

AN ALERT FROM THE BDO NATIONAL ASSURANCE PRACTICE

BDO FLASH REPORT

SEC MATTERS



► SUBJECT

EMERGING GROWTH COMPANY STATUS AND ACCOUNTING POLICY ELECTIONS

► SUMMARY

Title I of the recently passed Jumpstart Our Business Startups Act allows filers that qualify as emerging growth companies to provide certain reduced disclosures in their IPO registration statements and periodic filings thereafter.¹ Since the Act was signed into law, the SEC staff has issued several sets of frequently asked questions,² including two sets of FAQs related to the general applicability of Title I of the Act.³ Among other things, the FAQs related to Title I communicate steps an emerging growth company should take to communicate (1) its status as an emerging growth company and (2) the approach it has elected to take for implementing new accounting standards. This guidance is summarized below. An emerging growth company should follow this guidance in its next registration statement or periodic report.⁴

FAQ #4 addresses how a registrant should identify itself as an emerging growth company in a draft registration statement submitted on a confidential basis and in a subsequently filed registration statement. It states that a registrant should disclose that it qualifies as an emerging growth company on the cover page of its prospectus. An emerging growth company may have already completed its IPO and its next filing may be a periodic report. While FAQ #4 does not

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¹ For background, see recent *BDO Knows* newsletter (available at: <http://www.bdo.com/download/2054>).

² Links to the FAQ documents are available at: <http://www.sec.gov/divisions/corpfin/cfjobsact.shtml>.

³ The FAQs related to the general applicability of Title I are available at:

<http://www.sec.gov/divisions/corpfin/guidance/cfjobsactfaq-title-i-general.htm#q1>

⁴ Registrants that have not followed this guidance have received comments asking them to do so.

specifically address the approach an emerging growth company in this situation should take, we suggest that similar disclosure be made in its next periodic report, perhaps as part of the disclosure of the election discussed below.

Emerging growth companies may elect to adopt new or revised accounting standards using the effective dates applicable to nonpublic companies (if the standard is applicable to nonpublic companies). FAQ #33 clarifies that “new or revised” accounting standards consist of accounting standards issued after April 5, 2012, the effective date of the Act. Consequently, emerging growth companies are not allowed to delay the adoption of accounting standards public companies are currently adopting, such as ASU 2011-04, *Fair Value Measurement*, and ASU 2011-05, *Presentation of Comprehensive Income*, both of which are effective for fiscal years, and interim periods within those years, beginning after December 15, 2011.

FAQ #13 addresses a registrant’s election regarding compliance dates for new accounting standards. Some might read the Act and FAQ #13 as requiring an emerging growth company to notify the Commission of its election only if it chooses to comply with public company adoption dates. However, the staff has informally communicated that an emerging growth company should communicate its intention, whichever approach it elects to take. FAQ #13 states that “emerging growth companies that are submitting their draft registration statements on a confidential basis . . . should notify the review staff of their choice in their initial confidential submission” and that “[e]merging growth companies that currently are in registration or are subject to Exchange Act reporting should make and disclose their choice in their next amendment to the registration statement or in their next periodic report, respectively.”⁵

If an emerging growth company has elected to follow nonpublic company adoption dates, FAQ #37 indicates that it may later change its election and “upgrade” to follow the accounting standard adoption dates applicable to public companies. However, once the election to follow public company adoption dates has been made, the decision is irrevocable and the registrant will need to continue to follow public company adoption dates.

⁵ FAQ #29 clarifies that a company that has issued only debt securities pursuant to an effective registration statement on or before December 8, 2011 qualifies as an emerging growth company if its annual total gross revenues for its most recently completed fiscal year were less than \$1 billion and none of the disqualifying conditions have been triggered. Therefore, if a company that is an SEC registrant solely as a result of having registered an offering of debt securities wishes to follow nonpublic company accounting standard adoption dates, it should communicate its intention in this manner.