

Flying under the Radar: Confidential Filings and IPO Lawsuits*

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Abstract

Despite strong incentives to increase visibility and disclosure before initial public offerings (IPOs), many firms take advantage of the confidential filing provisions of the JOBS Act of 2012 to obscure their financial and non-financial information prior to IPOs. We posit that one potential reason for holding back information prior to an IPO is to reduce litigation from opportunistic parties. We focus not on shareholder litigation but on litigation from other sources (e.g. competitors, ex- and current employees, and patent trolls). We show that firms that publicly file their registration statement with the SEC experience a 25% increase in lawsuits during pre-IPO period, whereas a matched sample of firms that file confidentially under the provisions of the JOBS Act do not experience such an increase. The difference between the two groups is concentrated among lawsuits in which the plaintiff is a business, rather than an individual, and among lawsuits that are more likely to be meritless. There is no disproportionate increase in lawsuits for the confidential filers following the IPO, which suggests that withholding information during the IPO period mitigates, rather than delays, litigation.

JEL Classification: G10; G32; K20; K41; M41.

Keywords: JOBS Act; corporate disclosure; litigation risk; corporate lawsuits; initial public offerings.
