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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.

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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.¹ 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

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

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- 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.

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