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FAST Act Implications for Underwriters

December 9, 2015

Capital Markets & Securities

The Fixing America's Surface Transportation Act ("FAST Act") was enacted on December 4, 2015, and contains several provisions that may be beneficial to investment banks acting as underwriters in emerging growth company ("EGC") IPOs. We have summarized below the two provisions we believe may be most beneficial.

Reduced Roadshow Waiting Period

Effective immediately, the FAST Act has reduced the required waiting period between the initial public filing of a registration statement and the start of the IPO roadshow from 21 days to 15 days.

What it means: By starting the IPO roadshow closer in time to the public registration statement filing, underwriters should be able to better capitalize on favorable market conditions and reduce execution risk for EGC clients.

Reduced Financial Statement Burden

Effective January 4, 2016, EGC issuers will no longer be required to include in their filed or confidentially submitted registration statements financials that are expected to "go stale" prior to deal launch, so long as prior to distributing a preliminary prospectus to investors, the registration statement is amended to include up-to-date financial information.

Example: An EGC issuer is contemplating a fall 2016 IPO launch. The initial confidential submission is targeted for June. The issuer could omit first quarter results, since by the time of launch second quarter numbers would be required.

What it means: Deal teams may be able to shorten the time necessary to make the initial registration statement submission to the SEC by eliminating the need to prepare, and have the auditors review, financial information that the deal team knows will not ultimately be included in the registration statement at the time of the IPO. This change should also reduce auditor costs for the issuer as well as legal costs for both issuers and underwriters. Note that in some instances deal teams may still want to consider including this financial information in order to preview material changes with the SEC and avoid potential comments later in the process. Also, diligence issues relating to internal control and proficiency in closing the books and reporting out often arise with an EGC's first time-constrained preparation of quarterly financial statements. Deferring these "trial runs" until later in the IPO process would reduce the time available to cope with surprises, putting greater emphasis on early diligence around an EGC's experience and expertise in financial reporting.

If you have any questions concerning the material discussed in this client alert, please contact the following members of our Capital Markets & Securities practice group:

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