

116TH CONGRESS
1ST SESSION

S. 536

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.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 25, 2019

Mr. TILLIS (for himself and Mr. VAN HOLLEN) introduced the following bill; which was read twice and referred to the Committee on Banking, Housing, and Urban Affairs

A BILL

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.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Encouraging Public
5 Offerings Act of 2019”.

6 **SEC. 2. EXPANDING TESTING THE WATERS AND CONFIDEN-**
7 **TIAL SUBMISSIONS.**

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

1 (1) in section 5(d) (15 U.S.C. 77e(d))—

2 (A) by striking “Notwithstanding” and in-
3 serting the following:

4 “(1) IN GENERAL.—Notwithstanding”;

5 (B) by striking “an emerging growth com-
6 pany or any person authorized to act on behalf
7 of an emerging growth company” and inserting
8 “an issuer or any person authorized to act on
9 behalf of an issuer”; and

10 (C) by adding at the end the following:

11 “(2) ADDITIONAL REQUIREMENTS.—

12 “(A) IN GENERAL.—The Commission may
13 promulgate regulations, subject to public notice
14 and comment, to impose such other terms, con-
15 ditions, or requirements on the engaging in oral
16 or written communications described under
17 paragraph (1) by an issuer other than an
18 emerging growth company as the Commission
19 determines appropriate.

20 “(B) REPORT TO CONGRESS.—Prior to any
21 rulemaking described under subparagraph (A),
22 the Commission shall submit to Congress a re-
23 port containing a list of the findings supporting
24 the basis of the rulemaking.”; and

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

1 (A) in the heading, by striking “EMERG-
2 ING GROWTH COMPANIES” and inserting
3 “DRAFT REGISTRATION STATEMENTS”;

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

6 (C) by striking paragraph (1) and insert-
7 ing the following:

8 “(1) PRIOR TO INITIAL PUBLIC OFFERING.—

9 Any issuer, prior to its initial public offering date,
10 may confidentially submit to the Commission a draft
11 registration statement, for confidential nonpublic re-
12 view by the staff of the Commission prior to public
13 filing, provided that the initial confidential submis-
14 sion and all amendments thereto shall be publicly
15 filed with the Commission not later than 15 days be-
16 fore the date on which the issuer conducts a road
17 show, as defined in section 230.433(h) of title 17,
18 Code of Federal Regulations, or, in the absence of
19 a road show, at least 15 days prior to the requested
20 effective date of the registration statement.

21 “(2) WITHIN 1 YEAR AFTER INITIAL PUBLIC
22 OFFERING OR EXCHANGE REGISTRATION.—Any
23 issuer, within the 1-year period following its initial
24 public offering or its registration of a security under
25 section 12(b) of the Securities Exchange Act of

1 1934 (15 U.S.C. 78l(b)), may confidentially submit
2 to the Commission a draft registration statement,
3 for confidential nonpublic review by the staff of the
4 Commission prior to public filing, provided that the
5 initial confidential submission and all amendments
6 thereto shall be publicly filed with the Commission
7 not later than 15 days before the date on which the
8 issuer conducts a road show, as defined in section
9 230.433(h) of title 17, Code of Federal Regulations,
10 or, in the absence of a road show, at least 15 days
11 prior to the requested effective date of the registra-
12 tion statement.

13 “(3) ADDITIONAL REQUIREMENTS.—

14 “(A) IN GENERAL.—The Commission may
15 promulgate regulations, subject to public notice
16 and comment, to impose such other terms, con-
17 ditions, or requirements on the submission of
18 draft registration statements described under
19 this subsection by an issuer other than an
20 emerging growth company as the Commission
21 determines appropriate.

22 “(B) REPORT TO CONGRESS.—Prior to any
23 rulemaking described under subparagraph (A),
24 the Commission shall submit to Congress a re-

- 1 port containing a list of the findings supporting
- 2 the basis of the rulemaking.”.

