

**SECURITIES AND EXCHANGE COMMISSION**

**17 CFR PARTS 229 and 239**

**RELEASE NO. 33-10003; FILE NO. S7-01-16**

**RIN 3235-AL88**

**SIMPLIFICATION OF DISCLOSURE REQUIREMENTS FOR EMERGING GROWTH COMPANIES AND FORWARD INCORPORATION BY REFERENCE ON FORM S-1 FOR SMALLER REPORTING COMPANIES**

**AGENCY:** Securities and Exchange Commission.

**ACTION:** Interim final rules; request for comment.

**SUMMARY:** The Securities and Exchange Commission (“Commission”) is adopting interim final amendments to its rules and forms to implement Sections 71003 and 84001 of the Fixing America’s Surface Transportation (“FAST”) Act, which require that the Commission revise Forms S-1 and F-1 to permit emerging growth companies to omit financial information for certain historical periods and revise Form S-1 to permit forward incorporation by reference for smaller reporting companies.

**DATES:** Effective Date: The interim final rules are effective on January 19, 2016.

Comment Date: Comments on the interim final rules should be received on or before February 18, 2016.

**ADDRESSES:** Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission’s Internet comment form (<http://www.sec.gov/rules/proposed.shtml>); or

- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number S7-01-16 on the subject line; or
- Use the Federal eRulemaking Portal (<http://www.regulations.gov>). Follow the instructions for submitting comments.

Paper comments:

- Send paper comments to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number S7-01-16. This file number should be included on the subject line if e-mail is used. To help us process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's website (<http://www.sec.gov/rules/proposed.shtml>). Comments are also available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 am and 3:00 pm. All comments received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

**FOR FURTHER INFORMATION CONTACT:** Peggy Kim, Attorney-Adviser, Office of Rulemaking, Division of Corporation Finance, at (202) 551-3430, U.S. Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549.

**SUPPLEMENTARY INFORMATION:** We are adopting interim final amendments to Forms S-1<sup>1</sup> and F-1<sup>2</sup> under the Securities Act of 1933<sup>3</sup> and Item 512 of Regulation S-K.<sup>4</sup>

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<sup>1</sup> 17 CFR 239.11.

<sup>2</sup> 17 CFR 239.31.

## I. DISCUSSION OF AMENDMENTS

Form S-1 is the form used by domestic issuers to register the offer and sale of securities under the Securities Act of 1933 when no other form is authorized or prescribed, and Form F-1 is the corresponding form used by foreign private issuers.<sup>5</sup> Item 512 of Regulation S-K describes the undertakings that an issuer must include in a registration statement.

Section 71003 of the FAST Act<sup>6</sup> amends Section 102 of the Jumpstart Our Business Startups (“JOBS”) Act<sup>7</sup> to allow an emerging growth company<sup>8</sup> that is filing a registration statement (or submitting a draft registration statement<sup>9</sup> for confidential review) under Section 6

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<sup>3</sup> 15 U.S.C. 77a *et seq.*

<sup>4</sup> 17 CFR 229.512.

<sup>5</sup> A “foreign private issuer” is defined in Rule 405 [17 CFR 230.405] under the Securities Act to mean any foreign issuer other than a foreign government, except for an issuer that has more than 50% of its outstanding voting securities held of record by U.S. residents and any of the following: a majority of its officers and directors are citizens or residents of the United States, more than 50 percent of its assets are located in the United States, or its business is principally administered in the United States.

<sup>6</sup> Pub. L. No. 114-94 (Dec. 4, 2015).

<sup>7</sup> Pub. L. No. 112-106, 126 Stat. 306 (Apr. 5, 2012).

<sup>8</sup> An “emerging growth company” is defined in Section 2(a)(19) of the Securities Act [15 U.S.C. 77b(a)(19)] to mean an issuer with less than \$1 billion in total annual gross revenues during its most recently completed fiscal year. If an issuer qualifies as an emerging growth company on the first day of its fiscal year, it maintains that status until the earliest of the last day of the fiscal year of the issuer during which it has total annual gross revenues of \$1 billion or more; the last day of its fiscal year following the fifth anniversary of the first sale of its common equity securities pursuant to an effective registration statement; the date on which the issuer has, during the previous 3-year period, issued more than \$1 billion in non-convertible debt; or the date on which the issuer is deemed to be a “large accelerated filer” (as defined in Exchange Act Rule 12b-2 [17 CFR 240.12b-2]). Section 71002 of the FAST Act amends Section 6(e)(1) of the Securities Act [15 U.S.C. 77f(e)(1)] to provide that an issuer that qualifies as an emerging growth company at the time it initiates the registration process, either by submitting a draft registration statement or by filing it publicly, but which subsequently ceases to be an emerging growth company, will continue to be treated as an emerging growth company until the earlier of the date on which the issuer consummates its initial public offering pursuant to that registration statement or the end of the 1-year period beginning on the date the company ceases to be an emerging growth company. Section 71002 became effective upon enactment.

<sup>9</sup> Prior to filing a Form S-1 or F-1 for an initial public offering, emerging growth companies can submit draft registration statements to the Commission for confidential review.

of the Securities Act on Form S-1 or Form F-1 to omit financial information<sup>10</sup> for historical periods<sup>11</sup> otherwise required by Regulation S-X<sup>12</sup> if it reasonably believes the omitted information will not be required to be included in the filing at the time of the contemplated offering, so long as the issuer amends the registration statement prior to distributing a preliminary prospectus to include all financial information required by Regulation S-X at the time of the amendment. This provision takes effect 30 days after the date of enactment of the FAST Act. In addition, Section 71003 directs the Commission to revise the general instructions to Form S-1 and Form F-1 to reflect this self-executing change.

Section 84001 of the FAST Act requires the Commission to revise Form S-1 to permit a smaller reporting company<sup>13</sup> to incorporate by reference into its registration statement any documents filed by the issuer subsequent to the effective date of the registration statement. We are adding a new paragraph to Item 12 of Form S-1 to effect this provision.<sup>14</sup>

Currently, there are eligibility requirements for any issuer to use historical incorporation by reference on Form S-1 for documents filed before the effective date of the registration

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<sup>10</sup> The historical financial statements that may be omitted are not limited to the financial statements of the emerging growth company. For example, an emerging growth company may also omit the historical financial statements of an acquired business from its filing or submission if the company reasonably believes those financial statements will not be required at the time of the offering.

<sup>11</sup> Emerging growth companies must include two years of audited financial statements in a registration statement for an initial public offering of common equity securities. [15 U.S.C. 77g (a)(2)(A)]

<sup>12</sup> Form F-1 filers are subject to the financial reporting requirements of Regulation S-X and Form 20-F. Item 8.A. of Form 20-F [17 CFR 249.220f] contains the requirements for the historical periods applicable to foreign private issuers filing on Form F-1.

<sup>13</sup> A “smaller reporting company” is defined in Rule 405 under the Securities Act to mean an issuer that had a public float of less than \$75 million as of the last business day of its most recently completed second fiscal quarter or had annual revenues of less than \$50 million during the most recently completed fiscal year for which audited financial statements are available.

<sup>14</sup> New paragraph (b) to Item 12 of Form S-1.

statement. These requirements will not be affected as a result of these amendments.<sup>15</sup> Smaller reporting companies must meet each of these existing eligibility requirements and conditions to use forward incorporation by reference on Form S-1.<sup>16</sup> For example, to be eligible to use forward incorporation by reference, smaller reporting companies will be required to be current by having filed (a) an annual report for its most recently completed fiscal year and (b) all required Exchange Act reports and materials during the 12 months immediately preceding filing of the Form S-1 (or such shorter period that the smaller reporting company was required to file such reports and materials). Smaller reporting companies that are blank check companies, shell companies (other than business combination related shell companies) or issuers for offerings of penny stocks will not be permitted to forward incorporate by reference into a Form S-1. In addition, the ability to forward incorporate by reference will be conditioned on the smaller reporting company making its incorporated Exchange Act reports and other materials readily available and accessible on a web site maintained by or for the issuer and disclosing in the prospectus that such materials will be provided upon request.

Finally, we are making a conforming change to Item 512(a) of Regulation S-K to provide for forward incorporation by reference of Exchange Act reports filed or furnished after the effective date of the registration statement on Form S-1.<sup>17</sup> Our revised forms will be effective for disclosure made on or after [insert date of publication in the Federal Register].<sup>18</sup>

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<sup>15</sup> General Instruction VII to Form S-1 sets forth the eligibility requirements for incorporation by reference.

<sup>16</sup> Currently, forward incorporation by reference is not permitted for any issuers on Form S-1.

<sup>17</sup> The undertakings in Item 512(b) of Regulation S-K will also be required in Form S-1 registration statements filed by smaller reporting companies that use forward incorporation by reference.

<sup>18</sup> The amendments being adopted today apply to emerging growth companies omitting financial information from Form S-1 or Form F-1 and to smaller reporting companies using forward incorporation by reference in Form S-1. The staff will consider whether the amendments discussed in this release should be made available to a larger group

## **II. REQUEST FOR COMMENT**

We invite comment on whether the interim final rules should be extended to other registrants or forms. In addition, we request and encourage any interested person to submit comments on any aspect of our interim final rules, other matters that might have an impact on the rules, and any suggestions for additional changes. With respect to any comments, we note that they are of greatest assistance if accompanied by supporting data and analysis of the issues addressed in those comments.

## **III. PROCEDURAL AND OTHER MATTERS**

Under the Administrative Procedure Act (“APA”), a notice of proposed rulemaking is not required when the agency, for good cause, finds that notice and public comment are impracticable, unnecessary, or contrary to the public interest.<sup>19</sup> Because these amendments merely conform the specified forms to the requirements of a newly enacted statute, the FAST Act, the Commission finds that notice and public comment are unnecessary.<sup>20</sup> These amendments revise the Commission’s forms to make them consistent with the provisions of the FAST Act pertaining to simplified disclosure requirements for emerging growth companies and forward incorporation by reference for smaller reporting companies on Form S-1 and therefore do not involve the exercise of Commission discretion.

The APA generally requires publication of a rule at least 30 days before its effective

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of registrants, and for additional form types. Any future rulemaking proposal that may stem from the staff’s consideration would be subject to notice and public comment.

<sup>19</sup> 5 U.S.C. 553(b).

<sup>20</sup> This finding also satisfies the requirements of 5 U.S.C. 808(2), allowing the rule amendment to become effective notwithstanding the requirement of 5 U.S.C. 801 (if a federal agency finds that notice and public comment are impractical, unnecessary or contrary to the public interest, a rule shall take effect at such time as the federal agency promulgating the rule determines). The amendments also do not require analysis under the Regulatory Flexibility Act. See 5 U.S.C. 604(a) (requiring a final regulatory flexibility analysis only for rules required by the APA or other law to undergo notice and comment).

date.<sup>21</sup> The Commission finds there is good cause for the amendments to take effect on [insert date of publication in the Federal Register] because without the amendments the Commission's applicable forms do not conform to the requirements of Section 102 of the JOBS Act, as amended by Section 71003 of the FAST Act and Section 84001 of the FAST Act.<sup>22</sup> Additionally, the Commission finds that the amendments relieve restrictions in the Commission's forms.

The amendments to Form S-1, Form F-1, and Item 512 of Regulation S-K will have an effect on existing "collection of information" requirements within the meaning of the Paperwork Reduction Act of 1995.<sup>23</sup> We estimate the total annual decrease in the paperwork burden for all affected companies to comply with the collection of information requirements in these amendments is approximately 70,214 hours of company personnel time and approximately \$84,256,400 for the services of outside professionals.<sup>24</sup>

#### **IV. ECONOMIC ANALYSIS**

We are mindful of the costs imposed by and the benefits obtained from our rules and amendments.<sup>25</sup> The Commission is adopting amendments to implement the specific statutory mandates of Sections 71003 and 84001 of the FAST Act. Accordingly, the costs and benefits of

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<sup>21</sup> See 5 U.S.C. 553(d)(3).

<sup>22</sup> Section 71003 of the FAST Act takes effect 30 days after enactment, and Section 84001 of the FAST Act requires the Commission to revise Form S-1 within 45 days of enactment.

<sup>23</sup> 44 U.S.C. 3501 et seq.

<sup>24</sup> We are seeking emergency approval from the Office of Management and Budget for the revised burden estimates associated with the final rule amendments to Forms S-1 and F-1 in accordance with the procedures of the Paperwork Reduction Act of 1995. In a separate notice, we are seeking public comment on the revised burden estimates as well as a three-year extension of the same collections of information.

<sup>25</sup> Section 2(b) of the Securities Act [15 U.S.C. 77b(b)] requires the Commission, when engaging in rulemaking where it is required to consider or determine whether an action is necessary or appropriate in the public interest, to consider, in addition to the protection of investors, whether the action will promote efficiency, competition and capital formation.

these amendments stem entirely from the statutory mandates of Sections 71003 and 84001.<sup>26</sup>

### **A. Baseline**

The baseline for our economic analysis is the filing requirements prior to passage of the FAST Act and the amendments being adopted today. The amendments will impact disclosure requirements for emerging growth companies (“EGCs”) that file Forms S-1 and F-1 and smaller reporting companies (“SRCs”) that file Form S-1 for conducting a registered public securities offering and elect to use forward incorporation by reference. Investors who rely on issuer disclosures for making investment decisions will also be affected by the amendments mandated by Sections 71003 and 84001 of the FAST Act.

Prior to the effectiveness of Section 71003, EGCs were required, when filing or submitting Form S-1 or Form F-1 with the Commission prior to an initial public offering (“IPO”), to provide all financial statements for historical periods required by Regulation S-X at the time of the filing or submission, even though information for some historical periods may not be required to be included in the prospectus contained in the registration statement at the time of the contemplated offering. For example, prior to the effectiveness of Section 71003, an EGC that intended to conduct an IPO during early 2016 and that submitted or filed its registration statement in December 2015 would need to include audited financial statements for 2013 and 2014 in that registration statement to comply with the rules, even though at the time the issuer intended to market the offering only 2014 and 2015 audited financial statements would be required.

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<sup>26</sup> As the intent of this rulemaking is to implement the specific regulatory changes mandated by Congress, this analysis focuses on the economic effects arising from those changes. We recognize that these amendments could be made available to a larger group of registrants, and for additional form types. However, such discretionary amendments would be beyond the scope of this rulemaking. See supra note 18.

The amendment pursuant to Section 71003 of the FAST Act will impact Form S-1 and F-1 filings and draft registration statement submissions by domestic and foreign EGCs that conduct initial public offerings. An analysis of EDGAR filings indicates that 504 EGCs filed Form S-1 for an IPO during calendar year 2014, compared to 363 EGCs that filed a Form S-1 during calendar year 2015, through December 28<sup>th</sup>. The number of Form F-1 filings for an IPO by EGCs totaled 65 and 51 for calendar years 2014 and 2015, respectively (Table 1).<sup>27</sup> Additionally, 299 and 133 EGCs submitted a draft registration statement during 2014 and 2015, respectively, for confidential Commission review.<sup>28</sup>

**Table 1: EGCs Submissions of Draft Registration Statements, and Filings of Forms S-1 and F-1 for initial public offerings, 2012-2015**

	<b>Number of EGCs submitting Draft Registration Statement</b>	<b>Number of EGCs filing Form S-1</b>	<b>Number of EGCs filing Form F-1</b>
2012	41	295	25
2013	231	404	31
2014	299	504	65
2015	133	363	51

Currently, forward incorporation by reference is not permitted for any issuers on Form S-1,<sup>29</sup> and issuers are required to file a post-effective amendment to disclose material information,

<sup>27</sup> The Commission staff derived these estimates by analyzing filings made with the Commission during calendar years. Data for 2015 is for the period January 1 to December 28, 2015. The Forms S-1 and F-1 filings include filings for offerings that were later withdrawn or abandoned. Until October 2012, a significant number of EGCs submitted draft registration statements through email and as a result are not included in EDGAR filings for that year.

<sup>28</sup> Some of the issuers that submitted a draft registration statement may have also filed a Form S-1 or F-1.

<sup>29</sup> Forward incorporation by reference allows an issuer to automatically incorporate by reference reports filed pursuant to the Exchange Act, such as reports on Forms 10-K, 10-Q and 8-K, subsequent to the effectiveness of the registration statement.

including updates required as a result of Section 10(a)(3) of the Securities Act,<sup>30</sup> that may have occurred prior to the completion of the offering. Forward incorporation by reference is available under Form S-3,<sup>31</sup> the short-form registration statement for a follow-on offering, but only issuers that meet specific registrant and transaction requirements can utilize that form. Because many SRCs are ineligible to use Form S-3, they are required to use Form S-1 for conducting a registered securities offering.<sup>32</sup> As Table 2 presents, approximately 448 SRCs filed Form S-1 for conducting a follow-on offering while 150 SRCs filed Form S-3 during calendar year 2014.<sup>33</sup>

**Table 2: SRC filings of Forms S-1 and S-3 for follow-on offerings, 2012-2015**

	<b>Number of Form 10-Ks indicating SRC status</b>	<b>Number of SRCs filing Form S-1</b>	<b>Number of SRCs filing Form S-3</b>
2012	4,062	394	106
2013	3,773	432	116
2014	3,508	448	150
2015	3,107	269	112

The amendment pursuant to Section 84001 of the FAST Act will impact the number and disclosure content of post-effective amendments filed by eligible SRCs. Analysis of EDGAR filings indicates that approximately 204 SRCs filed 379 post-effective amendments during 2014, while another 217 filed 404 such amendments during calendar year 2015, through December

<sup>30</sup> 15 U.S.C. 77j(a)(3). When a prospectus is used more than nine months after the effective date of the registration statement, the information contained therein cannot be dated more than sixteen months prior to such use.

<sup>31</sup> 17 CFR 239.13.

<sup>32</sup> SRCs may be eligible to use Form S-3 for secondary offerings if the securities are listed on a national securities exchange or are quoted on the automated quotation system of a national securities association. See Instruction I.B.3 of Form S-3. In addition, SRCs may be eligible to use Form S-3 for limited primary offerings if the SRC has at least one class of common equity securities listed on a national securities exchange. See Instruction I.B.6. of Form S-3.

<sup>33</sup> The Commission staff derived these estimates by analyzing filings made with the Commission during calendar years. SRCs status was determined based on the filer status checked on the cover page of Form 10-K filed during the year.

15<sup>th</sup>.<sup>34</sup> Some SRCs could have avoided at least some post-effective amendment filings if forward incorporation had been available.

## **B. Analysis of the Amendments**

The statutory change to Section 102 of the JOBS Act and the corresponding amendment to our forms pursuant to Section 71003 of the FAST Act allow EGCs to omit certain historical financial statements required under Regulation S-X from their pre-initial public offering registration statement, which simplifies and reduces disclosure requirements for those EGCs. As Table 1 shows, up to 569 EGCs filing Form S-1 or F-1 and 299 EGCs submitting draft registration statements during calendar year 2014 could possibly have benefitted from such scaled down disclosure requirements. These amendments to the statute and our forms will ease the filing requirements for EGCs, which could promote small business capital formation through initial public offerings.

The amendments that implement Section 71003 will enable EGCs to provide only information that they reasonably expect will be required at the time they are marketing their initial public offerings. This will lower the regulatory burden and thereby reduce the registration costs for EGCs. The amendments may also shorten the time necessary to complete the initial registration statement of an IPO, which could improve an issuer's ability to raise capital in a timely manner. To the extent issuers have sensitive material in their historical financial information, the amendments may also enable EGCs to protect their competitive position by not publicly disseminating information beyond what is required when the securities offering is

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<sup>34</sup> Some of these filings may relate to non-Section 10(a)(3) updates, such as for deregistering securities. These filings will not be affected by an SRC's new ability to forward incorporate by reference. Additionally, some filings may comprise Section 10(a)(3) updates, as well as updates that will continue to be required as post-effective amendments.

conducted.<sup>35</sup> Such benefits are more likely to accrue to EGCs that have higher proprietary costs of disclosure.<sup>36</sup>

At the same time, the amendments may reduce the amount and quality of public information, thereby potentially increasing the level of information asymmetry and adversely impacting the informational efficiency of the securities market.<sup>37</sup> As a result, investors could become more risk averse and require a higher rate of return to compensate for such loss in disclosure. This would lower the amount of potential issuer proceeds, which would offset the lower disclosure costs stemming from the simplified disclosure requirements.<sup>38</sup> We believe, however, that the amendment's potential adverse impact on investors would be marginal because such omitted financial information is not expected to be used by issuers in marketing their offering and also because investors will have access to more recent and updated information.

The amendment pursuant to Section 84001 of the FAST Act to permit forward incorporation by reference by SRCs in Form S-1 will further integrate disclosures under the Securities Act and the Exchange Act and increase regulatory simplification. Forward incorporation by reference will eliminate the need to update information in a filing that has become stale or is incomplete. The amendment should decrease the existing filing burdens by reducing multiple disclosure filings, thereby allowing SRCs to satisfy Form S-1 disclosure requirements and access capital markets at a lower cost. As discussed above, during 2014 almost

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<sup>35</sup> For example, R&D-intensive firms may have competitive incentives to provide limited disclosure about their R&D investments, material agreements or acquisitions in previous years.

<sup>36</sup> See Jesse Ellis, C. Edward Fee & Shawn Thomas, *Proprietary Costs and the Disclosure of Information about Customers*, 50 J. ACCT. RES. 685–727 (2012).

<sup>37</sup> Market participants also can obtain information from Commission staff comment letters (publicly available after the IPO) sent in connection with the staff's review of a draft or filed registration statement. To the extent the lower level of disclosure affects the information content of Commission staff comment letters, the post-IPO liquidity and stock price volatility outcomes of EGCs could also be impacted.

<sup>38</sup> See Susan Chaplinsky, Kathleen Weiss Hanley & S. Katie Moon, *The JOBS Act and the Costs of Going Public* (Working Paper, Oct. 2015), available at [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2492241](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2492241).

half of the SRCs that filed a Form S-1 also filed a post-effective amendment to update information in that form. In addition to the reduced audit and legal costs of not having to file post-effective amendments, cost savings could also result from lower printing and delivery costs for a smaller sized prospectus. Such reduction in costs could be offset, to some extent, by ongoing costs related to the issuer's new obligations to make the incorporated Exchange Act reports and other materials readily available and accessible to investors on a web site maintained by or for the issuer, or provided upon request.

The revision to Form S-1 will make its requirements more consistent with those of Form S-3, which will particularly benefit SRCs that cannot use Form S-3 and have to rely on the longer Form S-1 to register their securities offering. The amendment will be most effective for continuous offerings, and those involving resales of securities, that often require repeated informational updates. By avoiding the need to file certain post-effective amendments, SRCs may be able to move quickly to raise capital when a 'market window' is open. Easing the filing burden for such issuers may promote efficiency in SRC capital formation.

At the same time, revising Form S-1 to allow SRCs to forward incorporate by reference could increase the analytical burden and search costs for potential investors. Instead of having all the information available in one location, investors may need to separately access on a web site or request the incorporated reports in order to price the offering security. As a result, costs to investors for assembling and assimilating necessary information could increase. We do not have data to assess if, and to what extent, the Form S-1 revision will be burdensome to investors. To the extent that investors previously benefitted from the Commission staff's selective review of post-effective amendment filings, allowing forward incorporation by reference may eliminate such reviews and, as a result, possibly increase the costs to investors.

As discussed above, the same eligibility requirements that currently apply to any issuer to use historical incorporation by reference on Form S-1 will apply to forward incorporation by reference by SRCs. Using these well-established eligibility requirements should provide certainty to issuers and investors about when forward incorporation by reference may be used. Requiring the SRCs to be current in their filing requirements will ensure that only issuers with a demonstrated ability to comply with Exchange Act reporting requirements are eligible to forward incorporate by reference, which will help to address concerns about investors being able to readily procure updated information through Exchange Act filings that would otherwise have been available through a post-effective amendment.

## **V. STATUTORY BASIS**

The amendments described in this release are made under the authority set forth in Sections 6, 7, 8, 10, and 19 of the Securities Act, Section 102 of the JOBS Act and Sections 71003 and 84001 of the FAST Act.

### **List of Subjects**

17 CFR Parts 229 and 239

Reporting and recordkeeping requirements, Securities.

In accordance with the foregoing, the Commission is amending Title 17, Chapter II of the Code of Federal Regulations as follows:

### **PART 229 -- STANDARD INSTRUCTIONS FOR FILING FORMS UNDER SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934 AND ENERGY POLICY AND CONSERVATION ACT OF 1975 -- REGULATION S-K**

1. The authority citation for Part 229 is revised to read as follows:

Authority: 15 U.S.C. 77e, 77f, 77g, 77h, 77j, 77k, 77s, 77z-2, 77z-3, 77aa(25), 77aa(26), 77ddd, 77eee, 77ggg, 77hhh, 77iii, 77jjj, 77nnn, 77sss, 78c, 78i, 78j, 78j-3, 78l, 78m, 78n, 78n-1, 78o, 78u-5, 78w, 78ll, 78 mm, 80a-8, 80a-9, 80a-20, 80a-29, 80a-30, 80a-31(c), 80a-37, 80a-

38(a), 80a-39, 80b-11 and 7201 et seq.; 18 U.S.C. 1350; Sec. 953(b), Pub. L. 111-203, 124 Stat. 1904; Sec. 102(a)(3), Pub. L. 112-106, 126 Stat. 309; and Sec. 84001, Pub. L. 114-94, 129 Stat. 1312.

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2. Section 229.512 is amended by revising paragraph (a)(1)(iii)(B) to read as follows:

**§229.512 (Item 512) Undertakings.**

\* \* \* \* \*

(a) \*\*\*

(1) \*\*\*

(iii) \*\*\*

(B) Paragraphs (a)(1)(i), (a)(1)(ii) and (a)(1)(iii) of this section do not apply if the registration statement is on Form S-1 (§239.11 of this chapter), Form S-3 (§239.13 of this chapter), Form SF-3 (§239.45 of this chapter) or Form F-3 (§239.33 of this chapter) and the information required to be included in a post-effective amendment by those paragraphs is contained in reports filed with or furnished to the Commission by the registrant pursuant to section 13 or section 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m or 78o(d)) that are incorporated by reference in the registration statement, or, as to a registration statement on Form S-3, Form SF-3 or Form F-3, is contained in a form of prospectus filed pursuant to §230.424(b) of this chapter that is part of the registration statement.

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**PART 239 -- FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933**

3. The general authority citation for Part 239 is revised to read as follows:

Authority: 15 U.S.C. 77c, 77f, 77g, 77h, 77j, 77s, 77z-2, 77z-3, 77sss, 78c, 78l, 78m, 78n, 78o(d), 78o-7 note, 78u-5, 78w(a), 78ll, 78mm, 80a-2(a), 80a-3, 80a-8, 80a-9, 80a-10, 80a-13, 80a-24, 80a-26, 80a-29, 80a-30, 80a-37, and Sec. 71003 and Sec. 84001, Pub. L. 114-94, 129 Stat. 1312, unless otherwise noted.

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4. Form S-1 (referenced in § 239.11) is amended by adding General Instructions II.C., re-designating paragraph (b) to Item 12 as paragraph (c), re-designating the Note to Item 12(b)(1) as the Note to Item 12(c)(1), and adding new paragraph (b) to Item 12 to read as follows:

**Note: The text of Form S-1 does not, and this amendment will not, appear in the Code of Federal Regulations.**

## **FORM S-1**

### **REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933**

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#### **GENERAL INSTRUCTIONS**

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#### **II. Application of General Rules and Regulations**

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C. A registration statement filed (or submitted for confidential review) under Section 6 of the Securities Act (15 U.S.C. 77f) by an emerging growth company, defined in Section 2(a)(19) of the Securities Act (15 U.S.C. 77b(a)(19)), prior to an initial public offering may omit financial information for historical periods otherwise required by Regulation S-X (17 CFR Part 210) as of the time of filing (or confidential submission) of the registration statement, provided that:

1. The omitted financial information relates to a historical period that the registrant reasonably believes will not be required to be included in this Form at the time of the contemplated offering; and

2. Prior to the registrant distributing a preliminary prospectus to investors, the registration statement is amended to include all financial information required by Regulation S-X at the date of the amendment.

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Item 12. Incorporation of Certain Information by Reference

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(b) In addition to the incorporation by reference permitted pursuant to paragraph (a) of this Item, a smaller reporting company, as defined in Rule 405 (17 CFR 230.405), may elect to incorporate by reference information filed after the effective date of the registration statement. A smaller reporting company making this election must state in the prospectus contained in the registration statement that all documents subsequently filed by the registrant pursuant to Sections 13(a), 13(c), 14 or 15(d) of the Exchange Act, prior to the termination of the offering shall be deemed to be incorporated by reference into the prospectus.

\* \* \* \* \*

5. Form F-1 (referenced in § 239.31) is amended by adding General Instruction II.E. to read as follows:

**Note: The text of Form F-1 does not, and this amendment will not, appear in the Code of Federal Regulations.**

**FORM F-1**

**REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933**

\* \* \* \* \*

## GENERAL INSTRUCTIONS

\* \* \* \* \*

II. \* \* \*

E. A registration statement filed (or submitted for confidential review) under Section 6 of the Securities Act (15 U.S.C. 77f) by an emerging growth company, defined in Section 2(a)(19) of the Securities Act (15 U.S.C. 77b(a)(19)), prior to an initial public offering may omit financial information for historical periods otherwise required by Regulation S-X (17 CFR Part 210) and Item 8.A. of Form 20-F (17 CFR 249.220f) as of the time of filing (or confidential submission) of the registration statement, provided that:

1. The omitted financial information relates to a historical period that the registrant reasonably believes will not be required to be included in this Form at the time of the contemplated offering; and
2. Prior to the registrant distributing a preliminary prospectus to investors, the registration statement is amended to include all financial information required by Regulation S-X at the date of the amendment.

\* \* \* \* \*

By the Commission.

Dated: January 13, 2016

Brent J. Fields  
Secretary