



SEC Staff Publishes Compliance and Disclosure Interpretations of FAST Act

December 18, 2015 — Last week, the SEC's Division of Corporation Finance (the "Division") issued two [Compliance and Disclosure Interpretations](#) (C&DIs) of the FAST Act,¹ which became law on December 4 (for a summary of the FAST Act's key provisions, see Deloitte's December 8 [journal entry](#)).

Interim Financial Statements

In the first C&DI, the SEC staff addresses a key provision of the FAST Act that simplifies the disclosure requirements for emerging growth companies (EGCs). Under the FAST Act, an EGC may, for historical periods required by Regulation S-X, 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) if the EGC reasonably believes that these historical periods will not be required to be included at the time of the contemplated offering. The SEC staff clarifies that interim financial information, including financial information for the comparative prior period, "relates" to both the interim period and a component of any longer period (interim or annual) in which it will be ultimately included. Thus, interim financial statements would be required in each filing of a registration statement, since any such periods will ultimately be included in either year-to-date interim periods or the annual periods presented in the registration statement as of the effective date.

The C&DI includes an example of a calendar-year-end EGC that submits or files a registration statement in December 2015 and reasonably expects to commence its offering in April 2016 when annual financial statements for 2015 and 2014 will be required. The C&DI states that in such a case an EGC may not omit its nine-month 2014 and 2015 interim financial statements "because those statements include financial information that relates to annual financial statements that will be required at the time of the offering in April 2016."

Financial Statements of Other Entities

The second C&DI discusses financial statements of other entities (e.g., an acquired business under Regulation S-X, Rule 3-05²) within the registration statement. It indicates that an EGC issuer may omit such financial statements from its filing or submission if the issuer reasonably believes that those financial statements will not be required at the time of the offering.

The SEC staff explains that "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." The C&DI also includes a reference to [paragraph 2030.4](#) of the Division's Financial Reporting Manual.

¹ Fixing America's Surface Transportation Act.

² SEC Regulation S-X, Rule 3-05, "Financial Statements of Businesses Acquired or to Be Acquired."

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