

SEC Announces Procedure for Confidential Submission of IPO Registration Statements



The recently-enacted Jumpstart Our Business Startups Act of 2012 (“JOBS Act”) provides that emerging growth companies may submit a registration statement for an initial public offering to the SEC on a confidential basis. On April 5, the SEC announced procedures for how eligible companies should make those confidential submissions.

Until the SEC announces a process for confidential electronic submissions, companies should submit the registration statement either as a text-searchable PDF file on a CD/DVD disk or as an unbound paper submission. In the cover letter, the issuer must confirm its status as an emerging growth company as defined in the JOBS Act. In either case, the submission should be sent to the following address:

Draft Registration Statement
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549

Foreign issuers that meet the definition of an emerging growth company under the JOBS Act should follow the same confidential submission procedure as domestic issuers.

No registration fee is required at the time of filing the confidential submission, which is not deemed to be a public filing or a filing of a registration statement for purposes of the Securities Act of 1933.

The documents filed with this confidential process would need to be made public at least 21 days prior to the commencement of the “road show” for the company’s initial public offering.

If you have any questions, please feel free to contact any member of the Fenwick & West Securities Group.

For more information on these or related matters, please contact your Fenwick securities team or the authors.

Jeffrey R. Vetter (650.335.7631 – jvetter@fenwick.com)

Horace Nash (650.335.7233 – hnash@fenwick.com)

©2012 Fenwick & West LLP. All Rights Reserved.

THE VIEWS EXPRESSED IN THIS PUBLICATION ARE SOLELY THOSE OF THE AUTHOR, AND DO NOT NECESSARILY REFLECT THE VIEWS OF FENWICK & WEST LLP OR ITS CLIENTS. THE CONTENT OF THE PUBLICATION (“CONTENT”) SHOULD NOT BE REGARDED AS ADVERTISING, SOLICITATION, LEGAL ADVICE OR ANY OTHER ADVICE ON ANY PARTICULAR MATTER. THE PUBLICATION OF ANY CONTENT IS NOT INTENDED TO CREATE AND DOES NOT CONSTITUTE AN ATTORNEY-CLIENT RELATIONSHIP BETWEEN YOU AND FENWICK & WEST LLP. YOU SHOULD NOT ACT OR REFRAIN FROM ACTING ON THE BASIS OF ANY CONTENT INCLUDED IN THE PUBLICATION WITHOUT SEEKING THE APPROPRIATE LEGAL OR PROFESSIONAL ADVICE ON THE PARTICULAR FACTS AND CIRCUMSTANCES AT ISSUE.

IRS CIRCULAR 230 DISCLOSURE: TO ENSURE COMPLIANCE WITH REQUIREMENTS IMPOSED BY THE IRS, WE INFORM YOU THAT ANY U.S. FEDERAL TAX ADVICE IN THIS COMMUNICATION (INCLUDING ATTACHMENTS) IS NOT INTENDED OR WRITTEN BY FENWICK & WEST LLP TO BE USED, AND CANNOT BE USED, FOR THE PURPOSE OF (I) AVOIDING PENALTIES UNDER THE INTERNAL REVENUE CODE OR (II)

PROMOTING, MARKETING, OR RECOMMENDING TO ANOTHER PARTY ANY TRANSACTION OR MATTER ADDRESSED HEREIN.