

## INSIGHTS

## FAST Act Impact on Community Banks

December 8, 2015

Last week, President Obama signed into law a \$305 billion bundle of legislation referred to as the FAST Act. While the FAST Act was conceived as a transportation bill, it came to contain a number of provisions targeted towards the financial services industry, which will have a considerable impact on the strategy and operations of community banks. These provisions appear under “Division C—Finance” and “Division G—Financial Services” of the [FAST Act](#), and consist of the following:

### Using Federal Reserve Resources to Offset the Cost of the Legislation

- Section 7(a) of the Federal Reserve Act is amended to cap the aggregate amount of surplus funds of the Federal Reserve banks at \$10 billion, with any funds exceeding such cap to be transferred to the U.S. Department of the Treasury (“Treasury”).
- Section 7(a)(1) of the Federal Reserve Act is amended to reduce the dividend payable on paid-in capital stock of banks with more than \$10 billion in assets to the smaller of (i) the rate equal to the high yield of the 10-year Treasury note auctioned at the last auction held prior to the payment of such dividends, and (ii) 6 percent. Banks below the \$10 billion threshold will keep the flat rate of 6 percent.

### Regulatory Relief Measures for Small to Medium Sized Banks

- Section 503 of the Gramm-Leach-Bliley Act is amended to eliminate the annual privacy notice requirement and to require banks to send out privacy disclosures only when their privacy policies and practices have changed.
- Section 10 of the Federal Deposit Insurance Act is amended to increase from \$500 million to \$1 billion the asset cap of banks eligible for extended bank exam cycles of 18 months.

### Equalizing the Registration Threshold for Holding Companies

Sections 12(g) and 15(d) of the Securities Exchange Act of 1934 is amended to require savings and loan holding companies to comply with the same securities registration requirements as banks and bank holding companies. Savings and loan holding companies with total assets over \$10 million and a class of equity security (other than an exempted security) held by 2,000 or more persons must register their securities with the Securities Exchange Commission (the “SEC”) and provide supplementary and periodic information relating to such registration.

### Codifying the “4(1½)” Exemption

Section 4 of the Securities Act of 1933 is amended in order to codify under new Section 4(a)(7) the informal resale exemption from Section 5 registration often referred to as the “4(1½)” exemption. This exemption, which until now had been recognized by the SEC but never codified in law or regulation, covered certain private, secondary transactions by non-issuers. Section 4(a)(7) now provides a formal exemption from Section 5 registration for such transactions, provided the following requirements are met:

- Each purchaser must be an accredited investor;
- The seller and any person acting on its behalf must not offer or sell the securities in question by means of general solicitation;
- If the issuer of the securities in question is a non-reporting company, the seller and purchaser may request from the issuer, and the issuer must provide in response, certain current information relating to, among other things, the issuer and its business, the securities being sold, the issuer’s officers and directors, and the issuer’s financial statements prepared in accordance with U.S. GAAP;
- The issuer must be “engaged in business” and must not be in the organizational stage or in bankruptcy, and must not be a blank check, blind pool or shell company;
- The sale must not involve an unsold allotment to, or a subscription or participation by, any underwriter;
- The securities sold must be of a class that has been authorized and outstanding for at least 90 days prior to the sale; and
- Neither the issuer nor anyone paid a commission by the issuer may be a “bad actor.”

Securities sold pursuant to the Section 4(a)(7) exemption are deemed to be restricted securities under Rule 144 and, as covered securities, are also exempt from registration under state “blue sky” laws.

The FAST Act includes several other capital markets provisions that facilitate access to the capital markets for emerging growth companies and smaller reporting companies; a detailed overview of the additional provisions may be found [here](#).