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The FAST Act: New Exemption for Private Resales to Accredited Investors

The *Fixing America's Surface Transportation Act* added a new section 4(a)(7) to the *Securities Act of 1933*, as amended (Securities Act), which provides a non-exclusive safe harbor exemption that will help facilitate private resales of securities by shareholders to accredited investors if certain conditions are met.¹

Section 4(a)(7) exempts from registration under the Securities Act resales of securities that meet the following conditions:

- Each purchaser must be an accredited investor.
- No form of general solicitation or general advertisement may be used in the offer or sale of the securities.
- The securities must be part of a class that has been authorized and outstanding for at least 90 days.
- The issuer must be engaged in a business and must not be in the organizational stage, bankruptcy or receivership, and must not be a blank check, blind pool or shell company that has no specific business plan or has indicated that its primary business plan is to engage in a merger, business combination or acquisition.
- The seller cannot be the issuer or a direct or indirect subsidiary of the issuer.
- The securities must not be part of an unsold allotment to, or a subscription or participation by, a broker or dealer as an underwriter of the securities or a redistribution.
- Neither the seller nor any person that receives remuneration or a commission in connection with his or her participation in the offer or sale of the securities, including solicitation of purchasers, may be subject to an event that would disqualify the issuer or other covered person under the "bad actor" provisions of Regulation D or be subject to certain "statutory disqualifications" under the *Securities Exchange Act of 1934*, as amended.
- In the case of non-reporting issuers, the seller and the purchaser must obtain from the issuer (at the request of the seller), and the seller must make available to the purchaser, specified general and financial information about the issuer and the securities. A seller who is a control person with respect to the issuer must provide a brief statement

¹ Market participants may continue to rely on other available resale exemptions, such as Rule 144, Rule 144A and even the so-called section 4(a)(1½) resale exemption.

regarding the nature of the affiliation and also certify that the seller has no reasonable grounds to believe that the issuer is in violation of the securities laws or regulations.

Securities acquired under section 4(a)(7) are considered "restricted securities" and cannot be transferred by the acquirer in the absence of another exemption under the Securities Act. In addition, securities sold under the exemption are "covered securities" under the Securities Act and, consequently, are preempted from state "blue sky" registration requirements.

If you have any questions regarding the foregoing, please contact [Jeffrey Nadler](#) (212.588.5505) or [Paul Watkins](#) (212.588.5547) in our New York office.

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