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## Luring the Unicorns — SEC Expands Nonpublic Review of Registration Statements to All Filers

The Securities and Exchange Commission has extended to all private or newly public companies the opportunity for confidential submission and review of certain of their registration statements. In a public statement on June 29, 2017, the SEC's Division of Corporation Finance announced that all companies seeking to register securities in connection with an initial public offering or listing on a national securities exchange, as well as certain follow-on offerings, may submit a draft registration statement under the popular 2012 JOBS (Jumpstart Our Business Startup) Act procedure previously reserved for "emerging growth companies." This IPO "on-ramp" permits smaller nonpublic companies and Division staff to engage in a confidential comment and review process, deferring public disclosure of the filings until the issuer and its managing underwriters are closer to the marketing, or roadshow, stage of the transaction. The new procedure enables Silicon Valley's and other "unicorn" companies too large to meet the JOBS Act "emerging growth company" definition to benefit from the regulatory flexibility afforded smaller start-ups. Likewise, these procedures should provide welcome relief to nonreporting companies seeking to list on a national securities exchange without raising new capital (whether as a result of market valuations or otherwise), and that may be anxious to avoid signaling

the markets before resolving any disclosure issues raised during the course of the SEC review process.

Significantly, any issuer conducting an offering within 12 months following the effective date of its initial Securities Act registration statement or Exchange Act listing registration may submit an initial draft filing confidentially. Previously, no "follow-on" offering registration was eligible for confidential review.

The announcement (together with a related series of [18 FAQs](#)) provides detailed information regarding:

- The need for EDGAR ID codes.
- When SEC filing fees are due.
- Preparing the draft submission for confidential review and representations required in the submission cover letter.
- Clarification that most other JOBS Act relief given to EGCs — including "testing the waters" with institutional investors — is unavailable to registrants that are not EGCs.

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- Permission to omit financial information that the issuer believes will not be required when the registration statement is publicly filed (similar to the relief provided by Section 71003 of the Fixing America's Surface Transportation Act, or FAST Act).

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