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CURRENT SEC INITIATIVES IMPACTING FOREIGN PRIVATE ISSUERS

Foreign companies seeking a US listing can take advantage of a number of existing recent SEC initiatives designed to ease the requirements for an IPO in the United States. They may also soon be able to take further advantage of proposed additional accommodations for IPOs. The author describes the most significant of these recent and proposed initiatives.

By Paul M. Dudek *

Foreign companies that are listed on a US stock exchange and registered with the US Securities and Exchange Commission play an important role in the US capital markets. Indeed, the SEC estimates that the market capitalization of these companies – widely referred to – under the SEC definition¹ – as “foreign

private issuers” or “FPIs,” exceeded US \$9 trillion as of the end of 2017.²

Recently, interest by FPIs in pursuing an initial public offering and listing in the United States has been growing. The number of foreign companies listed on US stock exchanges has increased over the past several years,³ and foreign companies accounted for over 40% of IPO volume in the United States in late 2017 and

¹ A foreign private issuer is an entity (other than a foreign government) incorporated or organized under the laws of a foreign jurisdiction unless: (1) more than 50% of its outstanding voting securities are directly or indirectly owned of record by US residents and (2) any of the following applies: (i) the majority of its executive officers or directors are US citizens or residents; (ii) more than 50% of its assets are located in the United States; or (iii) its business is administered principally in the United States. Securities Act Rule 405 and Exchange Act Rule 3b-4(c).

² William Hinman, Director, Division of Corporation Finance, SEC Keynote Address, February 1, 2018, available at <https://www.sec.gov/news/speech/speech-hinman-020118>.

³ Data from Current List of All Non-US Issuers as of December 31, 2016 and 2017 and April 30, 2018, New York Stock Exchange; data from the Annual Statistics Guide, World Federation of Exchanges, 2015 – 2017.

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