

## SEC IMPLEMENTS NEW RULES AFFECTING SUMMARIES IN FORM 10-K UNDER THE FAST ACT

JUNE 2016

On June 1, 2016, the SEC adopted an interim final [rule](#) pursuant to Section 72001 of the Fixing America's Surface Transportation Act ("FAST Act"). The amendment allows, but does not require, registrants to include a summary Form 10-K, provided that each item in the summary includes a cross reference by hyperlink to the more detailed related material within the registrant's Form 10-K.

### 10-K SUMMARIES

Section 72001 of the FAST Act, which became law on December 4, 2015, directed the SEC to issue regulations to allow registrants to include such summary pages. In accordance with Section 72001, the SEC amended Part IV of the Form 10-K by adding new Item 16, which expressly permits a registrant, at its option, to provide a summary in its Form 10-K.

Registrants who opt to include a summary are permitted to choose which items to summarize as long as the information is presented fairly and accurately. In light of the varied nature of registrants' size and operation, the interim rule does not:

- Set forth a required length for the summary (instead, the amendment simply states that the summary should be brief and provide more information than a table of contents);
- Designate the Form 10-K disclosure items that the summary must cover; or
- Direct the summary to be placed in a specific location within the Form 10-K.

Item 16 also addresses information incorporated by reference into the Form 10-K. This referenced information, for which an exhibit is filed along with the form, must include a hyperlink from the summary to the discussion in the accompanying exhibit.

Furthermore, a registrant choosing to include a summary under the interim final rule must only summarize the information that is included in the Form 10-K at the time it is filed. It need not update the summary to reflect information required by Part III of the Form 10-K that the registrant incorporates by reference either from a proxy or an information statement filed after the Form 10-K. Instead, the summary must only indicate that the summary does not include Part III information.

### ANTICIPATED EFFECTS OF INTERIM FINAL RULE

The SEC anticipates that a summary with hyperlinked cross references will allow users to easily locate corresponding items in a Form 10-K where the full disclosure is presented, providing the potential benefit of enhancing the ability of investors and other users of the form to process relevant information and reduce their processing time and search costs. In the case of larger and more complex Form 10-K's, a summary may be particularly useful to investors and other users because concisely written documents are more likely to be read, allowing the information to be more effectively incorporated into stock prices.

Due to the large scale flexibility provided by Item 16, registrants who currently do not implement summaries within their Form 10-K filings will not be required to do so. Instead, the amendment will primarily affect registrants who currently include a summary in their Form 10-K's that (1) do not cross reference items; (2) use cross references other than hyperlinks; or (3) use hyperlinks but not for all disclosure topics included in the summary.

### EFFECTIVE DATE

The interim final rule went into effect on June 9, 2016. The SEC will accept comments through July 11, 2016.

**ADDITIONAL INFORMATION**

Our Securities and Capital Markets attorneys will be pleased to meet with you to discuss the potential impact of the interim final rules. Please contact your attorney at Tucker Ellis or any of the following attorneys.

- **ROBERT LOESCH** | 216.696.5916 | [robert.loesch@tuckerellis.com](mailto:robert.loesch@tuckerellis.com)
- **GLENN MORRICAL** | 216.696.3431 | [glenn.morrical@tuckerellis.com](mailto:glenn.morrical@tuckerellis.com)
- **CHRISTOPHER HEWITT** | 216.696.2691 | [christopher.hewitt@tuckerellis.com](mailto:christopher.hewitt@tuckerellis.com)
- **PATRICIA OLIVER** | 216.696.4149 | [patricia.oliver@tuckerellis.com](mailto:patricia.oliver@tuckerellis.com)
- **MATTHEW MARGUERITE** | 216.696.5797 | [matthew.marguerite@tuckerellis.com](mailto:matthew.marguerite@tuckerellis.com)
- **JAMES WARREN** | 216.696.2590 | [james.warren@tuckerellis.com](mailto:james.warren@tuckerellis.com)
- **CHRISTINA SUH** | 216.696.2487 | [christina.suh@tuckerellis.com](mailto:christina.suh@tuckerellis.com)

This Client Alert has been prepared by Tucker Ellis LLP for the use of our clients. Although prepared by professionals, it should not be used as a substitute for legal counseling in specific situations. Readers should not act upon the information contained herein without professional guidance.