

ENCOURAGING PUBLIC OFFERINGS ACT OF 2023

JUNE 5, 2023.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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

R E P O R T

[To accompany H.R. 2793]

[Including cost estimate of the Congressional Budget Office]

The Committee on Financial Services, to whom was referred the bill (H.R. 2793) 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, reports favorably thereon with an amendment and recommends that the bill as amended do pass.

The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the “Encouraging Public Offerings Act of 2023”.

SEC. 2. EXPANDING TESTING THE WATERS AND CONFIDENTIAL SUBMISSIONS.

The Securities Act of 1933 (15 U.S.C. 77a et seq.) is amended—

(1) in section 5(d) (15 U.S.C. 77e(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) REGULATIONS.—The Commission may promulgate 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 submit to Congress a report containing a list of the findings supporting the basis of the rulemaking.”; and

(2) in section 6(e) (15 U.S.C. 77f(e))—

(A) in the heading, by striking “EMERGING GROWTH COMPANIES” and inserting “DRAFT REGISTRATION STATEMENTS”;

(B) by redesignating paragraph (2) as paragraph (4); and

(C) by striking paragraph (1) and inserting the following:

“(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 Commission not later than 15 days before the date on which the issuer conducts a road show, as defined in section 230.433(h) 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 1 YEAR AFTER INITIAL PUBLIC OFFERING OR EXCHANGE REGISTRATION.—Any issuer, within the 1-year period following its initial public offering or its registration of a security under section 12(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78l(b)), 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 in section 230.433(h) 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) REGULATIONS.—The Commission may promulgate 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 submit to Congress a report containing a list of the findings supporting the basis of the rulemaking.”.

PURPOSE AND SUMMARY

Introduced on April 20, 2023, by Representative Ann Wagner, H.R. 2793, the *Encouraging Public Offerings Act 2023*, would codify Rule 163B under the *Securities Act* by allowing an issuer to communicate with potential investors to determine interest in a securities offering, either before or after the filing of a registration statement (i.e. test the waters). The bill would also allow issuers to submit confidential draft registration statements to the Securities and Exchange Commission (SEC) for review prior to public filing. In such instances, an issuer would need to file its registration statement publicly 10 days before the effective date of the registration statement when conducting an IPO, 10 days before listing on an exchange for an initial registration of a security under Section 12(b) of the Exchange Act, and 48 hours before the effective date of the registration statement for a follow-on offering.

BACKGROUND AND NEED FOR LEGISLATION

During its IPO, an emerging growth company (EGC) is permitted to begin SEC registration on a confidential basis if the EGC publicly files its previously confidential registration statement at least 15 days before conducting a road show—or 15 days before the date of effectiveness if not conducting a road show. This provision is intended to facilitate public review of the registration statement between the first public filing and the IPO. However, experience has shown that 10 days is more than ample time for that purpose. Moreover, the application of the current requirement can some-

times be unclear based on uncertainty surrounding the definition of a road show.

As such, H.R. 2793 will enhance efficiency and provide greater certainty by reducing the minimum time between the first public filing and pricing and referring to the date of effectiveness rather than the date of a road show, which is sometimes unclear. The bill will also facilitate capital formation and conform practices for EGCs and non-EGCs, which maintains consistency in the registration process.

H.R. 2793 will encourage more companies to go public and provide better information to investors by expanding popular provisions of the *JOBS Act* to ensure that all companies—rather than just EGCs—may submit confidential draft registration statements to the SEC and are allowed to “test the waters.”

HEARING

The Subcommittee on Capital Markets of the Committee on Financial Services held a hearing examining matters relating to H.R. 2793 on March 9, 2023.

COMMITTEE CONSIDERATION

The Committee on Financial Services met in open session on April 26, 2023, and ordered H.R. 2793 to be reported favorably to the House as amended by a recorded vote of 39 ayes to 1 nays (Record vote no. FC–39), a quorum being present. Before the question was called to order the bill favorably reported, the Committee adopted an amendment in the nature of a substitute offered by Mrs. Wagner by voice vote.

COMMITTEE VOTES

Clause 2(b) of rule XIII of the Rules of the House of Representatives requires the Committee to list the record votes on the order to report legislation and amendments thereto. H.R. 2793 was ordered reported favorably to the House as amended by a recorded vote of 39 ayes to 1 nays (Record vote no. FC–39), a quorum being present.

Record vote no. FC- 39

Representative	Yea	Nay	Present	Representative	Yea	Nay	Present
Mr. McHenry	X	—	—	Ms. Waters	X	—	—
Mr. Hill	X	—	—	Mrs. Velázquez	—	—	—
Mr. Lucas	—	—	—	Mr. Sherman	—	—	—
Mr. Sessions	X	—	—	Mr. Meeks	X	—	—
Mr. Posey	X	—	—	Mr. Scott	X	—	—
Mr. Luetkemeyer	X	—	—	Mr. Lynch	—	—	—
Mr. Huizenga	X	—	—	Mr. Green	X	—	—
Mrs. Wagner	X	—	—	Mr. Cleaver	X	—	—
Mr. Barr	X	—	—	Mr. Himes	X	—	—
Mr. Williams (TX)	X	—	—	Mr. Foster	X	—	—
Mr. Emmer	—	—	—	Mrs. Beatty	X	—	—
Mr. Loudemilk	X	—	—	Mr. Vargas	X	—	—
Mr. Mooney	X	—	—	Mr. Gottheimer	X	—	—
Mr. Davidson	—	—	—	Mr. Gonzalez	X	—	—
Mr. Rose	—	—	—	Mr. Casten	X	—	—
Mr. Steil	X	—	—	Ms. Pressley	—	X	—
Mr. Timmons	—	—	—	Mr. Horsford	X	—	—
Mr. Norman	X	—	—	Ms. Tlaib	—	—	—
Mr. Meuser	X	—	—	Mr. Torres	X	—	—
Mr. Fitzgerald	X	—	—	Ms. Garcia	X	—	—
Mr. Garbarino	—	—	—	Ms. Williams (GA)	X	—	—
Mrs. Kim	X	—	—	Mr. Nickel	X	—	—
Mr. Donalds	—	—	—	Ms. Pettersen	X	—	—
Mr. Flood	X	—	—				
Mr. Lawler	X	—	—				
Mr. Nunn	—	—	—				
Ms. De La Cruz	X	—	—				
Mrs. Houchin	X	—	—				
Mr. Ogles	X	—	—				

COMMITTEE OVERSIGHT FINDINGS

Pursuant to clause 3(c) 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 goal of H.R. 2793 is to encourage more companies to go public and provide better information to investors by expanding popular provisions of the JOBS Act to ensure that all companies—rather than just EGCs—may submit confidential draft registration statements to the SEC and are allowed to “test the waters.”

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 1973.

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:

H.R. 2793, Encouraging Public Offerings Act of 2023			
As ordered reported by the House Committee on Financial Services on April 26, 2023			
By Fiscal Year, Millions of Dollars	2023	2023-2028	2023-2033
Direct Spending (Outlays)	0	0	0
Revenues	0	0	0
Increase or Decrease (-) in the Deficit	0	0	0
Spending Subject to Appropriation (Outlays)	*	*	not estimated
Increases <i>net direct spending</i> in any of the four consecutive 10-year periods beginning in 2034?	No	Statutory pay-as-you-go procedures apply? No	
Increases <i>on-budget deficits</i> in any of the four consecutive 10-year periods beginning in 2034?	No	Mandate Effects	
		Contains intergovernmental mandate?	No
		Contains private-sector mandate?	Yes, Under Threshold
* = between -\$500,000 and \$500,000.			

H.R. 2793 would codify two practices currently authorized by the Securities and Exchange Commission (SEC) under existing policy:

- Allowing issuers of securities to communicate with certain investors to gauge interest in potential offerings, and

- Permitting issuers to submit draft registration statements to the SEC for review prior to or for up to one year after their initial public offerings.

In the event of any further rulemakings related to those practices, H.R. 2793 would require the commission to report to the Congress to justify those rulemakings.

Because the SEC already allows such practices under current policy, CBO estimates that it would cost an insignificant amount for the agency to justify any further rulemakings to the Congress. However, because the SEC is authorized to collect fees each year to offset its annual appropriation, CBO expects that the net effect on discretionary spending over the 2023–2028 period would be negligible, assuming appropriation actions consistent with that authority.

If the SEC increases fees to offset the costs associated with implementing the bill, H.R. 2793 would increase the cost of an existing mandate on private entities required to pay those assessments. CBO estimates that the incremental cost of that mandate would be small and fall below the annual threshold established in the Unfunded Mandates Reform Act (UMRA) for private-sector mandates (\$198 million in 2023, adjusted annually for inflation).

H.R. 2793 contains no intergovernmental mandates as defined in UMRA.

The CBO staff contacts for this estimate are David Hughes (for federal costs) and Rachel Austin (for mandates). The estimate was reviewed by Ann E. Futrell, Senior Adviser for Budget Analysis.

PHILLIP L. SWAGEL,
Director, Congressional Budget Office.

FEDERAL MANDATES STATEMENT

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

Per the estimate from CBO, H.R. 2793 could increase the cost of an existing mandate on private entities if the SEC increased costs to implement the bill. However, this increase would still fall below the annual threshold for private-sector mandates as defined in the Unfunded Mandates Reform Act.

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 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 provisions 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 a program of the Federal Government known to be duplicative of another Federal program, including any program that was included in a report to Congress pursuant to section 21 of the Public Law 111-139 or the most recent Catalog of Federal Domestic Assistance.

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

Section 1. Short title

This section cites H.R. 2793 as the “Encouraging Public Offerings Act of 2023”.

Section 2. Expanding testing the waters

This section amends the Securities Act of 1933 to allow any issuer to communicate with potential investors to determine interest in a securities offering, either before or after the filing of a registration statement (i.e. test the waters). This section also allows the SEC to promulgate rules regarding written or oral communications by an issuer other than an emerging growth company as the SEC determine appropriate. However, prior to such rulemaking the SEC must submit to Congress a report containing a list of findings supporting the basis of the rulemaking.

Section 3. Confidential review of draft registration statements

This section allows issuers to submit confidential draft registration statements with respect to an initial public offering, initial registration of a security of the issuer under Section 12(b) of the Exchange Act of 1934, or follow-on offerings to the Securities and Exchange Commission (SEC) for review prior to public filing. In such instances, this section also requires the issuer to file its registration statement publicly 10 days before the effective date of the registration statement when conducting an IPO, 10 days before listing on an exchange for an initial registration of a security under Section 12(b) of the Exchange Act, and 48 hours before the effective date of the registration statement for a follow-on offering. This section also allows the SEC to promulgate rules regarding confidential submissions by an issuer other than an emerging growth company as the SEC determine appropriate. However, prior to such rulemaking the SEC must submit to Congress a report containing a list of findings supporting the basis of 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 below, as prepared by the Office of Legislative Counsel.

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 italics, 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) *REGULATIONS.*—*The Commission may promulgate 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 submit to Congress a report containing a list of the findings supporting the basis of the 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.
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(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 registration 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 in section 230.433(h) 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 1 YEAR AFTER INITIAL PUBLIC OFFERING OR EXCHANGE REGISTRATION.*—Any issuer, within the 1-year period following its initial public offering or its registration of a security under section 12(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78l(b)), 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 in section 230.433(h) 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) *REGULATIONS.*—The Commission may promulgate 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 submit to Congress a report containing a list of the findings supporting the basis of the 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.

* * * * *