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HOUSE OF REPRESENTATIVES
REPORT
115–374

ENCOURAGING PUBLIC OFFERINGS ACT OF 2017

OCTOBER 31, 2017.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. HENSARLING, from the Committee on Financial Services, submitted the following

R E P O R T

[To accompany H.R. 3903]

[Including cost estimate of the Congressional Budget Office]

The Committee on Financial Services, to whom was referred the bill (H.R. 3903) to amend the Securities Act of 1933 to expand the ability to use testing the waters and confidential draft registration submissions, and for other purposes, having considered the same, report favorably thereon with amendments and recommend that the bill as amended do pass.

The amendments (stated in terms of the page and line numbers of the introduced bill) are as follows:

Page 2, strike lines 1 through 5 and insert the following:

(1) in section 5(d)—

(A) by striking "Notwithstanding" and inserting the following:

"(1) IN GENERAL.—Notwithstanding";

(B) by striking "an emerging growth company or any person authorized to act on behalf of an emerging growth company" and inserting "an issuer or any person authorized to act on behalf of an issuer"; and

(C) by adding at the end the following:

"(2) ADDITIONAL REQUIREMENTS.—

"(A) IN GENERAL.—The Commission may issue regulations, subject to public notice and comment, to impose such other terms, conditions, or requirements on the engaging in oral or written communications described under paragraph (1) by an issuer other than an emerging growth company as the Commission determines appropriate.

"(B) REPORT TO CONGRESS.—Prior to any rulemaking described under subparagraph (A), the Commission shall issue a report to the Congress containing a list of the findings supporting the basis of such rulemaking."; and

Page 2, line 11, strike "paragraph (3)" and insert "paragraph (4)".

Page 3, after line 19, insert the following:

"(3) ADDITIONAL REQUIREMENTS.—

"(A) IN GENERAL.—The Commission may issue regulations, subject to public notice and comment, to impose such other terms, conditions, or requirements on the submission of draft registration statements described under this subsection by an issuer other than an emerging growth company as the Commission determines appropriate.

"(B) REPORT TO CONGRESS.—Prior to any rulemaking described under subparagraph (A), the Commission shall issue a report to the Congress containing a list of the findings supporting the basis of such rulemaking.".

PURPOSE AND SUMMARY

On October 2, 2017, Representative Ted Budd introduced H.R. 3903 the "Encouraging Public Offerings Act of 2017," which amends the Securities Act of 1933 to expand to all public companies certain provisions of Title I of the Jumpstart Our Business Startups (JOBS) Act that previously applied only to Emerging Growth Companies (EGCs).

H. R. 3903 permits issuers to submit to the Securities and Exchange Commission (SEC) for confidential review before publicly filing draft registration statements for an Initial Public Offering (IPO) and for follow-on offerings within one year of an IPO. Additionally, this bill allows all companies to "test the waters" before filing an IPO, which means the company may meet with qualified institutional buyers (QIBs) and other institutional accredited investors to gauge those investors' interest in the offering.

BACKGROUND AND NEED FOR LEGISLATION

The goal of H.R. 3903 is to encourage more companies to go public and expand provisions of Title I of the JOBS Act to allow all companies to submit confidential draft registration statements to the SEC and to "test the waters" by communicating directly with certain potential investors before filing an IPO.

Although small companies are at the forefront of technological innovation and job creation, they frequently face obstacles in obtaining funding in the capital markets. These obstacles often are a result of the disproportionately larger burden that securities regulations—written for large public companies—place on small companies when they seek to go public. The JOBS Act makes it easier for smaller companies to access the capital markets and recognizes that rigid provisions in the securities laws can serve as deterrent to small companies as they seek to raise equity capital. Signed into law on April 5, 2012, the bipartisan JOBS Act consisted of six bills

that originated in the Financial Services Committee and help small companies obtain access to capital markets by lifting the burden of certain securities regulations.

By helping small companies obtain funding and go public, the JOBS Act has helped facilitate economic growth and job creation. Title I of the JOBS Act established a new category of issuers known as "Emerging Growth Companies"—or "EGCs." EGCs must have less than $1 billion in annual revenues or $700 million in public float when they register with the SEC, and the law provides these EGCs with a five-year of an "On Ramp" to comply with certain regulatory requirements related to disclosure and reporting. Additionally, Title I allows for EGCs to "test the waters" by meeting with investors and explain their business structure before issuing an IPO. Biotech companies in particular have been vocal about the benefits that testing the waters provides, as it allows for additional time to explain to investors the complicated technologies, regulatory pathways, and complex product offerings of the company to encourage greater participation in the IPO. Title I of the JOBS Act also permits EGCs to confidentially submit draft registration statements to the SEC for nonpublic review before issuing an IPO. Allowing confidential filing of draft registration statements with the SEC allows companies to finalize their registration documents without the undue expectations from media scrutiny and allows companies to time their offering with the market before making their Form S–1 public and beginning an investor roadshow.

Even with these important advances, many small companies still cannot access the capital they need to grow their businesses and create jobs. According to one survey, 57 percent of respondents believe the current business financing environment is restricting growth opportunities and 49 percent of respondents believe it is restricting their ability to hire. While the JOBS Act has made it easier for small companies to go public, the JOBS Act alone has not been enough to entirely overcome the capital formation obstacles that many companies face as they attempt to go public.

Recognizing the benefit these JOBS Act provisions serve to fulfill its mission of facilitating capital formation, on June 29, 2017, the SEC extended the option to submit draft registration statements for IPOs and follow-on offerings within one year of an IPO to all companies (no longer limiting the option to EGCs). H.R. 3903 codifies this provision into statute and expands the "testing the waters" provision in Title I of the JOBS Act to apply to all companies. Expanding "testing the waters" provision will enable all companies to have the benefits of reaching out to QIBs and other institutional accredited investors to solicit interest before filing an IPO, without harming retail investors. An amendment offered by Rep. Budd, and adopted by the Committee, would allow the SEC to impose additional terms, conditions, or requirements regarding the expansion of these provisions beyond EGCs as is appropriate in the public interest or for the protection of investors.

In its report on Capital Markets mandated by President Trump's February 3rd Executive Order, Treasury recommended that the SEC permit all companies to file drafts for IPOs confidentially and that companies other than EGCs be allowed to "test the waters" with potential investors who are QIBs or institutional accredited investors.

HEARINGS

The Committee on Financial Services and Subcommittee on Capital Markets, Securities, and Investment held a hearing examining matters relating to H.R. 3903 on March 22, 2017, April, 26, 2017, and July 18, 2017.

COMMITTEE CONSIDERATION

The Committee on Financial Services met in open session on October 11, 2017, and October 12, 2017, and ordered H.R. 3903 to be reported favorably to the House as amended by a recorded vote of 60 yeas to 0 nays (Record vote no. FC–84), a quorum being present. Before the motion to report was offered, the Committee adopted an amendment offered by Mr. Budd by voice vote.

COMMITTEE VOTES

Clause 3(b) of rule XIII of the Rules of the House of Representatives requires the Committee to list the record votes on the motion to report legislation and amendments thereto. The sole recorded vote was on a motion by Chairman Hensarling to report the bill favorably to the House as amended. The motion was agreed to by a recorded vote of 60 yeas to 0 nays (Record vote no. FC–84), a quorum being present.

Record vote no. FC-84

Representative	Yea	Nay	Present	Representative	Yea	Nay	Present
Mr. Hensarling	X			Ms. Maxine Waters (CA)	X		
Mr. McHenry	X			Mrs. Carolyn B. Maloney (NY)	X		
Mr. King	X			Ms. Velázquez	X		
Mr. Royce (CA)	X			Mr. Sherman	X		
Mr. Lucas	X			Mr. Meeks	X		
Mr. Pearce	X			Mr. Capuano	X		
Mr. Posey	X			Mr. Clay	X		
Mr. Luetkemeyer	X			Mr. Lynch	X		
Mr. Huizenga	X			Mr. David Scott (GA)	X		
Mr. Duffy	X			Mr. Al Green (TX)	X		
Mr. Stivers	X			Mr. Cleaver	X		
Mr. Hultgren	X			Ms. Moore	X		
Mr. Ross	X			Mr. Ellison	X		
Mr. Pittenger	X			Mr. Perlmutter	X		
Mrs. Wagner	X			Mr. Himes	X		
Mr. Barr	X			Mr. Foster	X		
Mr. Rothfus	X			Mr. Kildee	X		
Mr. Messer	X			Mr. Delaney	X		
Mr. Tipton	X			Ms. Sinema	X		
Mr. Williams	X			Mrs. Beatty	X		
Mr. Poliquin	X			Mr. Heck	X		
Mrs. Love	X			Mr. Vargas	X		
Mr. Hill	X			Mr. Gottheimer	X		
Mr. Emmer	X			Mr. Gonzalez (TX)	X		
Mr. Zeldin	X			Mr. Crist	X		
Mr. Trott	X			Mr. Kihuen	X		
Mr. Loudermilk	X						
Mr. Mooney (WV)	X						
Mr. MacArthur	X						
Mr. Davidson	X						
Mr. Budd	X						
Mr. Kustoff (TN)	X						
Ms. Tenney	X						
Mr. Hollingsworth	X						

COMMITTEE OVERSIGHT FINDINGS

Pursuant to clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the findings and recommendations of the Committee based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

PERFORMANCE GOALS AND OBJECTIVES

Pursuant to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the Committee states that H.R. 3903 will extend popular JOBS Act provisions beyond just EGCs to all companies, to help encourage companies to go public.

NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX EXPENDITURES

In compliance with clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee adopts as its own the estimate of new budget authority, entitlement authority, or tax expenditures or revenues contained in the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

CONGRESSIONAL BUDGET OFFICE ESTIMATES

Pursuant to clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the following is the cost estimate provided by the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, October 27, 2017.

Hon. JEB HENSARLING,
Chairman, Committee on Financial Services,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 3903, the Encouraging Public Offerings Act of 2017.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Stephen Rabent.

Sincerely,

KEITH HALL,
Director.

Enclosure.

H.R. 3903—Encouraging Public Offerings Act of 2017

Under current law, issuers of securities are generally required to register with the Securities and Exchange Commission (SEC) prior to an initial public offering (IPO) of their securities for sale. Emerging growth companies are allowed to submit draft registration statements to the SEC for confidential review before publicly filing and also can submit draft registration statements for follow-on securities offerings within one year of an IPO. SEC's current policy guidance extends that allowance to all issuers of securities. H.R.

3903 would codify that policy guidance. Additionally, emerging growth companies are exempt from a prohibition on issuers of securities from communicating with certain potential investors about such securities without first registering them with the SEC. H.R. 3903 would expand that exemption to include all issuers of securities.

Based on an analysis of information from the SEC, CBO estimates that implementing H.R. 3903 would cost less than $500,000 to update the SEC's guidance. Moreover, the SEC is authorized to collect fees sufficient to offset its annual appropriation; therefore, CBO estimates that the net effect on discretionary spending would be negligible, assuming appropriation actions consistent with that authority.

Enacting H.R. 3903 would not affect direct spending or revenues; therefore, pay-as-you-go procedures do not apply.

CBO estimates that enacting H.R. 3903 would not increase net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2028.

H.R. 3903 contains no intergovernmental mandates as defined in the Unfunded Mandates Reform Act (UMRA).

If the SEC increases fees to offset the costs associated with implementing the bill, H.R. 3903 would increase the cost of an existing mandate on private entities required to pay those assessments. CBO estimates that the incremental cost of the mandate would be small and would fall well below the annual threshold for private-sector mandates established in UMRA ($156 million in 2017, adjusted annually for inflation).

The CBO staff contacts for this estimate are Stephen Rabent (for federal costs) and Logan Smith (for private-sector mandates). The estimate was approved by H. Samuel Papenfuss, Deputy Assistant Director for Budget Analysis.

FEDERAL MANDATES STATEMENT

This information is provided in accordance with section 423 of the Unfunded Mandates Reform Act of 1995.

The Committee has determined that the bill does not contain Federal mandates on the private sector. The Committee has determined that the bill does not impose a Federal intergovernmental mandate on State, local, or tribal governments.

ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act were created by this legislation.

APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of the section 102(b)(3) of the Congressional Accountability Act.

EARMARK IDENTIFICATION

With respect to clause 9 of rule XXI of the Rules of the House of Representatives, the Committee has carefully reviewed the pro-

visions of the bill and states that the provisions of the bill do not contain any congressional earmarks, limited tax benefits, or limited tariff benefits within the meaning of the rule.

DUPLICATION OF FEDERAL PROGRAMS

In compliance with clause 3(c)(5) of rule XIII of the Rules of the House of Representatives, the Committee states that no provision of the bill establishes or reauthorizes: (1) a program of the Federal Government known to be duplicative of another Federal program; (2) a program included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111–139; or (3) a program related to a program identified in the most recent Catalog of Federal Domestic Assistance, published pursuant to the Federal Program Information Act (Pub. L. No. 95–220, as amended by Pub. L. No. 98–169).

DISCLOSURE OF DIRECTED RULEMAKING

Pursuant to section 3(i) of H. Res. 5, (115th Congress), the following statement is made concerning directed rulemakings: The Committee estimates that the bill requires no directed rulemakings within the meaning of such section.

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

Section 1. Short title

This Section cites H.R. 3903 as the "Encouraging Public Offerings Act of 2017"

Section 2. Expanding testing the waters and confidential submissions

This section amends section 5(d) of the Securities Act of 1933 to allow for all companies to engage in oral or written communications with potential investors prior to filing a registration statement.

This section also amends the Securities Act of 1933 to allow for any issuer prior to its IPO to confidentially submit a draft registration statement to the SEC for nonpublic review and allows for any issuer within a one year period of its initial public offering, or its registration of a security under section 12(b) of the Securities Exchange Act of 1934, to confidentially submit a draft registration statement with the SEC for nonpublic review.

This section gives the SEC the authority to issue regulations, subject to public notice and comment, or impose such other terms, conditions or requirements on oral and written communications or draft registration statements by any issuer, other than an EGC, as it deems appropriate to be in the public interest or for the protection of investors. The SEC must submit a report to Congress prior to any rulemaking with a list of findings supporting the rulemaking.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omit-

ted is enclosed in black brackets, new matter is printed in italic, and existing law in which no change is proposed is shown in roman):

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, and existing law in which no change is proposed is shown in roman):

SECURITIES ACT OF 1933

TITLE I—

* * * * * * *

PROHIBITIONS RELATING TO INTERSTATE COMMERCE AND THE MAILS

SEC. 5. (a) Unless a registration statement is in effect as to a security, it shall be unlawful for any person, directly or indirectly—

(1) to make use of any means or instruments of transportation or communication in interstate commerce or of the mails to sell such security through the use or medium of any prospectus or otherwise; or

(2) to carry or cause to be carried through the mails or in interstate commerce, by any means or instruments of transportation, any such security for the purpose of sale or for delivery after sale.

(b) It shall be unlawful for any person, directly or indirectly—

(1) to make use of any means or instruments of transportation or communication in interstate commerce or of the mails to carry or transmit any prospectus relating to any security with respect to which a registration statement has been filed under this title, unless such prospectus meets the requirements of section 10; or

(2) to carry or cause to be carried through the mails or in interstate commerce any such security for the purpose of sale or for delivery after sale, unless accompanied or preceded by a prospectus that meets the requirements of subsection (a) of section 10.

(c) It shall be unlawful for any person, directly or indirectly, to make use of any means or instruments of transportation or communication in interstate commerce or of the mails to offer to sell or offer to buy through the use or medium of any prospectus or otherwise any security, unless a registration statement has been filed as to such security, or while the registration statement is the subject of a refusal order or stop order or (prior to the effective date of the registration statement) any public proceeding or examination under section 8.

(d) LIMITATION.—[Notwithstanding]

(1) IN GENERAL.—Notwithstanding any other provision of this section, [an emerging growth company or any person authorized to act on behalf of an emerging growth company] *an issuer or any person authorized to act on behalf of an issuer*

may engage in oral or written communications with potential investors that are qualified institutional buyers or institutions that are accredited investors, as such terms are respectively defined in section 230.144A and section 230.501(a) of title 17, Code of Federal Regulations, or any successor thereto, to determine whether such investors might have an interest in a contemplated securities offering, either prior to or following the date of filing of a registration statement with respect to such securities with the Commission, subject to the requirement of subsection (b)(2).

(2) ADDITIONAL REQUIREMENTS.—

(A) IN GENERAL.—The Commission may issue regulations, subject to public notice and comment, to impose such other terms, conditions, or requirements on the engaging in oral or written communications described under paragraph (1) by an issuer other than an emerging growth company as the Commission determines appropriate.

(B) REPORT TO CONGRESS.—Prior to any rulemaking described under subparagraph (A), the Commission shall issue a report to the Congress containing a list of the findings supporting the basis of such rulemaking.

(e) Notwithstanding the provisions of section 3 or 4, unless a registration statement meeting the requirements of section 10(a) is in effect as to a security-based swap, it shall be unlawful for any person, directly or indirectly, to make use of any means or instruments of transportation or communication in interstate commerce or of the mails to offer to sell, offer to buy or purchase or sell a security-based swap to any person who is not an eligible contract participant as defined in section 1a(18) of the Commodity Exchange Act (7 U.S.C. 1a(18)).

REGISTRATION OF SECURITIES AND SIGNING OF REGISTRATION STATEMENT

SEC. 6. (a) Any security may be registered with the Commission under the terms and conditions hereinafter provided, by filing a registration statement in triplicate, at least one of which shall be signed by each issuer, its principal executive officer or officers, its principal financial officer, its comptroller or principal accounting officer, and the majority of its board of directors or persons performing similar functions (or, if there is no board of directors or persons performing similar functions, by the majority of the persons or board having the power of management of the issuer), and in case the issuer is a foreign or Territorial person by its duly authorized representative in the United States; except that when such registration statement relates to a security issued by a foreign government, or political subdivision thereof, it need be signed only by the underwriter of such security. Signatures of all such persons when written on the said registration statements shall be presumed to have been so written by authority of the person whose signature is so affixed and the burden of proof, in the event such authority shall be denied, shall be upon the party denying the same. The affixing of any signature without the authority of the purported signer shall constitute a violation of this title. A registration statement shall be deemed effective only as to the securities specified therein as proposed to be offered.

(b) REGISTRATION FEE.—

(1) FEE PAYMENT REQUIRED.—At the time of filing a registration statement, the applicant shall pay to the Commission a fee at a rate that shall be equal to $92 per $1,000,000 of the maximum aggregate price at which such securities are proposed to be offered, except that during fiscal year 2003 and any succeeding fiscal year such fee shall be adjusted pursuant to paragraph (2).

(2) ANNUAL ADJUSTMENT.—For each fiscal year, the Commission shall by order adjust the rate required by paragraph (1) for such fiscal year to a rate that, when applied to the baseline estimate of the aggregate maximum offering prices for such fiscal year, is reasonably likely to produce aggregate fee collections under this subsection that are equal to the target fee collection amount for such fiscal year.

(3) PRO RATA APPLICATION.—The rates per $1,000,000 required by this subsection shall be applied pro rata to amounts and balances of less than $1,000,000.

(4) REVIEW AND EFFECTIVE DATE.—In exercising its authority under this subsection, the Commission shall not be required to comply with the provisions of section 553 of title 5, United States Code. An adjusted rate prescribed under paragraph (2) and published under paragraph (5) shall not be subject to judicial review. An adjusted rate prescribed under paragraph (2) shall take effect on the first day of the fiscal year to which such rate applies.

(5) PUBLICATION.—The Commission shall publish in the Federal Register notices of the rate applicable under this subsection and under sections 13(e) and 14(g) for each fiscal year not later than August 31 of the fiscal year preceding the fiscal year to which such rate applies, together with any estimates or projections on which such rate is based.

(6) DEFINITIONS.—For purposes of this subsection:

(A) TARGET OFFSETTING COLLECTION AMOUNT.—The target fee collection amount for each fiscal year is determined according to the following table:

Fiscal year:	Target fee collection amount
2002	$377,000,000
2003	$435,000,000
2004	$467,000,000
2005	$570,000,000
2006	$689,000,000
2007	$214,000,000
2008	$234,000,000
2009	$284,000,000
2010	$334,000,000
2011	$394,000,000
2012	$425,000,000
2013	$455,000,000
2014	$485,000,000
2015	$515,000,000
2016	$550,000,000
2017	$585,000,000
2018	$620,000,000
2019	$660,000,000
2020	$705,000,000

2021 and each fiscal year thereafter ..	An amount that is equal to the target fee collection amount for the prior fiscal year, adjusted by the rate of inflation.

(B) BASELINE ESTIMATE OF THE AGGREGATE MAXIMUM OFFERING PRICES.—The baseline estimate of the aggregate maximum offering prices for any fiscal year is the baseline estimate of the aggregate maximum offering price at which securities are proposed to be offered pursuant to registration statements filed with the Commission during such fiscal year as determined by the Commission, after consultation with the Congressional Budget Office and the Office of Management and Budget, using the methodology required for projections pursuant to section 257 of the Balanced Budget and Emergency Deficit Control Act of 1985.

(c) The filing with the Commission of a registration statement, or of an amendment to a registration statement, shall be deemed to have taken place upon the receipt thereof, but the filing of a registration statement shall not be deemed to have taken place unless it is accompanied by a United States postal money order or a certified bank check or cash for the amount of the fee required under subsection (b).

(d) The information contained in or filed with any registration statement shall be made available to the public under such regulations as the Commission may prescribe, and copies thereof, photostatic or otherwise, shall be furnished to every applicant at such reasonable charge as the Commission may prescribe.

(e) [EMERGING GROWTH COMPANIES] *DRAFT REGISTRATION STATEMENTS*.—

[(1) IN GENERAL.—Any emerging growth company, prior to its initial public offering date, may confidentially submit to the Commission a draft registration statement, for confidential nonpublic review by the staff of the Commission prior to public filing, provided that the initial confidential submission and all amendments thereto shall be publicly filed with the Commission not later than 15 days before the date on which the issuer conducts a road show, as such term is defined in section 230.433(h)(4) of title 17, Code of Federal Regulations, or any successor thereto. An issuer that was an emerging growth company at the time it submitted a confidential registration statement or, in lieu thereof, a publicly filed registration statement for review under this subsection but ceases to be an emerging growth company thereafter shall continue to be treated as an emerging market growth company for the purposes of this subsection through the earlier of the date on which the issuer consummates its initial public offering pursuant to such registrations statement or the end of the 1-year period beginning on the date the company ceases to be an emerging growth company.]

(1) PRIOR TO INITIAL PUBLIC OFFERING.—Any issuer, prior to its initial public offering date, may confidentially submit to the Commission a draft registration statement, for confidential nonpublic review by the staff of the Commission prior to public filing, provided that the initial confidential submission and all amendments thereto shall be publicly filed with the Commis-

sion not later than 15 days before the date on which the issuer conducts a road show (as defined under section 230.433(h)(4) of title 17, Code of Federal Regulations) or, in the absence of a road show, at least 15 days prior to the requested effective date of the registration statement.

(2) WITHIN ONE YEAR AFTER INITIAL PUBLIC OFFERING OR EXCHANGE REGISTRATION.—Any issuer, within the one-year period following its initial public offering or its registration of a security under section 12(b) of the Securities Exchange Act of 1934, may confidentially submit to the Commission a draft registration statement, for confidential nonpublic review by the staff of the Commission prior to public filing, provided that the initial confidential submission and all amendments thereto shall be publicly filed with the Commission not later than 15 days before the date on which the issuer conducts a road show (as defined under section 230.433(h)(4) of title 17, Code of Federal Regulations) or, in the absence of a road show, at least 15 days prior to the requested effective date of the registration statement.

(3) ADDITIONAL REQUIREMENTS.—

(A) IN GENERAL.—The Commission may issue regulations, subject to public notice and comment, to impose such other terms, conditions, or requirements on the submission of draft registration statements described under this subsection by an issuer other than an emerging growth company as the Commission determines appropriate.

(B) REPORT TO CONGRESS.—Prior to any rulemaking described under subparagraph (A), the Commission shall issue a report to the Congress containing a list of the findings supporting the basis of such rulemaking.

[(2)**]** *(4)* CONFIDENTIALITY.—Notwithstanding any other provision of this title, the Commission shall not be compelled to disclose any information provided to or obtained by the Commission pursuant to this subsection. For purposes of section 552 of title 5, United States Code, this subsection shall be considered a statute described in subsection (b)(3)(B) of such section 552. Information described in or obtained pursuant to this subsection shall be deemed to constitute confidential information for purposes of section 24(b)(2) of the Securities Exchange Act of 1934.

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