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Fast Relief for EGCs and Others: JOBS Act 2.0

A just-enacted 500-page transportation bill (the FAST Act) contains provisions nicknamed JOBS Act 2.0 (after the popular JOBS Act of 2012), which liberalized aspects of federal securities to encourage capital formation.

JOBS Act 2.0 implements the following further relief for reporting companies and investors in private companies:

- Effective immediately, reduces from 21 to 15 the number of days between public release by an emerging growth company of a confidential Securities Act draft registration statement submission and commencement of a road show.
- Continues to treat as an EGC an issuer that submits a DRS or files a registration statement and subsequently ceases to qualify until the earlier of the closing of the issuer's IPO or the first anniversary of the date on which it ceased to qualify.
- Permits an EGC to exclude from a DRS or registration statement any financial statements that the EGC reasonably believes will not be required to be included at the time the registration statement is effective, as long as the EGC includes all required financial statements in the registration statement before distributing a preliminary prospectus. Depending on the timing of effectiveness relative to

an EGC's fiscal year, this change could significantly reduce the amount of work needed to prepare a DRS. This section of the FAST Act becomes effective Jan. 3, 2016.

- Permits "forward incorporation by reference" into registration statements on Form S-1 by smaller reporting companies, making it easier for them to maintain effectiveness of their Form S-1 registration statements. SEC action required to implement this revision to Form S-1 must be taken by Jan. 18, 2016.
- Codifies, effective immediately, the so-called Section 4(a)(1 1/2) exemption for private resales of restricted securities to accredited investors.

The FAST Act also requires the SEC by June 1, 2016, to:

- Revise Regulation S-K — the combined reporting standards applicable to virtually all domestic SEC reporting companies to reduce cost and burdens on EGCs, smaller reporting companies and other smaller issuers, and to eliminate duplicative, overlapping, outdated or otherwise unnecessary provisions for which no further study (as described below) is necessary.

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- Permit the annual report on Form 10-K to include a summary page, as long as each item on the summary page includes a cross-reference (by electronic link or otherwise) to the related discussion in the annual report.

The SEC is also required to conduct a “modernization” study of Regulation S-K in consultation with the Investor Advisory Committee and Advisory Committee on Small and Emerging Companies, to issue a corresponding

report to Congress not later than Nov. 28, 2016, and to implement the recommendations of that report by Nov. 23, 2017.

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Capital Markets Practice

NORWOOD P. BEVERIDGE, JR	NBEVERIDGE@LOEB.COM	212.407.4970
ROBERT CALDWELL	RCALDWELL@LOEB.COM	+852 3923 1115
GIOVANNI CARUSO	GCARUSO@LOEB.COM	212.407.4866
ANGELA CHAN	ACHAN@LOEB.COM	+852 3923 1176
ROY CHOI	RKCHOI@LOEB.COM	+852 3923 1138
ROBERT CHUNG	RCHUNG@LOEB.COM	310.282.2216
STEPHEN H. COHEN	SCOHEN@LOEB.COM	212.407.4279
ANGELA DOWD	ADOWD@LOEB.COM	212.407.4097
ALLAN B. DUBOFF	ADUBOFF@LOEB.COM	310.282.2141
ROSS D. EMMERMAN	REMMERMAN@LOEB.COM	312.464.3357
DAVID C. FISCHER	DFISCHER@LOEB.COM	212.407.4827
STEVEN E. HURDLE, JR.	SHURDLE@LOEB.COM	310.282.2187
CHRISTOPHER J. KELLY	CKELLY@LOEB.COM	310.282.2263
WALLACE LAU	WLAU@LOEB.COM	+852 3923 1128
NORMAN LEE	NLMLEE@LOEB.COM	+852 3923 1178
JADA SOYUN LEE	JSLEE@LOEB.COM	+852 3923 1150
JC LEE	JCLEE@LOEB.COM	+852 3923 1146
FRANK LEE	FLEE@LOEB.COM	212.407.4825
STEPHEN LEUNG	SLEUNG@LOEB.COM	+852 3923 1134
DAVID J. LEVINE	DLEVINE@LOEB.COM	212.407.4923
BARRY T. MEHLMAN	BMEHLMAN@LOEB.COM	212.407.4812

RIMA R. MOAWAD	RMOAWAD@LOEB.COM	212.407.4052
MITCHELL S. NUSSBAUM	MNUSSBAUM@LOEB.COM	212.407.4159
BENNY PANG	BPANG@LOEB.COM	+852 3923 1198
SIMONA S. PAPAIZIAN	SPAPAIZIAN@LOEB.COM	212.407.4941
ROGER C. PENG	RPENG@LOEB.COM	+86 10 5954 3552
RONELLE C. PORTER	RPORTER@LOEB.COM	212.407.4110
GRACE SHEN	GSHEN@LOEB.COM	310.282.2140
ALVIN SO	ASO@LOEB.COM	+852 3923 1155
FRAN M. STOLLER	FSTOLLER@LOEB.COM	212.407.4935
ALLEN Z. SUSSMAN	ASUSSMAN@LOEB.COM	310.282.2375
LILI TAHERI	LTAHERI@LOEB.COM	212.407.4160
LAWRENCE VENICK	LVENICK@LOEB.COM	+86 10 5954 3688
CHLOE WANG	CWANG@LOEB.COM	+852 3923 1158
JAMIE YI WANG	JWANG@LOEB.COM	212.407.4933
MILKA WONG	MWONG@LOEB.COM	+852 3923 1168
TIMOTHY WONG	TWONG@LOEB.COM	+852 3923 1136
TAHRA T. WRIGHT	TWRIGHT@LOEB.COM	212.407.4122
CANDICE YANG	CYANG@LOEB.COM	+86 10 5954 3556
CONNIE YU	CYU@LOEB.COM	+852 3923 1126
JAMES ZHANG	JZHANG@LOEB.COM	+86 10 5954 3557