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SEC Permits All Companies to File Certain Registration Statements Confidentially

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Securities

On June 29, 2017, the Division of Corporate Finance of the Securities and Exchange Commission (the "Division") announced that it will permit all companies to submit drafts of certain registration statements to the Division on a confidential basis, expanding a popular privilege that was made available to emerging growth companies ("EGCs") under the Jumpstart Our Business Startups Act (known as the JOBS Act) in 2012.

Non-public review of a registration statement is a significant accommodation permitted by the Division because it gives issuers greater flexibility to control the timing of offerings. In the case of initial public offerings, in particular, this accommodation allows an issuer to avoid disclosing competitively sensitive information until it has more certainty regarding its initial public offering process, including the timing thereof.

The Division's non-public review of registration statements will be available for (1) draft initial registration statements filed under the Securities Act of 1933, e.g., for initial public offerings, (2) draft initial registration statements registering a class of securities under Section 12(b) of the Securities Exchange Act of 1934, and (3) draft registration statements related to Securities Act offerings, i.e., follow-on offerings, filed within one year of the effective date of an initial Securities Act registration statement or Exchange Act Section 12(b) registration statement.

For initial Securities Act registration statements and initial registration statements under Section 12(b) of the Exchange Act, non-public review will be available for the initial submission and subsequent revisions. An issuer seeking non-public review of an initial Securities Act registration statement must commit to file its registration statement publicly at least 15 days prior to any road show, or in the absence of a road show, at least 15 days prior to the requested effective date of the registration statement. An issuer seeking non-public review of an initial Exchange Act Section 12(b) registration statement must commit to file its registration statement publicly at least 15 days prior to the anticipated effective date of the registration statement for its listing on a national securities exchange.

For a Securities Act registration statement filed within one year of the effective date of an initial Securities Act registration statement or Exchange Act Section 12(b) registration statement, an issuer must commit to file its registration statement publicly at least 48 hours prior to the requested effective time and date. The staff's non-public review of these registration statements will be limited to the issuer's initial submission, and an issuer responding to staff comments on such a non-public draft registration statement must do so with a public filing.

The Division's announcement does not affect the confidential review process for EGCs or the other procedures available to EGCs as provided in the JOBS Act. In addition, the Division's

announcement does not affect Foreign Private Issuers, which may choose to avail themselves of prior staff guidance issued on May 30, 2012.

The Division indicated it will monitor practices under the new confidential review procedures and may make modifications to limit or terminate these procedures in the future. Please see the Division's FAQs for further information about the Division's expanded review procedures. The Division's new confidential review procedures will take effect beginning on July 10, 2017.

If you have any questions concerning the material discussed in this client alert, please contact the lawyers listed below or any member of our Securities Practice Group:

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