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Disclosure and lawsuits ahead of IPOs

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Disclosure and lawsuits ahead of IPOs*

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Disclosure and lawsuits ahead of IPOs*

Abstract

We examine whether IPO registration disclosures expose firms to greater nonshareholder litigation risk. Using hand-collected data on lawsuits initiated at federal and state courts against IPO firms, we show that firms that submit their IPO registration statement with the SEC publicly experience a 16% increase in litigation risk between the registration filing and issuance date. Consistent with the public filing of the registration driving this heightened litigation risk, firms that file their registration confidentially under the JOBS Act do not experience such an increase in litigation risk. The effects of confidential filing are concentrated among business-initiated lawsuits, intellectual property/contract lawsuits, and potentially meritless lawsuits. We find no disproportionate increase in post-IPO lawsuits for confidential filers, suggesting that withholding information during the IPO registration period mitigates litigation risk.

JEL Classification: G32; K20; K41; M41.

Keywords: Corporate disclosure; nonshareholder lawsuits; initial public offerings.

1. Introduction

Firms considering an initial public offering (IPO) face a trade-off between mitigating information asymmetry and revealing proprietary information when making disclosures (Leone, Rock, and Willenborg 2007; Hanley and Hoberg 2010; Lowry, Michaely, and Volkova 2020). The Jumpstart Our Business Startups (JOBS) Act offers qualifying companies the option to keep IPO registration statements confidential throughout most of the registration process and thereby allows *delayed* public disclosure. Verrecchia (1983) conjectures that such delayed disclosure can be advantageous for the firm if proprietary disclosure costs are time-varying, but direct evidence of such costs is elusive. In this paper, we study nonshareholder litigation risk as a specific time-varying proprietary disclosure cost around IPO registration filings. We hypothesize and show that firms experience heightened nonshareholder litigation risk ahead of IPOs and that this risk is lower when firms merely delay IPO disclosures under the JOBS Act.

Firms that publicly register for an IPO are particularly vulnerable to nonshareholder litigation for at least two reasons. First, access to the IPO registration statement and amendments based on SEC comment letters can help outsiders better understand the firm's operations, products, and financial condition, thereby making the pre-suit investigation easier and less costly for potential plaintiffs. Second, an IPO registration signals the firm's fundraising efforts and thus its vulnerability. Since firms face heightened reputational concerns and managers have competing demands on their time during the IPO registration period, plaintiffs with claims against these firms are likely to have more leverage during this time. This effectively increases the expected benefit of litigation, which could motivate all categories of plaintiffs to pursue legal claims during defendants' IPO registration periods. Moreover, the signal of an IPO registration can encourage competitor firms to disrupt the IPO to preserve their market share.

Relative to public registration statements, confidential filings may lower firms' exposure to litigation risk along these dimensions. First, the confidential filing makes it more difficult for outsiders to learn about firms' operations. This may make the pre-suit investigation more time-consuming and costlier for potential plaintiffs and discourage them from filing lawsuits. Although registration statements must still become public for confidential filers, this occurs only two to three weeks before the roadshow. In contrast, this occurs four months before the roadshow for nonconfidential filers. Thus, potential plaintiffs are significantly less likely to have sufficient time to complete a pre-suit investigation before filing litigation against confidential filers. Second, the confidential filing reduces the salience of the IPO process and may further discourage lawsuits intended to either leverage the IPO firm's vulnerabilities in pursuing legal claims or disrupt the IPO.

We examine whether IPO firms experience different nonshareholder litigation risk based on the public availability of their registration filings. We use the term *nonshareholder litigation risk* to refer to the likelihood of a firm facing legal action from nonshareholders (e.g., competitors, former or current employees, customers, governments, patent monetizers). These legal actions against a firm vary widely in their source and scope. However, managers face strong incentives to minimize all litigation since lawsuits have significant direct (e.g., legal fees and settlements) and indirect (e.g., diversion of resources and managerial attention and loss of reputation) costs to defendants.

The treatment firms in our sample are companies that filed their IPO registration statement confidentially under the JOBS Act between its enactment in April 2012 and December 2019. Under the Act, companies qualify for confidential filing if their revenues are less than \$1 billion during the most recently completed fiscal year prior to their IPO registration. We propensity-score-match each treatment firm to a control firm in the same industry that publicly filed its IPO registration statement between January 2003 and March 2012. We use a difference-in-differences design to compare rates of litigation between control and treatment firms across three time periods: the

registration period (i.e., the period starting the second day after the initial IPO registration filing till the issuance date), the benchmark period (i.e., the equally long period ending two days before initial IPO registration), and the post-IPO period (i.e., the equally long period starting two days after the issuance date). For control (treatment) firms, we define the initial IPO registration filing date as the initial public S-1 (private DRS) filing date.

Using hand-collected data on lawsuits from Bloomberg Law, Public Access to Electronic Court Records (PACER), and state courts, we find that control firms experience, on average, 0.36 more lawsuits during the registration period relative to the benchmark period. Since the average control firm faces 2.3 lawsuits over the benchmark, registration, and post-IPO periods, the observed increase constitutes a 16% increase in litigation risk. This supports our hypothesis that the IPO registration process exposes firms to additional nonshareholder litigation risk. Consistent with the idea that confidential filing can help shield firms from this risk, we find that treatment firms do not experience a similar increase in nonshareholder litigation. We also show that treatment firms do not face more lawsuits relative to the control firms in the post-IPO period. This suggests that treatment firms experience an overall reduction, rather than merely a delay, in litigation relative to control firms. These results hold using both count and linear models that include controls for firm characteristics as well as industry and macroeconomic conditions.

Our main measure of nonshareholder litigation risk adopts the view that each additional lawsuit creates risk for the firm, regardless of its characteristics. This reflects an understanding that all legal proceedings impose substantial direct and indirect costs upon the firm, and even relatively small claims can consume vast resources (Beisner 2010). At the same time, the risks of litigation during IPO registration, as well as the potential protection afforded by confidential filing, could change with lawsuit severity. To study this possibility, we consider three alternative dimensions of litigation risk that likely affect lawsuit severity: the plaintiffs' identity, the allegations made therein,

and the lawsuit's merit as reflected in its ultimate disposition. We find evidence consistent with varying litigation risk along all three dimensions. First, we find that IPO registrations are associated with elevated levels of litigation from all plaintiff types, but confidential filing only helps deter litigation initiated by business plaintiffs. Second, we find that IPO registrations are associated with elevated levels of intellectual property/contract claims but not civil rights/labor claims, and confidential filing is most effective at deterring the former. Third, we find that IPO registrations are associated with elevated levels of litigation with both high and low merit, but confidential filing only helps deter low merit lawsuits. Overall, this evidence suggests that plaintiffs use registration filings to leverage firms' vulnerability during the registration period, and confidential filing helps protect firms from this type of plaintiff behavior.

We also study pre-IPO price revisions to examine the costs to defendant firms of litigation during the registration period. Ideally, we would measure initial pricing at the registration filing date to assess the full cost of litigation induced by IPO disclosures. However, most IPO firms do not publicly announce the pricing information until late in the registration period. For the median firm in our sample, initial pricing data is publicly available only 14 days prior to the issuance date. Thus, our analyses investigate and speak to the pricing effect of lawsuits filed between the first observable pricing date and the issuance date. We find that each lawsuit during this period is associated with a 1.5% reduction in the offering price and a 7.0 % increase in the likelihood of a downward price revision. Given that the median proceeds from the IPO in our sample is \$88 million, our estimate suggests that each additional lawsuit costs the median IPO firm around \$1.3 million in proceeds.

We conduct additional analyses to test several alternative explanations. First, we consider the possibility that a time-varying unknown factor could influence our findings. To address this concern, we investigate changes in nonshareholder litigation for large IPO firms that do not qualify for filing confidentially after the JOBS Act. If our results pertain to changing environmental factors rather

than the confidential filing provision, we expect to observe similar reductions in litigation for these large, ineligible firms. Instead, we find no significant change in litigation against these firms before and after the JOBS Act. Second, we consider the effect of other provisions of the JOBS Act on our inferences, although these provisions seem unlikely to affect litigation from nonshareholders. Prior to the JOBS Act, a subset of IPO firms known as smaller reporting companies (SRCs) were afforded most of the reduced disclosure provisions of the JOBS Act but not the confidential filing provision. We study how litigation risk changes for SRCs around the act and find evidence that our results are driven primarily by the confidential filing provision. Third, we consider the impact on our inferences of the testing-the-waters provision, which allows companies to selectively communicate with potential investors prior to the IPO issuance date. We control for the potential effects of this provision on pre-IPO corporate disclosure frequency, and we study a 2017 amendment to the JOBS Act that extended confidential filing, but not the testing-the-waters, to the previously ineligible firms. Both analyses suggest that our inferences are unlikely to be driven by the testing-the-waters provision. Fourth, to alleviate the concern that the financial crisis could influence our results, we replicate our analyses after removing control firms that filed for IPO during that period. Our inferences remain similar using this restricted sample. Last, we confirm that our inferences are not specific to the pharmaceuticals/biotech industry, which Dambra et al. (2015) suggest may be particularly sensitive to proprietary disclosure costs.

Our study extends the literature on IPO firms' disclosure decisions along two dimensions. First, we identify reduced litigation risk as a material benefit of deferring mandatory IPO registration disclosures through confidential filing. In doing so, our findings provide direct empirical evidence supporting Verrecchia's (1983) conjecture that, if proprietary disclosure costs attenuate over time, deferring disclosure can benefit firms. Confidential filings merely delay disclosure for firms that complete their IPOs, and yet we find that confidential filings can benefit firms by materially

reducing litigation risk. In this respect, our study differs from prior research on disclosure delays, which focus primarily on the role of agency conflicts between managers and shareholders. A common finding in these studies is that managerial incentives lead firms to delay disclosure of bad news and accelerate disclosure of good news (e.g., Amir and Ziv 1997; Kothari, Shu, and Wysocki 2009; Ertimur, Sletten, and Sunder 2014; Michaeli 2017). In contrast to this literature, we show that disclosure delay can benefit firms and shareholders simultaneously if firms face time-varying proprietary disclosure costs. As such, our study is most closely related to work by Li (2013) and Bernard (2016), which documents that disclosure delays are more common among firms in more competitive industries and among firms that face financial constraints, two characteristics associated with higher proprietary disclosure costs. We expand on these studies by demonstrating that nonshareholder litigation risk is a specific and time-varying proprietary disclosure cost that relates to disclosure timing decisions. This forms the second dimension of our contribution. Prior research focuses on fixed proprietary disclosure costs and thus typically relies on more stable firm (i.e., size, research intensity, financial constraint) or industry characteristics (i.e., industry membership, industry concentration) to measure variation in proprietary disclosure costs (Barth et al. 2017; Bernard 2016; Dambra et al. 2015; Li 2013). However, as Dambra et al. (2015) caution, these measures may relate to underlying market dynamics rather than proprietary disclosure costs. Our paper contributes to the literature by identifying non-shareholder litigation risk as a specific proprietary disclosure cost.

Our findings point to the broader implications of the JOBS Act and its confidential filing provision. Despite the popularity and recent expansion of the confidential filing provision, its impact on the IPO process is still not fully understood (Barth et al. 2017; Even-Tov, Patatoukas, and Yoon 2021). Our study indicates that confidential filers enjoy protection from the elevated nonshareholder litigation risk that characterizes the IPO registration period. Since the stated regulatory motivations for the JOBS Act do not include any discussion of litigation risk, this effect is likely unintended.

Thus, our findings inform regulators about potential unintended consequences of the confidential filing provision. We note, however, that confidential filings do not become public for firms that withdraw from the IPO process. Therefore, like prior work in this area, our analyses are limited to firms that completed their IPO, and our inferences may not generalize to withdrawn IPOs. In addition, in some instances our results do not have strong statistical significance due to the unavoidably limited sample size and the inclusion of a nontrivial number of covariates.

Our study also adds to the nascent literature on the nonshareholder litigation risk. Studies on nonshareholder litigation explore how it affects corporate investment and financing policies (e.g., Gormley and Matsa 2011; Appel, Farre-Mensa, and Simintzi 2019; Cohen, Gurun, and Kominers 2019), but they do not address the role of disclosure in a firm's exposure to this risk. While there is ample research on the relation between litigation risk and corporate disclosures, this literature focuses predominantly on the risk of *shareholder* litigation for *public* firms. In contrast, our study focuses on private firms and nonshareholder litigation risk, which leads to starkly different conclusions. In particular, studies almost unequivocally find that public firms increase disclosure in response to an *increase* in the risk of shareholder litigation (e.g., Skinner 1994 and 1997; Field, Lowry, and Shu 2005; Hanley and Hoberg 2012), whereas we show that reducing disclosure can *decrease* the risk of nonshareholder litigation for private firms.

2. Background

2.1. IPO registration and confidential filings

The IPO registration statement is the set of documents that a firm must file with the SEC as part of the process of completing an IPO. It comprises the prospectus, which must be shared with all investors who are offered the securities, and additional exhibits, which may be withheld from investors at the firm's discretion and the SEC's agreement. The prospectus, drafted jointly by the IPO firm and its underwriter, provides details of the firm's operations, financial condition, risk

factors, intended uses of proceeds, and management’s discussion and analyses. It also includes audited financial statements. The SEC conducts a full review of IPO prospectuses upon filing to ensure compliance with U.S. Generally Accepted Accounting Principles. When there are concerns about noncompliance, the SEC requests a revision of the prospectus via an amended filing. This process can iterate multiple times. The prospectus and amendments are a primary source of information for potential investors seeking to determine the firm's value.

Prior to the passage of the JOBS Act on April 5, 2012, the SEC made all prospectuses and amendments publicly available upon filing. Firms had little control over the amount of disclosure, except for redacting certain sensitive information (e.g., customer names and contract amounts) with the SEC’s permission. Firms’ discretion was primarily limited to the disclosure quality. Consistent with higher quality disclosures in IPO prospectuses facilitating price discovery, studies find that more informative content (Hanley and Hoberg 2010), fewer SEC concerns (Lowry, Michaely, and Volkova 2020), more detailed description of the intended use of proceeds (Leone, Rock, and Willenborg 2007), and more definitive tone (Loughran and McDonald 2013) improve pricing, whereas the use of cautionary language increases underpricing (Ferris, Hao, and Liao 2013).

The JOBS Act afforded many firms flexibility in terms of whether, when, and how much to disclose in the IPO prospectuses. To encourage funding of small businesses, Title I of the JOBS Act eased many of the securities regulations and disclosure requirements for a new category of issuers, Emerging Growth Companies (EGCs). Defined as issuers with total gross annual revenues of less than \$1 billion during the fiscal year ending immediately before the IPO date, EGCs gained flexibility in terms of their disclosures around the IPO through several provisions.¹ These provisions include filing draft IPO registration statements confidentially with the SEC; communicating with

¹ An EGC keeps its status until the earliest of (i) its total gross annual revenues exceed \$1 billion, (ii) end of fifth fiscal year following the issuance of common equity shares, (iii) the date on which the issuer has issued more than \$1 billion in nonconvertible debt over the previous three years, and (iv) the date the firm is deemed to be a large accelerated filer. Issuers cannot regain EGC status once it is lost. In 2017, the SEC increased the revenue threshold for EGCs to \$1.07 billion.

institutional investors and accredited investors while registration statement remains confidential; reducing the scope of executive compensation disclosures; reporting two, instead of three, years of audited financial statements; delaying application of new or revised accounting standards; and delaying compliance with §404(b) of the Sarbanes Oxley Act.

Confidential filings provide firms with the flexibility to decide when to disclose the IPO prospectus (and amendments based on SEC comment letters) to the broader public. If the firm decides to complete its IPO, these disclosures must become public 21 days (15 days for IPOs conducted after December 2015) before the road show but can be obscured until then. If the firm decides to withdraw from the IPO, these documents need never become public. To compare, in nonconfidential filings, the prospectus and amendments become public upon initial filing, usually more than four months prior to the issuance date. While the SEC comment letters themselves are never publicly disclosed until after the issuance date, Li and Liu (2017) note that investors can typically “observe the effect of the letters on firm disclosures in the amendments to the initial registration statements.” Thus, investors may infer the content of comment letters based on the amendments, if the latter are publicly available. We illustrate a timeline for the confidential and nonconfidential filing processes in Figure 1.

2.2. *Costs of litigation for IPO firms*

Litigation risk is an important concern to managers contemplating an IPO, as lawsuits have significant direct and indirect costs to defendants. Direct costs of litigation include legal fees and settlements amounts. Understanding the magnitude of these costs can be challenging in the United States, where legal fees and settlement amounts remain confidential. Anecdotal evidence suggests that these amounts can be substantial. For example, with respect to legal fees, the 2019 American Intellectual Property Lawyers Association’s survey suggests that in patent infringement cases, the median fees range from \$700,000 (when less than \$1 million is at risk) to \$4 million (when more

than \$25 million is at risk). With respect to settlement amounts, using corporate lawsuits filed against firms headquartered in common law countries outside the U.S., Arena and Ferris (2018) report that the average (median) settlement is \$200 (\$62) million or 29% (0.5%) of the defendant's asset value.²

The indirect costs of litigation are typically much larger than the direct costs, as they pertain to diversion of resources, reduced managerial attention, and loss of reputation. Cutler and Summers (1988), Bhagat, Brickley, and Coles (1994), and Bizjak and Coles (1995) suggest that initiation of inter-firm lawsuits significantly reduces the defendant's firm value because of not only direct litigation costs but also increased uncertainty about the defendant's business practices and the potential suboptimal managerial decisions that may stem from such uncertainty. Additionally, Beisner (2010) outlines the high and growing costs of legal discovery, which can comprise between 50 and 90 percent of the total litigation costs. There has been recent explosive growth in these costs due to the advent of electronic records and the related challenges in processing such large volumes of information (Blankespoor, deHaan, and Marinovic 2020). To complete the discovery phase of a legal proceeding, managers often must substantially divert resources away from more productive endeavors. Bessen, Ford, and Meurer (2011) estimate that indirect costs of litigation borne by the defendant firm can be more than two and a half times the direct costs. Overall, these findings suggest that litigation imposes substantial costs to defendant firms in both direct and indirect ways.

2.3. *Plaintiffs' incentives to file litigation against IPO firms*

IPO registration can encourage plaintiffs to pursue litigation against IPO firms for two reasons. First, access to the registration statement and amendments based on SEC comment letters helps outsiders better understand the firm's operations, products, and financial condition, making

² Arena and Ferris (2018) also report settlement amounts for litigation filed in civil law countries, but note that these are typically lower due to the fundamental differences between the civil and common law systems. We refer to their findings related to common law countries since we study litigation in the United States, which has a common law legal system.

the pre-suit investigation and discovery easier for potential plaintiffs. This could reduce plaintiffs' costs associated with identifying claims and preparing litigation, and thus facilitate more litigation.

The American Bar Association (ABA) provides clear guidance to plaintiffs regarding the importance of pre-suit investigation when developing a case (Grant, Saunders, and Sussman 2009; Nelson and Teeters 2014). Typically, pre-suit investigations for business tort cases require the identification of key facts, documents, potential witnesses, and detailed research into the opponent or key players. These investigations help plaintiffs determine the substantive legal issues implicated by the cause of action, procedural issues, the need for expert witnesses, the legal strategy, and analyses of expected defenses. This would involve steps such as meeting with the clients, conducting witness interviews, collecting data from public sources, identifying important documents (e.g., emails, technical data, computer logs), and deciding on the optimal venue for the filing and other legal strategies. For example, one of the requirements in determining the reasonableness of the claim in intellectual property cases is the ability to reverse engineer the allegedly infringing product and demonstrate the possible use of intellectual property in the production (Chen 2014). In guiding plaintiffs on pre-suit investigations, the ABA specifically suggests plaintiffs to consult SEC filings.

Second, an IPO registration signals to the market the issuing firm's fundraising efforts and thus their vulnerability. During the IPO registration period, issuing firms face heightened reputational concerns and have competing demands on their time. Thus, plaintiffs are likely to have relatively more leverage against issuing firms during the IPO registration period. Various parties, such as current or former employees or customers and patent trolls, can use this leverage to resolve longstanding issues or receive a settlement payment.³ For instance, PayPal was sued by its customers ahead of its planned IPO in 2002 over account restrictions. Similarly, before Uber's 2019 IPO, both

³ For plaintiffs exclusively interested in receiving settlements, it is unclear whether it is optimal to pursue litigation during the IPO registration period or after the IPO. After IPOs, lawsuits can yield more lucrative settlements since a firm that recently conducted an IPO typically has large cash reserves. However, in the post-IPO period, firms also can likely afford better legal help to defend themselves and have less pressure to settle quickly.

its drivers and former IT security employees sued the company. Meurer (2003) argues that, since the scope of intellectual property rights is highly variable, some rent-seeking intellectual property (IP) owners may also file opportunistic lawsuits against firms. Along these lines, Feldman and Frondorf (2015) survey 52 IPO firms and report increased patent litigation around IPOs. For example, such lawsuits against Facebook, Zynga, Groupon, and LinkedIn mounted following their IPO announcements, although these firms faced few or no similar lawsuits in the year prior. Perhaps in recognition of this elevated risk, Alibaba Group purchased over 100 patents while pursuing its IPO to reduce the risk of IP litigation during the process. However, most IPO firms do not have such resources, and not all litigation may be deterred by spending alone. Overall, the perceptions of defendant vulnerability, as conveyed by the IPO registration signal, can motivate potential plaintiffs to pursue litigation during the IPO registration period.

By signaling IPO intent, IPO registrations also make issuing firms the potential target of litigation from competitors. A growing literature documents the adverse effects of IPOs on peer firms. For example, Hsu, Reed, and Rocholl (2010) find that competitors of an IPO firm experience negative stock price reactions and a deterioration in long-term operating performance when the IPO is completed, and they experience positive stock price reactions when one is withdrawn. This creates incentives for competitors to derail the IPO process. Along these lines, Billet, Ma, and Yu (2021) report that firms manipulate reported earnings to obscure industry profits and reduce the likelihood of peers' IPOs. Strategic litigation can be another tool competitors may use towards the same goal. For example, after being sued by CertCo shortly before its IPO, PayPal stated: "PayPal has been offering its service that CertCo alleges is infringing for more than two years (and) CertCo filed this lawsuit with the intent that it would disrupt PayPal's initial public offering."⁴

⁴ In other high-profile cases, two weeks before Fitbit was to set its IPO price, its direct competitor, Jawbone, filed two separate lawsuits against the company. According to some, this was a "strategic filing" to make "Fitbit feel some pain" (Rosenblatt, 2015). Similarly, Trulia was sued by Zillow and Google was sued by Yahoo! shortly after announcing their IPOs.

2.4. *Confidential filing and litigation risk*

Confidential filing can help shield IPO firms from the temporarily elevated nonshareholder litigation risk they experience during the IPO registration process.⁵ We expect this to occur because confidential filing effectively obstructs the two channels by which IPO firms are exposed to heightened nonshareholder litigation risk.

First, confidential filing significantly delays the availability of information that plaintiffs can use in pre-suit investigations. Thus, confidential filing may shield firms from litigation by making it harder for plaintiffs to complete pre-suit investigations and file effective lawsuits. Second, confidential filing obscures the signal of IPO intent throughout most of the IPO registration period. In doing so, it limits plaintiffs' ability to leverage the issuing firms' vulnerability to resolve legal claims more favorably. This is true even in the case of lawsuits that are likely meritless. Rule 11 of the Federal Rules of Civil Procedure mandates significant sanctions for bringing lawsuits that are frivolous or filed without a reasonable pre-filing inquiry, ranging from immediate dismissal of the case (e.g., *Classen Immunotherapies, Inc. v. Biogen*, 2005) to monetary penalties (e.g., *Precision Links Inc. v. USA Products Group*, 2008) or even disbarment of the attorneys. Many jurisdictions (e.g., Florida State code § 766.203, N.D. Cal. Patent Local Rules 3-1, 3-2) require a 30 or 60-day advance notice to defendants so that extensive pre-suit investigation can be conducted before filing a lawsuit. Such statutes would not preclude a litigious plaintiff from observing the signal of an IPO registration and then filing a frivolous lawsuit, provided that the public IPO registration for these firms occurs sufficiently in advance of the issuance date. However, under confidential filing, registration statements become public about five weeks prior to the issuance date. It is implausible

⁵ While not as beneficial as eliminating a lawsuit, delaying a lawsuit until after the IPO is also beneficial, as this eliminates the impact of the lawsuit on the interest in and pricing of the IPO, relieves the management from the time and monetary burden of the lawsuits during the IPO process, and allows the IPO firm to use greater resources to defend itself. The lawsuit patterns around IPO dates (see Figure 2) and our findings in Table 6 suggest that lawsuits are more likely to be eliminated than delayed through confidential filings.

that five weeks is enough time to complete even a perfunctory pre-suit investigation and complete the statutory advance notice period before filing litigation.

By obscuring IPO intent, the confidential filing also has the potential to protect issuing firms from litigation from competitors seeking to derail the IPO process. However, this potential only exists insofar as competitors do not acquire signals of peer IPO intent through other means. Some competitors may be hyper-sensitive and might seek out such information even when it is not publicly available. Moreover, firms are not prohibited from announcing that they are pursuing an IPO even if they file confidentially, although our evidence suggests that such behavior is rare, and confidential filers tend to be quite diligent about concealing their IPO intent.⁶

3. Data and Summary Statistics

3.1. Sample construction

We construct our sample by first identifying, via the SDC Global New Issues database, all new security issuances between January 1, 2003, and December 31, 2019. We use several data filters, summarized in Appendix A, to ensure our sample only comprises firms making initial public offerings of common stock for which we have sufficient data to conduct our analyses. This process yields a sample of 1,552 IPOs. Of these, 824 (728) were completed prior to (after) the enactment of the JOBS Act. Of the 824 pre-JOBS Act IPOs, 714 (110) were conducted by firms with sales less (more) than \$1 billion, the original threshold used for determining EGC eligibility. Of the 728 post-JOBS Act IPOs, 630 (98) were conducted by EGCs (non-EGCs).

We use the intermediate sample of 630 post-JOBS Act EGCs and 714 pre-JOBS Act similar firms to construct a sample of treatment and control firms matched on their industry membership and propensity to file confidentially. We define the treatment group as firms that elected to file their

⁶ For example, we find that in the first two years of JOBS Acts' enactment, only nine firms announced their IPO intent before the week that the regulatory filings become publicly available. These firms tend to be larger (e.g., Twitter and Trulia) and, in a couple of cases, had to delay their original IPO due to unforeseen circumstances (e.g., Hurricane Sandy).

registration confidentially after the JOBS Act, and our control group as firms with a high propensity for confidential filing but that filed for an IPO prior to the enactment of the JOBS Act.^{7,8} To generate the propensity-score-matched sample, first, we use the sample of 630 EGCs firms that filed for an IPO in the post-JOBS Act period and estimate a firm's propensity to choose confidential filing based on observable characteristics. Specifically, we estimate the following logit model:

$$\Pr(\text{Confidential}) = \alpha + \beta_1 \text{Size} + \beta_2 \text{Loss} + \beta_3 \frac{\text{PPE}}{\text{Assets}} + \beta_4 \text{MediaAttention} + \beta_5 \text{ExAnte_Lit}_{\text{Bus}} + \beta_6 \text{ExAnte_Lit}_{\text{Other}} + \text{IndFES} + \epsilon_{i,t} \quad (1)$$

where the dependent variable is equal to one if the EGC chooses to file its registration statement confidentially with the SEC and zero otherwise. We identify EGC status and confidentiality of filings by manually searching through and reading the SEC filings of the issuers.⁹

To determine the set of explanatory variables in (1), we rely on several prior studies of the determinants of disclosure choices (e.g., Verrecchia and Weber 2007; Boone, Floros, and Johnson 2016; Chaplinsky, Hanley, and Moon 2017). First, we estimate (1) with all of the following explanatory variables identified in this literature: *Size*, *Ln(Age)*, *ROA*, *Loss*, *Leverage*, *RD/Assets*, *PPE/Assets*, *SalesGrowth*, *MarketShare*, *ProdMktFluid*, *VBacked*, *IndPE*, *IPOWave*, *IndRet*, *IndDisp*, *SP500*, *VIX*, and *GDPGrowth*. Appendix B provides a detailed definition of each of these variables.

Observing that a number of these variables are statistically unrelated to the confidential filing decision, we ultimately keep only the statistically significant variables in this estimation. Those are *Size*, the natural logarithm of total assets (in 2012 \$), *Loss*, an indicator variable equal to one if the

⁷ In our view, this is the most suitable control group for our analysis because it comprises firms that would have had a high propensity to file confidentially but could not do so because of the regulations at the time. Alternatives would be EGCs that did not elect to file confidentially and non-EGCs that filed for IPO after the JOBS Act. While these alternative groups have the benefit of going public during the same period as the treatment firms, they both have other drawbacks. For example, the election of confidential filing is likely endogenous (e.g., firms with greater litigation risk may choose to file their registration confidentially) and non-EGCs differ systematically from EGCs (i.e., non-EGCs are by definition significantly larger firms).

⁸ Another alternative is to implement a regression discontinuity design (RDD) around the \$1 billion size threshold for EGC eligibility. However, such test is not feasible as there are few IPOs with the revenues just exceeding 1 billion (e.g., throughout the sample period there are 20 non-confidential filers (11 before the JOBS Act and 9 after) with revenues in the range of 1 to 1.25 billion). Moreover, companies can strategically time their IPO, or manipulate their revenues, to ensure that they meet the EGC-eligibility requirements. Thus, the assumption of quasi-randomization around the threshold may be violated.

⁹ We validate our classifications with those of Honigsberg, Jackson, and Wong (2015) for our sample period that overlaps with theirs.

firm's income before extraordinary items is negative and zero otherwise, and $PPE/Assets$, the ratio of net property, plant, and equipment to the total assets, which are measured for the most recent fiscal period ending prior to the firm's IPO. In addition to these, given our specific focus on litigation risk and IPO signaling via registration filings, we also include the number of lawsuits prior to IPO registration ($ExAnte_Lit$) and media attention ($MediaAttention$) to alleviate any concern that control and treatment firms are subject to systematically different litigation risks or media attention. $MediaAttention$ is the number of news articles focusing on the IPO firm and press releases issued by the IPO firm over the 360 days ending five days before the beginning of the IPO registration period; $ExAnte_Lit_{Bus}$ ($ExAnte_Lit_{Other}$) is the number of business (other) plaintiff initiated lawsuits filed against the firm over the 360 days ending five days before the beginning of the IPO registration period. We also include industry-fixed effects based on Fama-French 17 industry classification. Overall, our selection of explanatory variables yields an estimation with a pseudo-R-squared of 23%. This suggests that the variables are reasonably effective in explaining variation in disclosure.

Next, we use the coefficient estimates from (1) to generate propensity scores for the 714 firms with revenues under \$1 billion (in 2012 \$s) that completed their IPO prior to the JOBS Act. Finally, we match EGCs that have filed confidentially with their nearest neighbor among firms in the same industry in the pre-JOBS Act group. The final sample includes 530 firms in 265 pairs.

We gather data on lawsuits in three stages: identifying lawsuits, confirming IPO firms as defendants of each lawsuit, and determining the disposition of each lawsuit. First, we identify all possible litigation using the Bloomberg Law database, a comprehensive source of court dockets filed across 2,163 distinct U.S. courts that span federal and state jurisdictions. This is optimal for our study since we aim to investigate litigation risks firms face regardless of jurisdiction. Alternative sources of lawsuit data, such as PACER, are limited to specific jurisdictions. Bloomberg Law does not have any unique identifiers for firms other than the firm name. Therefore, for each firm in our

sample, we manually search for its name and possible variations and identify all related federal and state/district-level lawsuits initiated against it between January 1, 2001, and December 31, 2020.

In the second stage of our lawsuit data collection, we read through each lawsuit docket header to verify that the firm in our sample matches a defendant in the lawsuit.¹⁰ In the third stage, we identify the nature and outcome of lawsuits by reading the full docket results with the assistance of a paralegal. Bloomberg Law does not provide a complete list of docket entries for a substantial fraction of lawsuits. This is especially common for lawsuits that are not initiated at a federal court or initiated at a federal court but subsequently remanded to a lower court. In these cases, we identify the court, judge, and docket number from the lawsuit files and then manually search for the case at PACER and state or district courts' websites. We identify the final disposition for 72% of lawsuits through this process. We note that classifying lawsuits and their dispositions requires detailed textual data, which is available for most but not all lawsuits. Therefore, our analyses using lawsuit categories and dispositions may be subject to measurement error.

We define each firm's IPO registration period as the period beginning with its first registration filing and ending with the issuance date. In order to determine when each firm's IPO registration period begins, we gather data on initial S-1 and draft registration statement (DRS) filing dates from SEC filings. While the SDC database reports the initial S-1 filing dates for all IPO firms, the interpretation of the SDC-reported date varies for control and treatment filers. For control firms, the SDC-reported date reflects the beginning of the registration period. However, for treatment firms, the SDC-reported date corresponds to the date the S-1 filing becomes publicly available rather than to the date the firm files its first DRS with the SEC. The latter date more accurately indicates the beginning of the IPO registration period for treatment firms. The dates and

¹⁰ We exclude lawsuits if the IPO firm is named among both the plaintiffs and the defendants (i.e., when parties have cross-claims). We also exclude the lawsuits if the IPO firm is named as a garnishee/third-party defendant (e.g., when an employee of the firm is sued and the firm is asked to forward the employee's wages to an escrow account).

contents of treatment firms' registration filings are not observable in real time. However, after successful IPO completion, these firms retroactively disclose their initial DRS filing dates via EDGAR. By reading the history of EDGAR filings for each treatment firm, we obtain, on an *ex-post* basis, the date on which these firms confidentially began their IPO registration. Hence, we use SEC EDGAR searches to manually identify the initial DRS filing date for treatment firms. We also use the same process to validate the S-1 filing date reported in SDC for control firms.

We use Compustat to obtain data on firm financials, Ravenpack Analytics to obtain data on media attention, CRSP to obtain return metrics, and the Federal Reserve Economic Database to obtain VIX. We gather any missing financial data items by manually searching IPO prospectuses. Appendix B provides detailed definitions of and sources for each variable.

3.2. *Descriptive statistics*

We report descriptive statistics for the sample in Table 1. Panel A provides summary statistics for the treatment and control samples, and the last two columns report results from the tests of differences in means. For both control and treatment firms, the registration window length (*RWLength*) is around 142 days. To our knowledge, our study is the first to document the actual registration window length for confidential filers and compare it with similar non-confidential filing firms. Untabulated statistics reveal that these distributions remain similar in the full sample of IPOs (143 days for non-confidential filers and 148 for confidential filers). These suggest that confidential filing does not necessarily reduce the time it takes to prepare for an IPO, but it possibly helps managers allocate their time more towards preparing for the IPO rather than address other issues (e.g., public scrutiny or lawsuits).

In terms of firm characteristics, the two groups are also similar. Firms in both groups are around 15 years of age at the time of IPO, and consistent with a need to finance growth, over 60% of firms in both groups are loss firms, with the mean *ROA* being negative in both samples. Across

the two groups, there is no difference in mean values of *Size*, *LnAge*, *ROA*, *Loss*, *Leverage*, *RD/Assets*, *PPE/Assets*, *MarketShare*, *SalesGrowth*, *ProdMktFluid*, or *VCTbacked*. The two groups are also subject of similar number of news articles prior to registration filing. Importantly, they experience similar levels of litigation from both business and other plaintiffs prior to the IPO registration process, with about one in three firms experiencing litigation from non-business plaintiffs (*ExAnte_LitOther*) and one in five experiencing litigation from businesses (*ExAnte_LitBus*) over the year before registration filing. In terms of economic conditions, *IndPE*, *IndDisp*, *SP500*, *VIX*, and *GDPGrowth* exhibit some differences between the two groups. In light of these differences, we include measures of economic conditions as control variables in our analyses. As we discuss in Section 5.5, we also conduct additional analyses to ensure our findings are not driven by the differences in economic conditions.

(Insert Table 1 around Here)

Table 1, Panel B reports descriptive statistics for our primary litigation risk measure, the number of new lawsuits. Specifically, it reports all litigation filed against sample firms during the length of time starting two registration periods before each firm's issuance date and ending one registration period after. Since the average registration period is 142 days long, this corresponds to approximately 10 months before (5 months after) each firm's issuance date. Cumulatively, treatment firms are subject to 532 lawsuits, of which 138 are initiated by businesses and 394 are initiated by other parties, such as individuals, government entities, and not-for-profit entities. Control firms are subject to 619 lawsuits, of which 214 are initiated by businesses, and 405 are initiated by other parties. Over 38% of the firms in the treatment group and over 42% of those in the control group are subject to at least one lawsuit over the analyses window. The mean number of lawsuits per firm in the treatment (control) group is 2.0 (2.3). The similarity in these measures likely reflects our intentional matching of firms on pre-registration litigation risk.

Table 1, Panel B also provides descriptive statistics regarding legal jurisdiction (federal vs. state) and the nature of lawsuit. There are more lawsuits filed in federal courts against control firms (355) compared to treatment firms (260), but the numbers in state courts are similar across the two groups (272 for treatment firms and 264 for control firms).

Lawsuits can arise for various reasons, and federal courts sort the subject matters in lawsuits into thirteen main categories. Six categories of federal lawsuits (civil rights, contract, labor, personal injury/property, intellectual property rights, and statutory actions) are relatively well represented in our sample. We aggregate the remaining categories (real property, bankruptcy, immigration, prisoner petitions, penalties, social security, and tax) into a single “other” category. The most frequent topic of litigation in federal courts against both treatment and control firms is statutory actions (e.g., environmental matters, corruption, other commodity/security-related issues). The primary subject of lawsuits filed by business plaintiffs is property rights in both samples, followed by contract-related issues. The primary subject of lawsuits filed by non-business plaintiffs is statutory actions followed by personal injury/property, labor, and civil rights-related matters.

State courts do not have a classification system similar to the nature of the suit. While they require some description of the case, this is inconsistent across courts (there are over 200 unique values in our sample) and often uninformative (e.g., civil lawsuit, damages, other, miscellaneous). We use keyword searches in the case type definitions and categorize state court lawsuits into the same six categories as federal lawsuits.¹¹ Since most case types are not descriptive, the other is the most represented category in our sample, followed by contract and personal injury/property cases.

In terms of the outcomes, settlement is the most common outcome for lawsuits in both

¹¹ Categories (and keywords in parenthesis) are as follows: civil rights (“civil rights” or “discrimination”); contract (“contract” (except warranty), “commercial,” or “corporate”); labor (“labor,” “employment,” “wrongful termination,” or “wrongful discharge”); personal property/injury (“injury,” “asbestos,” “lead paint,” “premises liability,” “malpractice,” “personal property,” “small claim,” “product liability,” or “warranty”); property rights (“intellectual property”); statutory actions (“antitrust,” “licensing,” or “tax”); and all others.

control and treatment groups followed by ruling in favor of the defendant. Over a third (nearly a quarter) of all lawsuits in our sample are settled (won by the defendant).

Figure 2 presents the number of new lawsuits filed against control and treatment firms from days [-600, +600] relative to the initial S-1 (for control firms) or DRS (for treatment firms) filing date. It reveals that control and treatment firms experience similar frequencies of lawsuits before the registration filing date. Neither group experiences consistently more litigation during this time; across subperiods, they alternate having relatively more or less litigation. The similarity in the frequency of pre-registration period lawsuits is not surprising since our propensity-score-matching explicitly considers litigation risk during the pre-registration period. The number of lawsuits against the two groups begins to visibly diverge upon the initial registration filing, which becomes publicly available upon filing for control firms but remains confidential until a few weeks before the IPO for treatment firms. Control firms experience a significant increase in the number of lawsuits upon filing of their registration statement on day 0 (from 75 lawsuits during days [-75,-1] to 111 during days [0,75] and to 129 during days [76,150]). In contrast, treatment firms experience only minor increases in litigation rates. To compare, in untabulated analyses we also examine the change in lawsuits around the time confidential filers make their first publicly available S-1 filing. We find a short-lived jump in the number of lawsuits from 77 over the 75 days before the public filing to 109 over the 75 days following the public filing which then decreases to 93 in the next 75 days. We note, however, that the jump may be partly attributable to the IPO itself since the vast majority of confidential filers complete their IPO within 40 days of publicly filing their S-1 forms.

Figure 2 also presents rates of litigation after the IPO. They appear in sub-periods starting 150 days after the initial registration filing date since the average registration period is 142 days. During this period, lawsuits against control firms remain higher, although the gap between the two

groups becomes smaller over time.¹² This suggests that treatment firms likely avoid some of the lawsuits that control firms face altogether, rather than simply having them delayed.

(Insert Figure 2 around Here)

4. Research Design

We use a difference-in-differences design to examine whether confidential filings affect litigation risk around an IPO. Our first difference compares treatment firms to control firms. Our second difference compares the registration period to the benchmark period. We define each firm's benchmark period as the period equal in length to the firm's registration period and ending two days before the initial S-1 or DRS filing date. We exclude the three days centered on the filing date to minimize possible errors due to inconsistency in the exact time of registration and lawsuit filings.

Given that we measure litigation risk using the count of lawsuits, we estimate the following Poisson model to test our predictions:¹³

$$\begin{aligned} \#Lawsuits_{i,t} &\sim \text{Poisson}(\lambda_{i,t}) \\ \lambda_{i,t} &= \exp\{\beta_0 + \beta_1 \text{Confidential}_i + \beta_2 \text{RegPeriod}_t + \beta_3 \text{RegPeriod}_t \times \text{Conf}_{.i} + \mathbf{\beta}' \text{Controls}_i + \text{Exposure}_i + \epsilon_{i,t}\} \end{aligned} \quad (2a)$$

where the dependent variable, $\#Lawsuits_{i,t}$, is the number of lawsuits filed against the firm during the benchmark or registration periods. *Confidential* is an indicator variable equal to one for treatment firms and zero for control firms. The variables of interest in (2a) are *RegPeriod*, an indicator variable equal to one for the registration period and zero for the benchmark period, and the interaction term *RegPeriod* x *Confidential*. If lawsuits increase during the registration period for control firms, we expect β_2 to be significantly positive. If confidential filing reduces such litigation risk, then we expect β_3 to be significantly negative.

¹² Since our lawsuit sample ends on December 31, 2020, lawsuits filed against seven firms that filed for an IPO during 2019 are not fully covered beyond 525 days. This has no bearing on our statistical analyses but affects Figure 2. Thus, to ensure comparability between treatment and control groups on the graph, when graphing the last two bins we remove lawsuits against the control firms that are matched to these seven firms from the sample as well. Excluding these treatment firms and the matched controls from the graph throughout the whole period instead would have no impact on our discussions or inferences.

¹³ Our inferences remain unchanged when we use a negative binomial model instead.

On average, control and treatment firms have similar registration period lengths, but Table 1 reveals some variation in this length across firms. To account for this variation, we set the exposure variable in the Poisson model equal to the registration/benchmark period length. To ensure that our results are not sensitive to our use of a Poisson model, we also estimate the following OLS model, where the dependent variable is equal to the daily average number of lawsuits in each period:

$$AvgLawsuits_{i,t} = \beta_0 + \beta_1 Conf_{.i} + \beta_2 RegPeriod_t + \beta_3 Conf_{.i} \times RegPeriod_t + \beta' Controls_{i,t} + \epsilon_{i,t} \quad (2b)$$

We calculate $AvgLawsuits_{i,t}$ by dividing $\#Lawsuits_{i,t}$ during the period by the length of the period and multiplying it by 100. The control variables in (2a) and (2b) are $Size$, $Ln(Age)$, ROA , $Loss$, $Leverage$, $RD/Assets$, $PPE/Assets$, $MarketShare$, $SalesGrowth$, $ProdMktFluid$, $VBacked$, $MediaAttention$, and $IPOWave$, following prior studies of proprietary disclosure decisions (Boone, Floros, and Johnson 2016; Chaplinsky, Hanley, and Moon 2017; Verrecchia and Weber 2006). The inclusion of these variables as controls helps mitigate concerns about imbalances in the matching procedure. To control for differences in industry-specific and macroeconomic conditions across treatment and control groups, we also include $IndPE$, $IndRet$, $S\&P500$, $IndDisp$, VIX , and $GDPGrowth$ as controls. Our use of difference-in-differences analysis further alleviates any concerns regarding the effect of economic conditions. Appendix B provides a detailed definition for each of these variables.¹⁴

5. Empirical Analyses

5.1. *Lawsuits and confidentiality of IPO registration*

We report results from the estimation of models specified in (2a) and (2b) in Table 2. We base our inferences on z and t-statistics calculated using standard errors clustered at the industry and year-level. Columns (1) and (2) present results from estimating (2a) without and with control variables, respectively. In both columns, the coefficients on $RegPeriod$ are positive and statistically

¹⁴ Our inferences are unchanged when we control for firm characteristics using firm fixed effects instead.

significant, suggesting that control firms experience more lawsuit initiations during the registration period relative to the benchmark period. The incidence rate (i.e., $e^{\beta}-1$) is 49%, which translates to an increase of 0.36 more lawsuits against the control firms during the registration period compared to the benchmark period. Since the mean number of lawsuits per control firm around the IPO is 2.3, this increase represents a 16% increase in litigation risk during the registration period.¹⁵ The coefficient on *Confidential* \times *RegPeriod* is significantly negative and of similar magnitude to the coefficient on *RegPeriod*. Thus, unlike control firms, treatment firms do not experience an increase in lawsuits during the registration period. The coefficient on *Confidential* is statistically indistinguishable from zero in both columns, indicating no significant difference in lawsuits between treatment and control firms during the benchmark periods. In columns (3) and (4), we observe similar results using an OLS estimation, suggesting that our inferences are not sensitive to using the Poisson model.¹⁶

(Insert Table 2 around Here)

5.2. *Types of lawsuits and confidentiality of IPO registration*

Our main findings suggest that firms are more exposed to litigation risk prior to their IPO, and confidential filings can shield firms from such exposure. In this section, we examine how this risk and related protection vary with lawsuit severity, as reflected in the plaintiff's identity, the nature of the lawsuit, and the merit of the lawsuit.

5.2.1. *Lawsuits by plaintiff identity*

We first study variation in litigation risk as reflected in plaintiff identity. Lawsuits against IPO firms can be filed by different parties, including other businesses (e.g., competitors, suppliers,

¹⁵ Lawsuits are less common among smaller IPO firms. To understand whether our inferences arise from litigation against a small number of large firms, we analyze firms above and below the 75th percentile of sales revenue separately (untabulated). These analyses indicate that our inferences persist for firms in the bottom three quartiles of sales revenue. When we similarly split the sample by median sales, our results remain statistically significant for firms above the median but not for those below the median, which suggests that larger firms play a more important role for our inferences than smaller firms.

¹⁶ The sum of coefficients on *RegPeriod* and *Confidential* \times *RegPeriod* is statistically insignificant (e.g., based on column 4, $p < 0.64$).

customers, patent trolls), individuals (e.g., employees and customers), and governmental agencies (e.g., tax authorities and regulatory agencies) or non-profit organizations. Different plaintiffs may have different motivations for pursuing legal action around IPOs, which could affect the severity of the lawsuit and the risk it poses to the firm. Therefore, we construct an alternate litigation risk measure that incorporates plaintiff identity. To do so, we collect the name of the plaintiff party for each lawsuit in our sample and classify lawsuits into two categories: those in which at least one plaintiff is a business (*Business*) and those in which none of the plaintiffs is a business (*Other*).¹⁷ We then re-estimate (2a) and (2b) separately using these two components of overall litigation risk as distinct dependent variables.

(Insert Table 3 around Here)

Table 3 presents the results of this analysis. It reveals that the coefficient on *RegPeriod* is statistically positive in all columns. This suggests that control firms experience a significant increase in lawsuits initiated by both business plaintiffs and other plaintiffs during the registration period. The incidence of business lawsuits increases by about 81%, and the incidence of other lawsuits increases by about 34%. This reflects about 0.21 (0.16) more business (other) lawsuits during the registration period, relative to an average of 0.8 (1.5) business (other) lawsuits overall. The coefficient on the interaction term is negative in all columns, but it is significantly negative only when the dependent variable is business lawsuits.¹⁸ These results indicate that, while IPO firms face an increase in litigation risk from both businesses and other parties, confidential filings are primarily effective in shielding firms from lawsuits initiated by businesses.

¹⁷ We do not attempt to classify plaintiffs into finer bins (e.g., competitor, employee, customer) for two reasons. First, further splits will have relatively small sample sizes, and therefore, we are unlikely to have the statistical power necessary for making reliable inferences. Second, court docket files we collected typically provide the name of plaintiff(s) but do not provide any further details about the plaintiff. As a result, we cannot reliably classify plaintiffs into finer bins within reasonable effort.

¹⁸ The sum of coefficients on *RegPeriod* and *Confidential* x *RegPeriod* is statistically insignificant in both groups (e.g., $p < 0.61$ in column 2 and $p < 0.75$ in column 4).

5.2.2. Lawsuits by nature of suit

Next, we study variation in litigation risk as reflected in the nature of the suit. The nature of a lawsuit refers to the subject matter of the claims asserted in a lawsuit. Lawsuits can arise for various reasons, and we conjecture that different legal claims could pose different degrees of risk to the firm. Therefore, we first categorize lawsuits into three groups based on their nature. The first group includes cases about intellectual property rights and contracts. The second group includes cases about labor and civil rights. The third group includes cases about personal injury or property, civil rights, statutory actions, and other claims. We re-estimate (2a) and (2b) separately using these three components of overall litigation risk as distinct dependent variables.

(Insert Table 4 around Here)

The results of this estimation appear in Table 4. They reveal significantly positive coefficients on *RegPeriod* in columns 1, 2, 5, and 6. This suggests that control firms face an increase in property rights/contracts litigation and other litigation during the registration period, but not in civil rights/labor litigation. The coefficient on *Confidential* \times *RegPeriod* is negative and marginally statistically significant for property rights/contracts litigation. It has a negative sign but is not statistically significant in the other two groups. These results suggest that confidential filings are most effective in protecting against lawsuits related to intellectual property/contract claims.

5.2.3. IPO lawsuits by merit

Finally, we study variation in litigation risk as reflected in the merit of the suit. Following Dyck, Morse, and Zingales (2010) and Kempf and Spalt (2022), we define the merit of a lawsuit based on its disposition. In particular, we define lawsuits with low legal merit as those that result in favor of the defendant and lawsuits with high legal merit as those that result in favor of the plaintiff or settled. Arguably, this classification introduces a bias against low merit lawsuits since defendants

may find settling some such lawsuits economically more efficient.¹⁹ We re-estimate (2a) and (2b) using low and high merit components of overall litigation risk as distinct dependent variables.

Table 5 reports estimates from our analyses by the merit of the lawsuit. The first two columns report results for lawsuits with low merit (i.e., where the dependent variable is the number of lawsuits that resulted in favor of the defendant). In these columns, we find a significantly positive coefficient on *RegPeriod*, which suggests that control firms experience more lawsuits during the registration period that eventually result in their favor. The coefficient on the interaction term *Confidential* x *RegPeriod* is significantly negative, indicating no such increase for the treatment firms. The last two columns report results for high merit lawsuits (i.e., where the dependent variable is the number of lawsuits that are settled or resulted in favor of the plaintiff). These columns show that control firms also experience more high merit lawsuits during the registration period. However, the coefficient on the interaction term *Confidential* x *RegPeriod* is statistically indistinguishable from zero, suggesting that confidential filing does not protect firms from high merit litigation.

(Insert Table 5 around Here)

5.3. Do confidential filings eliminate or delay lawsuits?

Our findings indicate that confidential filings help reduce the incidence of litigation during the IPO registration period. An important question is whether confidential filing helps treatment firms permanently avoid these lawsuits or if it simply facilitates a delay of litigation until the confidential filings become publicly available. If lawsuits filed during the registration period aim to (1) leverage an IPO firm's incentives to avoid uncertainty and distractions to extract payments from the firm or (2) derail the IPO process, we would expect the confidential filing to reduce the overall

¹⁹ Eagerness to settle may encourage further litigation (see for example, <https://news.bloomberglaw.com/corporate-law/uber-aims-to-shed-troubled-past-in-IPO-peace-making-bonanza-1>). Therefore, firms should be less willing to settle a lawsuit with weak merit. In addition, even if the IPO firm wants to settle a lawsuit with weak legal merit, the plaintiff may not be willing to do so if the plaintiff's goal is to keep uncertainty regarding the IPO firm high rather than to receive a quick settlement.

frequency of these lawsuits, rather than merely delay them. To test this empirically, we re-estimate (2a) and (2b) comparing the benchmark period to the post-IPO period (rather than the registration period). We define the post-IPO period as the period that starts two days after the issuance date and is equal in length to the benchmark/registration periods. If lawsuits are simply delayed as a result of confidential filings, then we should observe a significantly higher incidence of lawsuits for the treatment firms during the post-IPO period relative to the control firms.

(Insert Table 6 around Here)

Table 6 presents the results from this analysis. In Table 6, we find that the coefficient on *Post-IPO* is significantly positive in both columns, suggesting that control firms face more lawsuits during the post-IPO period compared to the benchmark period. This is consistent with prior research asserting that public firms experience heightened litigation risk (e.g., Talley 2009). Relating to our hypothesis, the coefficients on the interaction term (*Confidential* x *Post-IPO*) are statistically indistinguishable from zero and do not have a positive sign. These results suggest that after the IPO, treatment firms do not face a greater incidence of lawsuits relative to the control firms. This is inconsistent with the claim that confidential filing leads to delayed litigation. Combined with our main results, these findings suggest that filing confidentially affords treatment firms protection from strategically timed lawsuits during the registration period.

5.4. *Costs of IPO litigation*

Taken together, our evidence indicates that the confidential filing provision has the unintended benefit of helping shield IPO firms from lawsuits. The benefits of this protection are most easily understood by considering the myriad costs imposed by lawsuits, including increased uncertainty and distress risk, loss of businesses, managerial distraction, negative publicity, and diversion of resources from the operations and the IPO to litigation. While most of these costs are hard to directly observe and quantify, their effects should be reflected in the IPO's pricing. For

example, the negative publicity and uncertainty caused by a lawsuit can lead managers to revise IPO price downward and allocate more of their time and resources away from the IPO process.

To measure the effect of litigation on IPO price revisions, we examine the relation between price revisions during the IPO process and the number of lawsuits filed during the price revision period, defined for each firm as the time between the initial pricing date and the issuance date. We obtain initial pricing and offer price data from the SDC database. Ideally, we would measure initial pricing at the registration filing date to assess the full cost of litigation induced by IPO disclosures. However, such data does not exist for the vast majority of firms, as it is typical for firms and underwriters to decide on initial pricing much later in the IPO process. Consistent with prior research, the median firm in our sample has a price revision period of 14 days. Thus, the initial prices in our tests likely already incorporate the effect of lawsuits filed between the initial S-1 or DRS filing and the initial pricing date.

We measure the magnitude of price revision as follows:

$$Price\ Revision = \frac{Offer\ Price}{Midpoint\ of\ Initial\ Price\ Range} - 1$$

Table 7, column (1) reports the results of estimating an OLS model where the dependent variable is *PriceRevision*. In column (2), we focus specifically on downward price revisions and estimate a logit model where the dependent variable is an indicator that equals one if the price revision is negative and zero otherwise. In both tests, the main explanatory variable, *#Lawsuits*, measures the number of lawsuits filed against the issuing firm during the price revision period.

Table 7 reveals that *#Lawsuits* is negatively associated with the magnitude of price revisions and positively associated with the likelihood of a downward price revision. The coefficient on *#Lawsuits* in the first column suggests that each additional lawsuit during this period is associated with a 1.5% reduction in the offer price. In the second column, the marginal effect of the coefficient on *#Lawsuits* is 0.07, indicating that each additional lawsuit increases the likelihood of a downward

price revision by 7.0%. Given our finding in Table 2 that confidential filing leads to 0.36 fewer lawsuits during the registration period, a back of the envelope calculation suggests that the litigation impacts of confidential filings increase IPO offer prices by 0.54% ($0.36 \times 1.5\%$) or reduce the likelihood of downward price revisions by 2.5% ($0.36 \times 7\%$). Overall, these results show that litigation filed during the IPO period has a non-trivial negative impact on the offering prices of IPO firms.²⁰ This reinforces the view that confidential filings can benefit firms by reducing litigation and thus reducing such price revision costs.

(Insert Table 7 around Here)

5.5. *Robustness Checks*

We conduct several additional analyses to check the robustness of our findings to alternative explanations. First, we consider the possibility that unobservable time-varying factors impact our inferences. For example, in recent years, several states have implemented laws intended to discourage “bad faith” (i.e., frivolous) litigation related to patent infringement. It is possible that the staggered adoption of these laws could lead to reduced litigation risk during the latter part of our sample, which coincides with the post-JOBS Act period. However, such changes are unlikely to materially affect our inferences for at least two reasons. First, most of the firms in our sample operate across multiple state jurisdictions, making it possible for plaintiffs to choose their desired jurisdictions when filing a legal claim. This process is known as forum selection. Since regulations against bad faith litigation are not universally adopted by states, there is ample opportunity for plaintiffs to circumvent these laws through forum selection. Second, most patent infringement

²⁰ In untabulated analyses, we also attempt to study whether the effect of litigation on price revisions differs between confidential and nonconfidential filers by including $\#Lawsuits \times Confidential$ interaction term as an explanatory variable in our estimations. However, the brevity of the price revision period effectively precludes us from observing any difference across these groups. Specifically, firms filing confidential IPO registration documents must make their S-1 forms publicly available no later than 21 days prior to their roadshow. Since the revision period does not typically begin until 14 days prior to the issuance date, it is generally the case that both types of filers have similar information availability during the price revision period. Consistent with this, we do not observe a significant difference in the relation of litigation to price revisions between treatment and control firms.

claims are subject to federal preemption, which dictates that federal laws supersede state laws regarding patents. Federal preemption may be limited when a claim is “objectively baseless,” but this determination is often difficult to defend in practice. Thus, the impact of state-level “bad faith” litigation protections on our findings is likely limited.

Empirically, our difference-in-differences design and use of macroeconomic factors as control variables alleviate the concern that time-varying factors may affect our findings. To further test the effect of such factors, we conduct placebo analyses using IPO firms that do not qualify for EGC status. In particular, we first identify all IPOs that do not satisfy the EGC eligibility criteria and are conducted between the enactment of the JOBS Act and the expansion of the JOBS Act to all firms in July 2017. We then match these firms with control firms that would not have satisfied the EGC criteria and conducted their IPO prior to the enactment of the JOBS Act using the same matching model we employed for our primary analyses. The procedure yields 48 pairs of firms.²¹ The two subsamples are not significantly different along any of the matching dimensions. We then replace *Confidential* indicator in (2a) and (2b) with *Post-JOBS* indicator, which takes the value of one if the IPO took place after the enactment of the JOBS Act and zero otherwise. If our results are driven by unobservable time-varying factors, rather than confidentiality of the registration form, similar to our findings in Table 2, we expect to observe a positive and significant coefficient on *RegPeriod* and a negative and significant coefficient on the interaction term (*Post-JOBS* × *RegPeriod*). In contrast, as reported in the first two columns of Table 8, we do not observe any significance on either of these terms in our placebo analyses.

(Insert Table 8 around Here)

²¹ There are 110 non-EGC IPOs filed after the JOBS Act and 78 IPOs that would not have satisfied EGC criteria filed before the Act.

Second, we conduct an analysis to isolate the effect of confidential filings from the effects of other disclosure provisions in the JOBS Act, which include reducing the scope of executive compensation disclosures, reporting two, instead of three, years of audited financial statements, and delaying application of new or revised accounting standards. By construction, firms that opt-in for confidential filing take advantage of the reduced disclosure provisions until the registration statement becomes public, and few firms elect other disclosure provisions but not the confidential filing provision. Thus, as an alternative, we replicate our analyses using a subset of firms known as smaller reporting companies (SRCs). These firms were allowed to take advantage of reduced disclosure provisions, but not the confidential filing provision, prior to the JOBS Act.²² Following Chaplinsky et al. (2017), we infer a firm's SRC status based on whether its proceeds from issuance is below the public float criteria for SRC status that is effective at the time of registration filing (\$25 million until Feb. 5, 2008; \$75 million between Feb. 5, 2008, and June 28, 2018; and \$250 million afterward). We then match the SRCs that filed for IPO after the JOBS Act and elected confidential filing with control firms that conducted their IPO prior to the enactment of the JOBS Act using the same matching model we employed for our main analyses. The procedure yields 26 pairs of firms. The results from this analysis (reported in the last two columns of Table 8) largely confirm our main findings. In particular, we continue to observe a significantly positive coefficient on *RegPeriod* and a significantly negative coefficient on the interaction term in the Poisson model.²³ In untabulated tests, we observe that both coefficients are statistically significant when we focus on lawsuits initiated by business plaintiffs and insignificant when we focus on lawsuits initiated by other plaintiffs. Thus, we conclude that other provisions in the JOBS Act are unlikely to drive our main findings.

²² Less than 20% of the firms in our sample satisfy the SRC criteria, and given the small size of these firms, lawsuits are less common among these firms. For example, 22% of SRC firms in the matched sample experienced at least one lawsuit during the analysis window compared to 40% reported for the main sample in Section 3.2.

²³ We note that the larger z-statistics in Table 8, relative to our main tests, do not offer evidence of a stronger result for SRCs. Rather, they are likely an artifact of the smaller sample size available for these tests. We also attribute the lack of statistical significance of *RegPeriod* in the OLS estimation to the low statistical power of these tests.

Third, we examine the effect of testing-the-waters provision (TTW) on our findings. This JOBS Act provision allows firms to communicate with institutional or otherwise qualified investors in private ahead of an IPO to gauge interest in the potential offering. On the one hand, TTW may increase the chances of information leakage about the firm's condition and its IPO intentions, and thus the likelihood of potential lawsuits, which may bias against our findings. On the other hand, firms may reduce their public communications as they disclose information to potential investors privately, which may further reduce the public information available about the IPO firm. Since the vast majority of confidential filers elect TTW, it is not possible to examine the choice of TTW separately from confidential filing.²⁴ We conduct two untabulated tests to address this issue. First, we use the July 2017 amendment to the JOBS Act, which extended the confidential filing provision, but not TTW, to all issuers, and study changes in EGC-ineligible firms' litigation risk around their IPOs. Using the same methodology as in our main tests but focusing on IPOs of EGC-ineligible firms around the 2017 amendment, we find that coefficients of interest are directionally consistent with those in our main analyses and statistically significant in the Poisson models, despite the limited sample size. Second, we include the level of media attention over the year ending with the IPO date as an additional control to our analyses. Since this measure includes corporate press releases, it provides a proxy for the frequency of firms' public communications before the IPO date. We find that the addition of this variable has a negligible effect on our estimates and our inferences remain identical. Thus, we conclude that our findings are unlikely to be driven by TTW.

Fourth, we explore the sensitivity of our analyses to the inclusion of the financial crisis period. While our difference-in-difference design, use of economic/industry/market-level control variables, and the analyses in Table 8 offer reassurance that our results are unlikely to be driven by

²⁴ In our sample 3% of confidential filers state that they do not test the waters, and 81% state that they test-the-waters. The remaining firms do not provide a clear statement regarding whether they elected this provision.

time-varying factors, one remaining concern can be that IPOs filed during the 2007–2008 financial crisis have different characteristics. To address this concern, we conduct untabulated analyses where we exclude firm pairs where the control firm filed for its IPO during the recession period as defined by the NBER (i.e., 12/2007-6/2009). In these tests, we continue to observe a significantly positive (negative) coefficient on *RegPeriod* (the interaction term *Confidential* × *RegPeriod*) when the dependent variable is total lawsuits or business-initiated lawsuits. Overall, the results confirm that our findings are not attributable to the impact of the financial crisis on control firms.

Last, we examine whether our findings are driven by firms in the healthcare industry. Dambra et al. (2015) find that confidential filings are more prevalent in this industry than in other industries, and they attribute this result to higher proprietary disclosure costs for healthcare firms. To examine whether our findings are specific to firms in this industry, in untabulated tests we exclude all healthcare firms based on Dambra et al. (2015)'s definition from our sample and replicate our analyses. We find that our main inferences remain identical in these tests, providing reassurance that our results are not exclusive to healthcare firms.

6. Conclusion

This study examines the relation between public disclosure of IPO registration statements and the incidence of nonshareholder litigation during the registration period. Our analyses compare treatment firms that filed their registration statement confidentially under the JOBS Act with a matched sample of control firms that filed their registration statement publicly prior to the JOBS Act. Using a novel and comprehensive dataset of nonshareholder lawsuits against IPO firms, we show that the incidence of lawsuits significantly increases upon filing of registration statements for the control firms but not for the treatment firms. The increase accounts for a 16% increase in litigation risk around the IPO for control firms. We further find that our results are primarily driven

by lawsuits initiated by other businesses and those related to property rights and contracts. We also find evidence that confidential filings primarily deter lawsuits with weak legal merit.

Our study identifies reducing the risk of nonshareholder litigation as a quantifiable, important, and unintended benefit of confidential filings. Our findings support Verrecchia's (1983) conjecture that deferring disclosure can benefit firms if proprietary disclosure costs are time-variant. We also add to the literature on litigation risk and its effects on corporate decision-making. A growing number of studies examine the effects of non-shareholder litigation on corporate investment and financing decisions, and there is longstanding literature on the effects of shareholder litigation risk on disclosure. Our study merges these streams of literature and shows that the risk of nonshareholder litigation affects corporate disclosures, and its effect differs from that of shareholder litigation. Thus, we show that the relation between litigation risk and disclosure is complex, time-varying, and context-dependent.

Lastly, our results help paint a more complete picture of the trade-offs firms face in seeking visibility. While studies document material benefits associated with heightened corporate visibility (Gervais, Kaniel, and Mingelgrin 2001; Israeli, Kaniel, and Sridharan 2022), our study reveals that the pursuit of increased transparency may bring heightened litigation risk.

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APPENDIX A: SAMPLE CONSTRUCTION

	Number of IPOs
SDC Global New Issues, eligible IPOs between 01/2003 and 12/2019	2,126
Keep only NASDAQ, NYSE, and AMEX IPOs	1,961
Keep only (Class A & B) Common/Ordinary Shares	1,908
Drop manually verified closed-end funds, REITs, and foreign issues	1,859
Drop if the difference between initial S-1 (DRS for confidential filers) filing date and issue date > 18 month	1,802
Drop if any data is missing or cannot be accurately matched to Compustat or SEC filings	1,714
Drop if age < 3 years or assets < \$10 million (in 2012 \$s)	1,552
Observations that satisfy data requirements	1,552
Pre-JOBS Act IPOs: (01/01/2003, 04/04/2012)	
By firms with Sales < \$1 Billion (in 2012 \$USD terms)	714
By firms with Sales > \$1 Billion (in 2012 \$USD terms)	110
Post-JOBS Act IPOs: (04/05/2012, 12/31/2019)	
By EGC-eligible firms	630
By non EGC-eligible firms	98

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APPENDIX B: VARIABLE DEFINITIONS

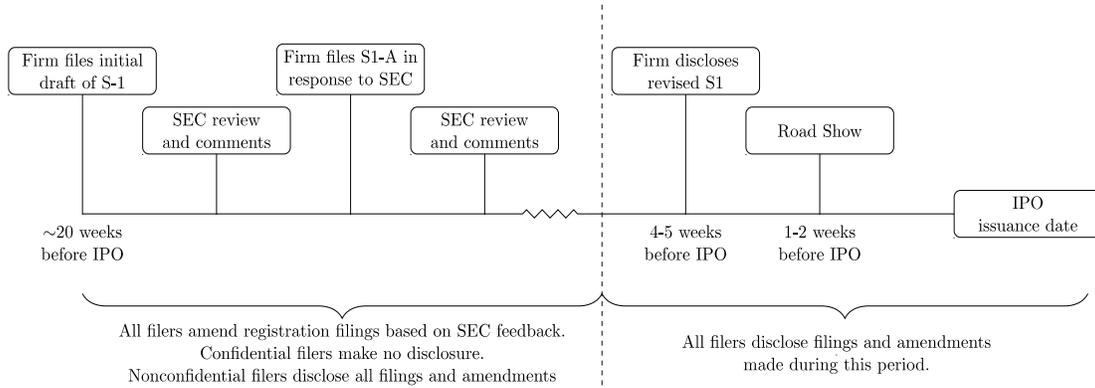
Variable Name	Description
<i>#Lawsuits</i>	The number of lawsuits filed against an IPO firm during its benchmark, registration, or Post-IPO period (Source: Bloomberg Law, PACER, and courts' websites)
<i>AvgLawsuits</i>	<i>#Lawsuits</i> during the benchmark, registration or Post-IPO period divided by the length of the period and multiplied by 100.
<i>Confidential</i>	An indicator variable that is equal to one for treatment firms and zero for control firms (Source: IPO prospectuses)
<i>RegPeriod</i>	An indicator variable that is equal to one for the period between the initial S-1 (DRS for confidential filers) filing date and IPO date, and zero for the same length window ending a day before the registration date
<i>RWLength</i>	Number of days between the initial S-1 (DRS for confidential filers) filing date and IPO date (Source: SDC and IPO prospectuses)
<i>Size</i>	Natural logarithm of the firm's total assets at the end of the last fiscal year prior to the IPO date (in 2012 \$s) (Source: Compustat and IPO prospectuses)
<i>LnAge</i>	Natural logarithm of the firm's age, where age is calculated as the difference in years between the year of the firm's IPO registration filing date and the firm's year of foundation (from Jay Ritter's website) or year of incorporation (from SDC and Google searches) when the year of foundation is not available
<i>Loss</i>	An indicator variable equal to one if the firm's income before extraordinary items at the end of the last fiscal year prior to the IPO date is negative and zero otherwise
<i>ROA</i>	The ratio of income before extraordinary items to the total assets at the end of the last fiscal year prior to the IPO date (Source: Compustat and IPO prospectuses)
<i>Leverage</i>	The ratio of total short-term and long-term debt to assets at the end of the last fiscal year prior to the IPO date (Source: Compustat and IPO prospectuses)
<i>RD/Assets</i>	The ratio of research and development expenditures to total assets at the end of the last fiscal year prior to the IPO date. When missing, it is set equal to zero. (Source: Compustat and IPO prospectuses)
<i>PPE/Assets</i>	The ratio of net property, plant, and equipment to the total assets at the end of the last fiscal year prior to the IPO date (Source: Compustat and IPO prospectuses)
<i>SalesGrowth</i>	The ratio of total sales to prior year total sales at the end of the fiscal year prior to the IPO date. When both years' sales are zero, the ratio is set to zero. When prior year sales is zero and current year's is not the ratio is set to one. (Source: Compustat and IPO prospectuses)
<i>VCBacked</i>	An indicator variable equal to one if the IPO firm is venture-capital backed and zero otherwise (Source: SDC)
<i>IPOWave</i>	An indicator variable equal to one if there are five or more IPOs in the same industry-year and zero otherwise. Industries are defined based on Fama-French 17 industry codes. (Source: SDC)
<i>ProdMktFluid</i>	Hoberg, Phillips, and Prabhala (2014) measure of product market fluidity, computed as the vector of aggregate absolute change in usage of each word in the product market universe from year $t - 1$ to year t . When missing, its value is set equal to the industry-year mean.
<i>MarketShare</i>	The ratio of the firm's total revenues to total revenues of all firms in the same industry at the end of the last fiscal year prior to the IPO date (Source: Compustat)
<i>ExAnte_Lit</i>	Natural logarithm of one plus the number of lawsuits initiated by business plaintiffs and other plaintiffs against an IPO firm over 360 days ending five days before the beginning of the IPO registration period (Source: Bloomberg Law, PACER, and courts' websites)
<i>Media.Attention</i>	Natural logarithm of one plus the number of news stories about the IPO firm or press releases from the IPO firm with a relevance rating of 100 published over the 360 days ending five days before the beginning of the IPO registration period (Source: Ravenpack Analytics)

<i>IndPE</i>	Median value of the ratio of fiscal year end price to earnings per share in the industry-year. Industries are defined based on Fama-French 17 industry codes. (Source: Compustat)
<i>IndRet</i>	Value weighted return for the IPO firm's industry over the 12 months ending the month before the beginning of the IPO registration period. Industries are defined based on Fama-French 17 industry codes. (Source: CRSP)
<i>IndDisp</i>	Standard deviation of stock returns in the IPO firm's industry for the 12-months ending the month before the beginning of the IPO registration period. Industries are defined based on Fama-French 17 industry codes. (Source: CRSP)
<i>GDPGrowth</i>	Annual real GDP growth during the IPO year (Source: FRED)
<i>S&P500</i>	S&P 500 index returns over the 12 months ending the month before the initial S-1 (DRS for confidential filers) filing date. (Source: CRSP)
<i>VIX</i>	Mean value of CBOE volatility index (VIX) for S&P 500 over the 90 days e the initial S-1 (DRS for confidential filers) filing date (Source: FRED)
<i>EGC</i>	An indicator variable that is equal to one for firms that satisfy emerging growth company criteria, and zero for firms that do not satisfy the same. For IPOs made before the JOBS Act EGC is defined based on whether the firm's total revenues before the IPO are below \$1 billion (in 2012 \$). (Source: IPO prospectuses)
<i>Post-JOBS</i>	An indicator variable that is equal to one for firms that file for IPO after April 5, 2012, and zero for firms that file before then (Source: SDC)
<i>Price Revision</i>	Percentage difference between the IPO offer price and the middle of initial price range (i.e., offer price/initial mid-price)-1) (Source: SDC)
<i>Price Revision<0</i>	An indicator variable equal to one if <i>Price Revision</i> is negative, and zero otherwise.

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FIGURE 1: TIMELINE OF IPO DISCLOSURES FOR NONCONFIDENTIAL AND CONFIDENTIAL FILERS

This figure illustrates the timeline for the nonconfidential and confidential filing processes for IPO firms.



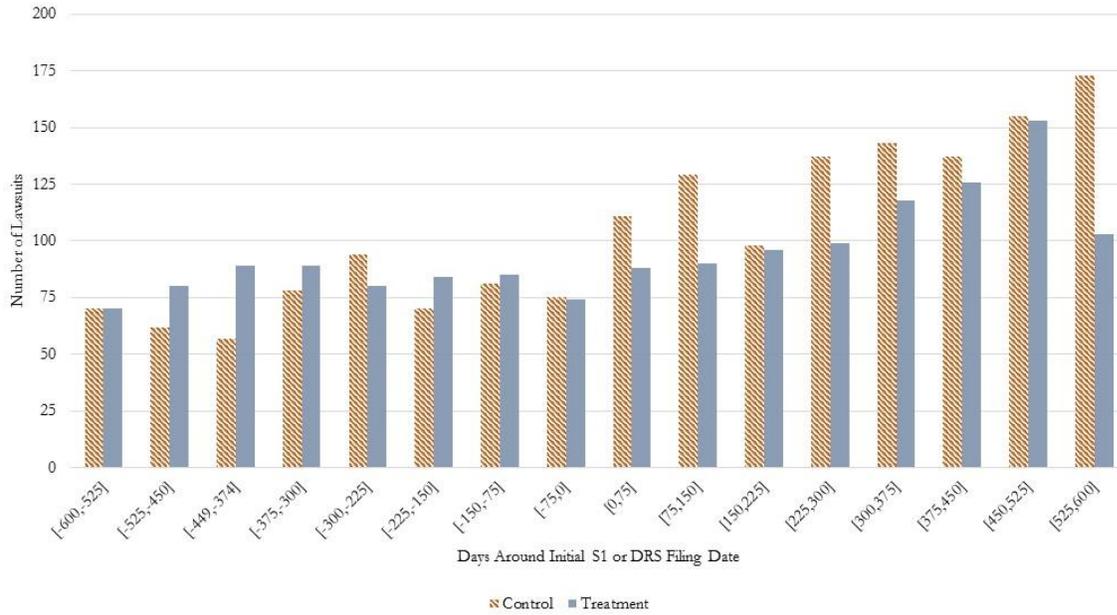
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FIGURE 2: DISTRIBUTION OF NEW LAWSUITS AROUND THE REGISTRATION FILING DATE

This figure presents the number of new lawsuit filings against IPO firms in our sample around IPO registration filing dates. Day 0 represents the initial IPO registration (S-1 or DRS) filing date.



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TABLE 1: DESCRIPTIVE STATISTICS

This table presents the descriptive statistics for the variables used in our analyses. Panel A presents the summary statistics for the treatment and control samples and a comparison of the mean values. Panel B presents the statistics for lawsuits by lawsuit type for treatment and control firms separately. Detailed definition of all variables are reported in Appendix B.

Panel A: Summary statistics

	Treatment Firms						Control Firms						Mean Diff.	t-value
	N	Mean	SD	25%	50%	75%	N	Mean	SD	25%	50%	75%		
<i>RWL_{length}</i>	265	140.8	82.7	89.0	115.0	152.0	265	143.3	92.1	86.0	105.0	163.0	-2.5	-0.33
<i>Size</i>	265	4.5	1.5	3.4	4.2	5.6	265	4.6	1.4	3.6	4.4	5.6	-0.1	-0.80
<i>LnAge</i>	265	2.4	0.7	1.9	2.3	2.8	265	2.4	0.8	1.9	2.2	2.8	0.0	-0.28
<i>ROA</i>	265	-0.36	0.69	-0.55	-0.20	0.01	265	-0.27	0.64	-0.45	-0.05	0.03	-0.09	-1.59
<i>Loss</i>	265	0.68	0.47	0.00	1.00	1.00	265	0.62	0.49	0.00	1.00	1.00	0.06	1.36
<i>Leverage</i>	265	0.27	0.36	0.00	0.12	0.40	265	0.31	0.51	0.03	0.15	0.45	-0.05	-1.18
<i>RD/Assets</i>	265	0.33	0.53	0.00	0.22	0.44	265	0.27	0.32	0.00	0.15	0.43	0.06	1.65
<i>PPE/Assets</i>	265	0.15	0.20	0.03	0.08	0.18	265	0.16	0.18	0.04	0.09	0.22	-0.01	-0.55
<i>MarketShare</i>	265	0.00	0.01	0.00	0.00	0.00	265	0.00	0.01	0.00	0.00	0.00	0.00	0.06
<i>SalesGrowth</i>	265	0.91	3.26	0.01	0.28	0.68	265	2.05	16.78	0.11	0.37	0.92	-1.14	-1.08
<i>ProdMktFluid</i>	265	9.5	4.4	5.9	8.3	12.9	265	9.8	4.2	6.7	8.9	12.4	-0.2	-0.57
<i>VCBacked</i>	265	0.65	0.48	0.00	1.00	1.00	265	0.62	0.49	0.00	1.00	1.00	0.03	0.72
<i>ExAnte_Lit_{oth}</i>	265	0.29	0.65	0.00	0.00	0.00	265	0.36	0.66	0.00	0.00	0.69	-0.07	-1.29
<i>ExAnte_Lit_{bus}</i>	265	0.21	0.47	0.00	0.00	0.00	265	0.23	0.46	0.00	0.00	0.00	-0.02	-0.54
<i>MediaAttention</i>	265	1.0	1.7	0.0	0.0	2.4	265	1.0	1.4	0.0	0.0	1.6	0.1	0.63
<i>IndPE</i>	265	2.7	6.3	-1.0	-0.7	1.7	265	4.7	5.3	0.0	2.5	6.8	-2.1	-4.11
<i>IPOWave</i>	265	0.95	0.22	1.0	1.0	1.0	265	0.96	0.17	1.0	1.0	1.0	-0.02	-1.31
<i>IndRet</i>	265	0.19	0.12	0.12	0.20	0.26	265	0.18	0.16	0.07	0.15	0.24	0.01	1.09
<i>Sc&P500</i>	265	0.15	0.08	0.11	0.14	0.20	265	0.13	0.12	0.06	0.12	0.18	0.02	2.19
<i>IndDisp</i>	265	0.62	0.24	0.45	0.61	0.77	265	0.78	0.48	0.49	0.56	0.84	-0.16	-4.74
<i>VIX</i>	265	14.8	2.28	13.6	14.6	15.9	265	17.1	5.7	13.0	16.3	19.2	-2.2	-5.98
<i>GDPGrowth</i>	265	2.3	0.4	1.8	2.3	2.7	265	2.6	1.3	2.0	2.8	3.5	-0.3	-3.96
<i>Price Rev</i>	265	-0.04	0.20	-0.14	0.00	0.09	265	-0.05	0.24	-0.22	0.00	0.08	0.01	0.45
<i>Price Rev<0</i>	265	0.41	0.49	0.00	0.00	1.00	265	0.47	0.50	0.00	0.00	1.00	0.06	1.31

Panel B: Lawsuit Types

	Lawsuits against Treatment Firms			Lawsuits against Control Firms		
	All	Business	Other	All	Business	Other
<i>Total</i>	532	138	394	619	214	405
<i>Mean</i>	2.0	0.5	1.5	2.3	0.8	1.5
<i>25%</i>	0.0	0.0	0.0	0.0	0.0	0.0
<i>Median</i>	0.0	0.0	0.0	0.0	0.0	0.0
<i>75%</i>	1.0	0.0	1.0	2.0	1.0	1.0
<i>AvgLawsuits</i>	1.31	0.34	0.97	1.54	0.54	0.99
<u><i>By Court Type and Nature</i></u>						
<i>Federal Courts</i>	260	62	198	355	123	232
<i>Civil Rights</i>	36	1	35	22	1	21
<i>Contract</i>	20	11	9	47	21	26
<i>Labor</i>	39	1	38	16	-	16
<i>Personal Inj./Property</i>	27	2	25	78	6	72
<i>Property Rights</i>	38	36	2	70	62	8
<i>Statutory Actions</i>	57	6	51	94	21	73
<i>Other</i>	43	5	38	28	12	16
<i>State Courts</i>	272	76	196	264	91	173
<i>Civil Rights</i>	1	0	1	1	0	1
<i>Contract</i>	44	15	29	55	40	15
<i>Labor</i>	18	1	17	11	1	10
<i>Personal Inj./Property</i>	44	5	39	54	13	41
<i>Property Rights</i>	1	1	0	0	0	0
<i>Statutory Actions</i>	7	0	7	12	1	11
<i>Other</i>	157	54	103	131	36	95
<u><i>By Outcome</i></u>						
<i>Defendant</i>	101	30	71	153	62	91
<i>Plaintiff</i>	27	10	17	36	15	21
<i>Settled</i>	204	52	152	216	76	140
<i>Transferred</i>	23	6	17	59	11	48
<i>Ongoing/Unknown</i>	177	40	137	155	50	105

TABLE 2: LAWSUIT FREQUENCY DURING THE IPO REGISTRATION PERIOD

This table presents estimates from Poisson and OLS models where the dependent variable is the number of lawsuits filed against a firm during the benchmark and IPO registration periods. *Confidential* is an indicator variable equal to one for treatment firms and zero for control firms; *RegPeriod* is an indicator variable that is equal to one for the registration period and zero for the benchmark period. Appendix B provides detailed variable definitions. t and z-statistics, based on standard errors clustered at the industry and year level are reported in parentheses. ***, **, and * indicate significance at a two-sided 1%, 5%, and 10% level, respectively.

	<i>Count (Poisson)</i>		<i>Daily Average (OLS)</i>	
<i>Confidential</i> × <i>RegPeriod</i>	-0.413 **	-0.413 **	-0.183 **	-0.183 *
	(-2.29)	(-2.29)	(-1.96)	(-1.95)
<i>RegPeriod</i>	0.401 ***	0.401 ***	0.213 ***	0.213 ***
	(3.89)	(3.89)	(3.29)	(3.26)
<i>Confidential</i>	0.138	0.135	0.031	0.068
	(0.38)	(0.57)	(0.23)	(0.49)
<i>Size</i>		0.510 ***		0.232 ***
		(5.46)		(2.92)
<i>Ln(Age)</i>		-0.267 **		-0.127
		(-2.55)		(-1.24)
<i>ROA</i>		0.247		-0.248
		(0.94)		(-1.07)
<i>Loss</i>		-0.360 **		-0.115
		(-2.09)		(-1.18)
<i>Leverage</i>		0.470		-0.098
		(1.51)		(-0.55)
<i>RD/Assets</i>		-1.500 **		-0.251
		(-2.36)		(-0.99)
<i>PPE/Assets</i>		-0.020		-0.140
		(-0.05)		(-0.66)
<i>MarketShare</i>		21.534 ***		39.507 ***
		(4.95)		(3.91)
<i>SalesGrowth</i>		0.012 ***		0.003
		(2.69)		(0.76)
<i>ProdMktFluid</i>		-0.047 **		-0.001
		(-2.03)		(-0.09)
<i>VBacked</i>		-0.115		-0.082
		(-0.57)		(-0.96)
<i>MediaAttention</i>		0.320 ***		0.118
		(4.69)		(1.34)
<i>IndPE</i>		0.010		0.001
		(0.49)		(0.09)
<i>IPOWave</i>		-0.232		0.041
		(-0.66)		(0.25)
<i>IndRet</i>		1.939		-0.008
		(1.37)		(-0.01)
<i>S&P500</i>		0.167		0.824
		(0.10)		(1.06)
<i>IndDisp</i>		-0.781 **		-0.366 **
		(-2.21)		(-2.47)
<i>VIX</i>		0.061 ***		0.036 ***
		(3.17)		(2.92)
<i>GDPGrowth</i>		-0.011		0.057
		(-0.13)		(1.10)
Log-Likelihood/ R-squared	1,061	1,061	0.3%	16.5%
Obs. count	1,060	1,060	1,060	1,060

TABLE 3: LAWSUIT FREQUENCY DURING THE IPO REGISTRATION PERIOD BY PLAINTIFF TYPE

This table presents the results from Poisson and OLS models, where the dependent variable is the number of lawsuits initiated by either businesses or other plaintiffs during the benchmark and IPO registration periods. Business lawsuits are defined as lawsuits in which the plaintiff (or at least one of the plaintiffs when there are multiple) is a business. Appendix B provides detailed variable definitions. t and z-statistics, based on standard errors clustered at the industry and year level are reported in parentheses. ***, **, and * indicate significance at a two-sided 1%, 5%, and 10%, respectively.

<i>Plaintiff Type:</i>	<i>Business</i>		<i>Other</i>	
	<i>Poisson</i>	<i>OLS</i>	<i>Poisson</i>	<i>OLS</i>
<i>Confidential × RegPeriod</i>	-0.675 ** (-2.40)	-0.078 * (-1.79)	-0.285 (-1.44)	-0.105 (-1.33)
<i>RegPeriod</i>	0.595 *** (3.64)	0.093 *** (3.05)	0.301 ** (2.30)	0.120 * (1.94)
<i>Confidential</i>	0.106 (0.33)	0.004 (0.07)	0.064 (0.24)	0.063 (0.62)
<i>Control Variables</i>	Included	Included	Included	Included
Log-likelihood/ R-Squared	499	11.0%	826	14.0%
Obs. Count	1,060	1,060	1,060	1,060

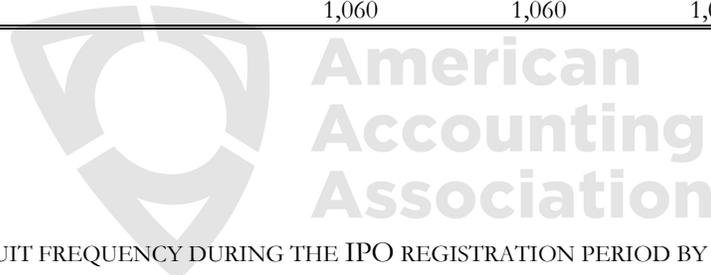


TABLE 4: LAWSUIT FREQUENCY DURING THE IPO REGISTRATION PERIOD BY NATURE OF SUIT

This table presents the results from Poisson and OLS models, where the dependent variable is the number of lawsuits filed during the benchmark and IPO registration periods. Lawsuits are categorized into three categories based on their nature: property rights or contract-related lawsuits, civil rights or labor-related lawsuits, and all other lawsuits. Appendix B provides detailed variable definitions. t and z-statistics, based on standard errors clustered at the industry and year level, are reported in parentheses. ***, **, and * indicate significance at a two-sided 1%, 5%, and 10%, respectively.

<i>Nature:</i>	<i>Property Rights & Contracts</i>		<i>Civil Rights & Labor</i>		<i>All Other</i>	
	<i>Poisson</i>	<i>OLS</i>	<i>Poisson</i>	<i>OLS</i>	<i>Poisson</i>	<i>OLS</i>
<i>Confidential × RegPeriod</i>	-0.523 * (-1.66)	-0.068 (-1.54)	-0.364 (-0.72)	-0.020 (-0.70)	-0.406 (-1.61)	-0.095 (-1.31)
<i>RegPeriod</i>	0.467 *** (3.04)	0.076 ** (2.23)	0.547 (1.15)	0.023 (1.14)	0.350 ** (2.18)	0.115 ** (2.53)
<i>Confidential</i>	-0.294 (-0.95)	-0.034 (-0.82)	0.847 ** (2.04)	0.040 * (1.89)	0.048 (0.15)	0.062 (0.53)
<i>Control Variables</i>	Included	Included	Included	Included	Included	Included
Log-likelihood/ R-Squared	458	9.1%	234	12.3%	724	14.0%
Obs. count	1,060	1,060	1,060	1,060	1,060	1,060

TABLE 5: LAWSUIT FREQUENCY DURING THE IPO REGISTRATION PERIOD BY MERIT

This table presents the results from Poisson and OLS models where the dependent variable is the number of lawsuits filed during the benchmark and IPO registration periods, categorized into two merit categories based on their outcome: lawsuits that result in favor of the defendant (*Low Merit*) and lawsuits that are settled or result in favor of the plaintiff (*High Merit*). Appendix B provides detailed variable definitions. t and z-statistics, based on standard errors clustered at the industry and year level, are reported in parentheses. ***, **, and * indicate significance at a two-sided 1%, 5%, and 10%, respectively.

	<i>Low Merit</i>		<i>High Merit</i>	
	<i>Poisson</i>	<i>OLS</i>	<i>Poisson</i>	<i>OLS</i>
<i>Confidential</i> × <i>RegPeriod</i>	-0.733 ** (-2.20)	-0.079 ** (-2.13)	-0.408 (-1.53)	-0.069 (-1.07)
<i>RegPeriod</i>	0.551 *** (2.91)	0.078 *** (3.08)	0.421 *** (2.81)	0.095 ** (2.16)
<i>Confidential</i>	0.020 (0.06)	0.008 (0.27)	0.204 (0.83)	0.027 (0.51)
<i>Control Variables</i>	Included	Included	Included	Included
Log-likelihood/ R-Squared	370	11.6%	602	13.9%
Obs. count	1,060	1,060	1,060	1,060

TABLE 6: LAWSUIT FREQUENCY DURING THE POST-IPO PERIOD

This table presents estimates from Poisson and OLS models where the dependent variable is the number of lawsuits filed against a firm during the benchmark and post-IPO periods. *Confidential* is an indicator variable equal to one for treatment firms and zero for control firms; *Post-IPO* is an indicator variable that is equal to one for the post-IPO period and zero for the benchmark period. Appendix B provides detailed variable definitions. t and z-statistics, based on standard errors clustered at the industry and year level, are reported in parentheses. ***, **, and * indicate significance at a two-sided 1%, 5%, and 10%, respectively.

	<i>Poisson</i>	<i>OLS</i>
<i>Confidential</i> × <i>Post-IPO</i>	-0.355 (-1.65)	-0.131 (-1.23)
<i>Post-IPO</i>	0.388 ** (2.44)	0.179 *** (2.00)
<i>Confidential</i>	-0.016 (-0.07)	0.044 (0.31)
<i>Control Variables</i>	Included	Included
Log-Likelihood/ R-squared	1,058	15.9%
Obs. count	1,060	1,060

TABLE 7: EFFECTS OF LAWSUITS ON THE IPO PRICING

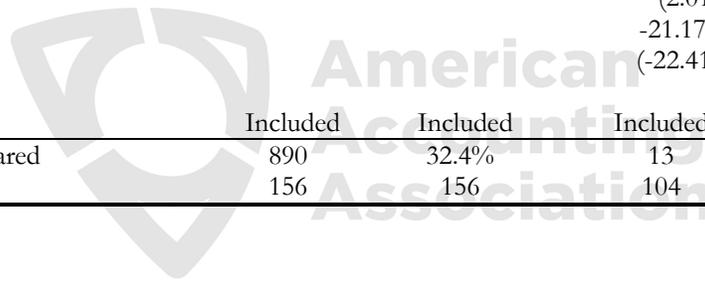
This table presents estimates from analyses of the effect of lawsuits on IPO price revisions. Columns 1 and 2 present estimates from OLS and logit models where the dependent variable is *Price Revision* (i.e. (offer price/initial mid-price)-1) and whether the price revision is negative, respectively. *#Lawsuits* variable in these columns measures all lawsuits filed during the price revision period (i.e., between the initial determination of the price range and the issuance date). Appendix B provides detailed variable definitions. t and z-statistics, based on standard errors clustered at the industry and year level, are reported in parentheses. ***, **, and * indicate significance at a two-sided 1%, 5%, and 10%, respectively.

	<i>Price Rev.</i>	<i>Pr(Price Rev<0)</i>
<i>#Lawsuits</i>	-0.015* (-1.77)	0.307** (1.97)
<i>Confidential</i>	0.016 (0.68)	-0.328 (-1.46)
<i>Size</i>	0.028*** (3.52)	-0.172* (-1.83)
<i>Ln(Age)</i>	-0.023* (-1.78)	0.128 (0.80)
<i>ROA</i>	-0.014 (-0.71)	-0.103 (-0.37)
<i>Loss</i>	-0.002 (-0.07)	-0.180 (-0.56)
<i>Leverage</i>	-0.029 (-1.14)	-0.059 (-0.25)
<i>RD/Assets</i>	-0.076*** (-2.64)	0.733* (1.82)
<i>PPE/Assets</i>	0.047 (0.98)	-0.197 (-0.37)
<i>MarketShare</i>	-1.332 (-1.49)	18.506 (1.56)
<i>SalesGrowth</i>	-0.001*** (-4.47)	0.007 (1.36)
<i>ProdMktFluid</i>	-0.012*** (-4.33)	0.076*** (3.08)
<i>VCBacked</i>	0.070*** (2.79)	-0.727** (-2.57)
<i>MediaAttention</i>	0.010 (1.15)	-0.061 (-0.80)
<i>IndPE</i>	-0.001 (-0.63)	0.008 (0.38)
<i>IPOWave</i>	0.032 (0.57)	-0.051 (-0.09)
<i>IndRet</i>	0.295* (1.87)	-3.333** (-2.03)
<i>S&P500</i>	-0.572*** (-2.79)	7.078*** (3.24)
<i>IndDisp</i>	-0.028 (-0.66)	0.063 (0.18)
<i>VIX</i>	0.002 (0.63)	0.007 (0.27)
<i>GDPGrowth</i>	0.017 (1.39)	-0.197* (-1.88)
(Pseudo) R-squared	14.8%	6.8%
Obs. count	530	530

TABLE 8: LAWSUIT FILINGS DURING THE IPO REGISTRATION PERIOD – NON-QUALIFYING AND SRC FIRMS

This table presents the results from the analyses of lawsuit filings against non-qualifying (i.e., non-EGC eligible) firms and SRC firms during benchmark and IPO registration periods. Appendix B provides detailed variable definitions. t and z-statistics, based on standard errors clustered at the industry and year level, are reported in parentheses. ***, **, and * indicate significance at a two-sided 1%, 5%, and 10%, respectively.

	<i>Non-Qualifying Firms</i>		<i>Smaller Reporting Companies</i>	
	<i>Poisson</i>	<i>OLS</i>	<i>Poisson</i>	<i>OLS</i>
<i>Post-JOBS × RegPeriod</i>	0.024 (0.18)	0.705 (0.48)		
<i>RegPeriod</i>	0.093 (0.98)	0.585 (0.65)		
<i>Post-JOBS</i>	-0.201 (-0.47)	2.802 (0.58)		
<i>Confidential × RegPeriod</i>			-25.716 *** (-20.02)	-0.256 ** (-2.06)
<i>RegPeriod</i>			2.079 ** (2.01)	0.136 (1.32)
<i>Confidential</i>			-21.170 *** (-22.41)	0.230 *** (2.79)
<i>Control Variables</i>	Included	Included	Included	Included
Log-Likelihood/ R-squared	890	32.4%	13	34.9%
Obs. count	156	156	104	104



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