date of termination, the savings and loan holding company is required to file all reports required by Exchange Act Sections 13(a), 14 and 16.

Alternatively, a savings and loan holding company could rely on Exchange Act Rule 12g-4, which permits the immediate suspension of Section 13(a) reporting obligations upon filing a Form 15, if it meets the requirements of that rule. Note that Rule 12g-4 has not yet been amended to incorporate the new 1,200 holder deregistration threshold. [Dec. 21, 2015]

Question 6

Question: On or after December 4, 2015, how can a savings and loan holding company suspend its reporting obligations under Section 15(d)?

Answer: In general, the Section 15(d) reporting obligation is suspended if, and for so long as, the issuer has a class of security registered under Section 12. When an issuer terminates Section 12 registration, it must address any Section 15(d) obligation that would apply once the Section 15(d) suspension is lifted.

For the current fiscal year, a savings and loan holding company can suspend its obligation to file reports under Section 15(d) with respect to a class of security that was sold pursuant to a Securities Act registration statement and that was held of record by less than 1,200 persons as of the first day of the current fiscal year. Such suspension would be deemed to have occurred as of the beginning of the fiscal year in accordance with Section 15(d) (as amended by the FAST Act). If, during the current fiscal year, a savings and loan holding company has a registration statement that becomes effective or is updated pursuant to Securities Act Section 10(a)(3), then it will have a Section 15(d) reporting obligation for the current fiscal year.

If a savings and loan holding company with a class of security held of record by less than 1,200 persons as of the first day of the current fiscal year has a registration statement that was updated during the current fiscal year pursuant to Securities Act Section 10(a)(3), but under which no sales have been made during the current fiscal year, the savings and loan holding company may suspend its Section 15(d) reporting obligation consistent with the guidance in Staff Legal Bulletin No. 18 (March 20, 2010) and GlenRose Instruments Inc. (July 16, 2012). [Dec. 21, 2015]

Modified: 08/17/2017