

April 6, 2017

## SEC Adopts EGC Inflation Adjustments and Other Technical Amendments Under the JOBS Act

If you have any questions regarding the matters discussed in this memorandum, please contact the attorneys listed on the last page or call your regular Skadden contact.

This memorandum is provided by Skadden, Arps, Slate, Meagher & Flom LLP and its affiliates for educational and informational purposes only and is not intended and should not be construed as legal advice. This memorandum is considered advertising under applicable state laws.

Four Times Square  
New York, NY 10036  
212.735.3000

On March 31, 2017, the Securities and Exchange Commission (SEC) adopted several new rules to effectuate inflation adjustments mandated under the Jumpstart Our Business Startups (JOBS) Act and made a number of technical amendments to existing rules and forms to conform them to certain provisions of the JOBS Act and related SEC staff interpretations.

The changes become effective upon publication in the Federal Register, which is expected shortly. A copy of the SEC adopting release outlining the new rules and amendments is available [here](#).

### **Inflation Adjustments to Definition of Emerging Growth Company**

The SEC adopted new rules to raise the annual gross revenue threshold to qualify as an “emerging growth company” (EGC) from \$1 billion to \$1.07 billion, to adjust for inflation.<sup>1</sup> The adjustments fulfill a JOBS Act mandate to index to inflation every five years the annual gross revenue threshold used to determine EGC status.

The adjustment mandate does not extend to the disqualifying provision in the EGC definition that provides that an issuer may lose its EGC status on the “date on which such issuer has during the previous 3-year period, issued more than \$1 billion in non-convertible debt.” Accordingly, this disqualifying provision remains unchanged.

### **Technical Amendments to Existing Rules and Forms**

The SEC also adopted amendments to modify the cover page of certain registration statements and reports to include two check boxes to allow companies to indicate whether, at the time of the filing, the company is an EGC and whether it has elected not to use the extended transition period for an EGC to comply with any new or revised financial accounting standards.

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 of 1933, as amended; and

<sup>1</sup> The SEC adopted similar new rules to adjust for inflation the dollar amounts in the registration exemptions under Regulation Crowdfunding.

# Capital Markets Alert

---

- Forms 10, 8-K, 10-Q, 10-K, 20-F and 40-F under the Securities Exchange Act of 1934, as amended.

The SEC also made several other technical amendments to conform its rules and forms to reflect existing, self-executing provisions of the JOBS Act and certain related SEC staff interpretations that exempt EGCs from, or subject them to reduced, compliance with various regulatory requirements. The conforming amendments address:

- the scaled disclosure requirements for EGC financial disclosures and management discussion and analysis;
- the exemption from the auditor attestation of management's report on internal control over financial reporting;
- the scaled executive compensation disclosure; and
- the exemption from shareholder advisory votes on say-on-pay, say-on-frequency and golden parachute compensation.

# Capital Markets Alert

## Contacts

---

### New York

**Ryan J. Dzierniejko**

Partner  
212.735.3712  
ryan.dzierniejko@skadden.com

**Gregory A. Fernicola**

Partner  
212.735.2918  
gregory.fernicola@skadden.com

**David J. Goldschmidt**

Partner  
212.735.3574  
david.goldschmidt@skadden.com

**Laura A. Kaufmann Belkhaty**

Partner  
212.735.2439  
laura.kaufmann@skadden.com

**Andrea L. Nicolas**

Partner  
212.735.3416  
andrea.nicolas@skadden.com

**Michael J. Schwartz**

Partner  
212.735.3694  
michael.schwartz@skadden.com

**Yossi Vebman**

Partner  
212.735.3719  
yossi.vebman@skadden.com

**Dwight S. Yoo**

Partner  
212.735.2573  
dwight.yoo@skadden.com

**Michael J. Zeidel**

Partner  
212.735.3259  
michael.zeidel@skadden.com

### Los Angeles

**Michelle Gasaway**

Partner  
213.687.5122  
michelle.gasaway@skadden.com

### Palo Alto

**Thomas J. Ivey**

Partner  
650.470.4522  
thomas.ivey@skadden.com

**Gregg A. Noel**

Partner  
650.470.4540  
gregg.noel@skadden.com

### Washington, D.C.

**Brian V. Breheny**

Partner  
202.371.7180  
brian.breheny@skadden.com

**Andrew J. Brady**

Of Counsel  
202.371.7513  
andrew.brady@skadden.com

### Frankfurt

**Stephan Hutter**

Partner  
49.69.74220.170  
stephan.hutter@skadden.com

### Hong Kong

**Z. Julie Gao**

Partner  
852.3740.4863  
julie.gao@skadden.com

**Jonathan B. Stone**

Partner  
852.3740.4703  
jonathan.stone@skadden.com

### London

**James A. McDonald**

Partner  
44.20.7519.7183  
james.mcdonald@skadden.com

**Danny Tricot**

Partner  
44.20.7519.7071  
danny.tricot@skadden.com

**Pranav L. Trivedi**

Partner  
44.20.7519.7026  
pranav.trivedi@skadden.com

### Singapore

**Rajeev P. Duggal**

Partner  
65.6434.2980  
rajeev.duggal@skadden.com

### Sydney

**Adrian J. S. Deitz**

Partner  
61.4294.44311  
adrian.deitz@skadden.com

### Tokyo

**Kenji Taneda**

Partner  
81.3.3568.2640  
kenji.taneda@skadden.com

### Toronto

**Riccardo A. Leofanti**

Partner  
416.777.4703  
riccardo.leofanti@skadden.com

---

Associate **Justin A. Kisner** assisted in the preparation of this alert.