

Technical Amendments Under the JOBS Act Result in Changes to Cover Pages of Many Securities Act and Exchange Act Forms

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On March 31, 2017, the Securities and Exchange Commission (“SEC”) made a number of technical amendments to existing rules and certain Securities Act of 1933 (“Securities Act”) and Securities Exchange Act of 1934 (“Exchange Act”) forms to conform them to certain provisions of the Jumpstart Our Business Startups Act of 2012 (“JOBS Act”) and related SEC guidance.¹ The changes became effective upon publication in the Federal Register on April 12, 2017.

These technical amendments result in changes to the cover pages of certain Securities Act and Exchange Act forms, which are now required to include two check boxes to allow companies to indicate:

- whether, at the time of the filing, the company is an emerging growth company (“EGC”), and
- if so, whether it has elected not to use the extended transition period for an EGC to comply with any new or revised financial accounting standards.

Under the JOBS Act, an EGC may elect to defer compliance with certain new or revised financial accounting standards, provided that if an EGC opts out of the extended transition period for complying with such standards, it must do so at the time it is “first required to file a registration statement, periodic report, or other report with the Commission under Section 13 of the Securities Exchange Act of 1934” and notify the SEC of its choice. An EGC that opts out of the extended transition period must comply with all new or revised accounting standards to the same extent that a non-EGC is required to comply with such standards and must continue to do so for as long as the issuer remains an EGC. This election is irrevocable. These amendments are intended to create a uniform method for the provision of an EGC’s opt-out notice. See Exhibit A to this alert for an example of the amended language for a Form 10-Q cover page.

The filings subject to these amendments include:

- Forms S-1, S-3, S-4, S-8, S-11, F-1, F-3 and F-4 under the Securities Act; and
- Forms 10, 8-K, 10-Q, 10-K, 20-F and 40-F under the Exchange Act.

¹ The SEC’s adopting release is available at <https://www.sec.gov/rules/final/2017/33-10332.pdf>.

While the revisions to these forms are specifically relevant to EGCs, all companies must include the two new check boxes when filing the relevant forms. Therefore, regardless of a company's status as an EGC, if it makes filings on the affected forms, it must revise the cover pages of its filings as a result of these amendments.

The SEC also revised the definition of EGC under Rule 12b-2 under the Exchange Act to raise the annual gross revenue cap for a company to qualify as an EGC from \$1 billion to \$1.07 billion, to adjust for inflation. The SEC is required by the JOBS Act to index to inflation the annual gross revenue cap every five years. The increase also became effective on April 12, 2017.

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Exhibit A

Amended Language For Form 10-Q Cover Page

The text below and accompanying check boxes should appear on the cover page of a quarterly report on Form 10-Q, immediately before the text “Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act):”

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, smaller reporting company, or an emerging growth company. See the definitions of “large accelerated filer,” “accelerated filer,” “smaller reporting company,” and “emerging growth company” in Rule 12b-2 of the Exchange Act.

Large accelerated filer	<input type="checkbox"/>	Accelerated filer	<input type="checkbox"/>
Non-accelerated filer	<input type="checkbox"/>	(Do not check if a smaller reporting company)	
Smaller reporting company	<input type="checkbox"/>	Emerging growth company	<input type="checkbox"/>

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act.