January 19, 2016

The SEC Issues Guidance On The FAST Act As It Relates To Savings And Loan Companies

The following is written by Laura Anthony, Esq., a going public attorney focused on OTC listing requirements, direct public offerings, going public transactions, reverse mergers, Form 10 and Form S-1 registration statements, SEC compliance and OTC Market reporting requirements.

On December 4, 2015, President Obama signed the Fixing America's Surface Transportation Act (the "FAST Act") into law, which included many capital markets/securities-related bills. The FAST Act is being dubbed the JOBS Act 2.0 by many industry insiders. The FAST Act has an aggressive rulemaking timetable and some of its provisions became effective immediately upon signing the bill into law on December 4, 2015.

On December 10, 2015, the SEC Division of Corporate Finance addressed the FAST Act by making an announcement with guidance and issuing two new Compliance & Disclosure Interpretations (C&DI). As the FAST Act is a transportation bill that rolled in securities law matters relatively quickly and then was signed into law even quicker, this was the first SEC acknowledgement and guidance on the subject.

On December 21, 2015, the SEC issued 4 additional C&DI on the FAST Act. Each of the new C&DI addresses the FAST Act's impact on Section 12(g) and Section 15(d) of the Exchange Act.

Section 85001 of the FAST Act amends Section 12(g) and Section 15(d) of the Securities Exchange Act such that savings and loan holding companies are treated similar to banks for purposes of the registration, termination of registration and suspension of reporting obligations under the Exchange Act.

In particular, the FAST Act amends Section 12(g) and Section 15(d) of the Exchange Act as follows:

Savings and loan holding companies, as such term is defined in Section 10 of the Home Owners' Loan Act, will have a Section 12(g) registration obligation as of any fiscal year-end after December 4, 2015, with respect to a class of equity security held of record by 2,000 or more persons.

The holders of record threshold for Section 12(g) deregistration for savings and loan holding companies has been increased from 300 to 1,200 persons.

The holders of record threshold for the suspension of reporting under Section 15(d) for savings and loan holding companies has been increased from 300 to 1,200 persons.

The new guidance explains the timing of the new provisions. The SEC clarifies:

Under Section 12(g)(1)(B), a savings and loan holding company will have a Section 12(g) registration obligation if, as of any fiscal year-end after December 4, 2015, it has total assets of more than $10 million and a class of equity security held of record by 2,000 or more persons. We consider that the effect of this provision is to eliminate, for savings and loan holding companies, any Section 12(g) registration obligation with respect to a class of equity security as of a fiscal year-end on or before December 4, 2015. Therefore, if a savings and loan holding company has filed an Exchange Act registration statement and the registration statement is not yet effective, then it may withdraw the registration statement. If a savings and loan holding company has registered a class of equity security under Section 12(g), it would need to continue that registration unless it is eligible to deregister under Section 12(g) or current rules.

Similarly as relates to the termination of registration:

If the class of equity security is held of record by less than 1,200 persons, the savings and loan holding company may file a Form 15 to terminate the Section 12(g) registration of that class. Until rule amendments are made to reflect the change to Section 12(g)(4), the savings and loan holding company should include an explanatory note in its Form 15 indicating that it is relying on Exchange Act Section 12(g)(4) to terminate its duty to file reports with respect to that class of equity security.

Pursuant to Section 12(g)(4), the Section 12(g) registration will be terminated 90 days after the savings and loan holding company files a Form 15. Until that date of termination, the savings and loan holding company is required to file all reports required by Exchange Act Sections 13(a), 14 and 16.

Alternatively, a savings and loan holding company could rely on Exchange Act Rule 12g-4, which permits the immediate suspension of Section 13(a) reporting obligations upon filing a Form 15, if it meets the requirements of that rule. Note that Rule 12g-4 has not yet been amended to incorporate the new 1,200 holder deregistration threshold.

Finally, as relates to the suspension of reporting obligations:

In general, the Section 15(d) reporting obligation is suspended if, and for so long as, the issuer has a class of security registered under Section 12. When an issuer terminates Section 12 registration, it must address any Section 15(d) obligation that would apply once the Section 15(d) suspension is lifted.

For the current fiscal year, a savings and loan holding company can suspend its obligation to file reports under Section 15(d) with respect to a class of security that was sold pursuant to a Securities Act registration statement and that was held of record by less than 1,200 persons as of the first day of the current fiscal year. Such suspension would be deemed to have occurred as of the beginning of the fiscal year in accordance with Section 15(d) (as amended by the FAST Act). If, during the current fiscal year, a savings and loan holding company has a registration statement that becomes effective or is updated pursuant to Securities Act Section 10(a)(3), then it will have a Section 15(d) reporting obligation for the current fiscal year.

If a savings and loan holding company with a class of security held of record by less than 1,200 persons as of the first day of the current fiscal year has a registration statement that was updated during the current fiscal year pursuant to Securities Act Section 10(a)(3), but under which no sales have been made during the current fiscal year, the savings and loan holding company may suspend its Section 15(d) reporting obligation consistent with the guidance in Staff Legal Bulletin No. 18 (March 20, 2010) and GlenRose Instruments Inc. (July 16, 2012).

The Author

Attorney Laura Anthony
Founding Partner
Legal & Compliance, LLC
Corporate, Securities and Going Public Attorneys
LAnthony@LegalAndCompliance.com

Securities Law Blog is written by Laura Anthony, Esq., a going public lawyer focused on OTC Listing Requirements, Direct Public Offerings, Going Public Transactions, Reverse Mergers, Form 10 Registration Statements, and Form S-1 Registration Statements. Securities Law Blog covers topics ranging from SEC Compliance, FINRA Compliance, DTC Chills, Going Public on the OTC, and OTCQX and OTCQB Reporting Requirements. Ms. Anthony is also the host of LawCast.com, the securities law network.

Contact Legal & Compliance, LLC. Inquiries of a technical nature are always encouraged. Follow me on Facebook, LinkedIn, YouTube, Google+, Pinterest and Twitter.

Download our mobile app at iTunes and Google Play.