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February 18, 2016

Via E-mail: rule-comments@sec.gov

Securities and Exchange Commission,
100 F Street, N.E.,
Washington, DC 20549-0609.

Attention: Brent J. Fields, Secretary

Re: Simplification of Disclosure Requirements for Emerging Growth
Companies and Forward Incorporation by Reference on Form S-1
for Smaller Reporting Companies— File No. S7-01-16

Ladies and Gentlemen:

We appreciate the opportunity to comment on the Commission's interim final rules and request for comment implementing Sections 71003 and 84001 of the Fixing America's Surface Transportation Act (the "Fast Act").¹ We have no comments on the rule changes implementing Section 71003, but would suggest one revision to the rule changes implementing Section 84001.

While the revised Item 12(b) of Form S-1 faithfully tracks the language of Section 84001, we do not think it makes sense to limit availability of forward incorporation by reference to "smaller reporting companies". The effect is to exclude companies with a public float (measured as specified in Rule 405) of greater than \$75

¹ Release No. 33-10003 (January 13, 2016).

million from using forward incorporation by reference. But the larger a company's public float, the more likely it is to have a market following and research coverage, and so (at least under the Commission's traditional view) the more appropriate it is to permit streamlined procedures like forward incorporation by reference. The approach reflected in revised Item 12(b) turns this logic on its head. In addition, the Rule 405 definition of "smaller reporting company", requiring that public float be measured as of the last business day of the issuer's most recently completed second fiscal quarter, will add an unfortunate element of randomness to availability of the new relief. For example, whether a company completing its initial public offering may use forward incorporation by reference during its first year as a public company would often depend on whether the IPO priced before or after the end of the company's second quarter. It would be simpler, and more rational, to make forward incorporation by reference available to any Form S-1 filer. Given the dramatic increase of internet use, making any SEC filing instantly available to substantially all investors, we think that there is little practical risk involved in such a change, from an investor protection perspective.

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If you would like to discuss our letter, please feel free to contact Robert E. Buckholz at [REDACTED] or David B. Harms at [REDACTED].

Very truly yours,



Sullivan & Cromwell LLP