

Practice Update

SEC Expands Confidential Review Process for Draft Registration Statements

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On March 3, 2025, the Securities and Exchange Commission (the “Commission”) announced updates to its confidential submission process for draft registration statements, broadening the scope of issuers eligible for non-public review to facilitate capital formation, without diminishing investor protection. This comes on the heels of the Commission’s Acting Chair Mark Uyeda’s speech last month before the Florida Bar where he indicated his intention to better facilitate capital formation. The changes provide additional flexibility for companies preparing to enter the public markets, reducing early-stage disclosure burdens while maintaining investor protections. The changes take effect immediately.

What Changed?

The Commission’s expanded framework allows more issuers to submit draft registration statements on a confidential basis. Key updates include:

- *Follow-On Offerings*. Companies may now submit confidential draft registration statements for any offering under the Securities Act of 1933, as amended (the “Securities Act”) and are no longer restricted to registration statements submitted within twelve months of an initial public offering (“IPO”) or registration under Section 12(b) of the

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Securities Exchange Act of 1934, as amended (the “Exchange Act”).

- *Exchange Act Registrations*. Companies may now submit confidential initial registration filings for a class of equity securities under Section 12(g) of the Exchange Act on Forms 10, 20-F and 40-F. Previously, only initial registration statements under Section 12(b) of the Exchange Act were permitted to be submitted confidentially. Additionally, any Exchange Act registration statement under either Section 12(b) or 12(g) may be submitted confidentially regardless of how long an issuer has been a public reporting company.
- *De-SPAC Transactions*. The Commission’s expanded policy provides additional accommodations for special purpose acquisition companies (“SPACs”) and companies undergoing a de-SPAC transaction. De-SPAC transactions may now use draft registration statements for confidential review where the SPAC is the surviving entity if the target company qualifies for confidential review under the Commission’s existing policies. The Commission noted that a de-SPAC transaction “is the functional equivalent of the target’s initial public offering.”
- *Underwriters*. Companies may now omit the names of the underwriters from initial draft submissions, when otherwise required by Items 501 and 508 of Regulation S-K, provided that companies include the names of the underwriters in subsequent submissions and public filings.
- *Foreign Private Issuers (“FPIs”)*. The Commission has also extended these enhanced confidential submission accommodations to FPIs, facilitating cross-border capital raises. As a result, FPIs now have an additional option when submitting draft registration statements, in addition to the option of following the procedures for emerging growth companies (if the company qualifies as an emerging growth company) or the option of using

the confidential review procedures for FPIs under the Commission's May 30, 2012 guidance.

The Commission has published a dedicated e-mail address at CFDraftPolicy@sec.gov for questions about eligibility to use the expanded procedures.

Why It Matters

The Commission noted that the expanded accommodations can facilitate capital formation without diminishing investor protection. The expanded confidential submission process provides several advantages for eligible issuers:

- *Greater Flexibility*. Under this expanded process, all registrants can use a draft registration statement to submit an initial draft of a registration statement. As a result, more companies are now able to refine their filings before public disclosure.
- *Reduced Market Impact*. Confidential submission helps mitigate premature market reactions and competitive concerns. The expanded process now shields even more issuers from i) having to prematurely alert the public of a contemplated offering and ii) sharing sensitive company information before the offering is adequately developed.
- *Strategic Timing*. The expanded process removes the twelve-month limitation on the use of draft registration statements for confidential review related to offerings pursuant to the Securities Act, or registration statements made pursuant to Sections 12(b) or 12(g) of the Exchange Act, thereby allowing issuers to better align their offering plans with market conditions before making public announcements. Additionally, registrants are now able to omit underwriter names from their initial draft registration statement submission, allowing more time to secure underwriters.

Practical Considerations for Public Companies

Companies considering an IPO, a follow-on offering, a registration of securities or a De-SPAC transaction should assess whether they qualify to submit draft registration statements under the Commission's expanded guidelines. We are available to assist with any questions regarding eligibility or the process to use these expanded accommodations. We will continue to monitor developments in this area as the Commission indicated they will be monitoring practices under these expanded procedures and may choose to modify, limit or terminate the procedures at a future date.

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