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SEC Makes JOBS Act Technical Amendments to Cover Pages of Many Securities Act and Exchange Act Forms

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On March 31, 2017, the Securities and Exchange Commission (the “SEC”) adopted several new technical amendments to conform certain rules and forms under the Securities Act of 1933, as amended (the “Securities Act”), and the Securities Exchange Act of 1934, as amended (the “Exchange Act”), to provisions of the Jumpstart Our Business Startups Act of 2012 (the “JOBS Act”) and related interpretations. These changes went into effect on April 12, 2017. A copy of the SEC’s adopting release is available [here](#).

Technical Amendments to Cover Pages of Forms

Notably, these technical amendments revised the cover pages of certain Securities Act and Exchange Act forms, which must now include new check boxes for: (i) whether the registrant is an emerging growth company (an “EGC”) at the time of the filing and (ii) if so, whether the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards.

Although the revisions to these forms concern EGCs, all companies, including non-EGCs, must update the cover pages of these forms to address the new check boxes. The following forms are impacted by these amendments:

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

See Exhibit A for sample language for the amendments to such forms.

Inflation Adjustment to Emerging Growth Company Definition

The SEC also raised the annual gross revenue threshold to qualify as an EGC from \$1.0 billion to \$1.07 billion pursuant to a mandate under the JOBS Act to index the gross revenue threshold for inflation every five years. Under the amended definition of an EGC, an issuer must have less than \$1.07 billion in total annual gross revenue during its most recently completed fiscal year to qualify as an EGC, and it will continue to be deemed an EGC until the earliest of: (i) the last day of the fiscal year during which it had \$1.07 billion or more in total annual gross revenue, (ii) the last day of the fiscal year following the fifth anniversary of the first sale of common equity securities pursuant to an effective registration statement under the Securities Act, (iii) the date on which the issuer issued more than \$1.0 billion¹ in non-convertible debt during the previous three-year period or (iv) the date on which the issuer is deemed to be a “large accelerated filer.” For more information relating to EGCs and the JOBS Act, please see our previous [client alert](#).

If you have any questions about this topic, please contact a member of our [Capital Markets and Securities Practice Group](#).

¹ Note that this non-convertible debt issuance threshold was not adjusted for inflation.

Exhibit A

Cover Page Language for Forms 10-Q, 10-K and 10

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.

Cover Page Language for Form 8-K

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (§ 230.405 of this chapter) or Rule 12b–2 of the Securities Exchange Act of 1934 (§ 240.12b–2 of this chapter).

Emerging growth company

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.

Cover Page Language for Forms S-1, S-3, S-4, S-8 and S-11

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 7(a)(2)(B) of the Securities Act.

Cover Page Language for Forms F-1, F-3 and F-4

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933.

Emerging growth company

If an emerging growth company that prepares its financial statements in accordance with U.S. GAAP, 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 7(a)(2)(B) of the Securities Act.

† The term “new or revised financial accounting standard” refers to any update issued by the Financial Accounting Standards Board to its Accounting Standards Codification after April 5, 2012.

Cover Page Language for Form 20-F

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

Large accelerated filer

Accelerated filer

Non-accelerated filer

Emerging growth company

If an emerging growth company that prepares its financial statements in accordance with U.S. GAAP, 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.

† The term “new or revised financial accounting standard” refers to any update issued by the Financial Accounting Standards Board to its Accounting Standards Codification after April 5, 2012.

Cover Page Language for Form 40-F

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 12b–2 of the Exchange Act.

Emerging growth company

If an emerging growth company that prepares its financial statements in accordance with U.S. GAAP, 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.

† The term “new or revised financial accounting standard” refers to any update issued by the Financial Accounting Standards Board to its Accounting Standards Codification after April 5, 2012.