



SEC Confidential Submission Procedures Expanded Beyond Emerging Growth Company Issuers Beginning July 10, 2017

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Some details of the expanded nonpublic review process are set forth below:

- **Initial Draft Securities Act Registration Statement**—The SEC Staff will now review all issuers' draft initial Securities Act registration statements and related revisions on a nonpublic basis. To take advantage of the nonpublic review process, an issuer must include a cover letter to the draft registration statement that confirms that it will publicly file its registration statement and nonpublic draft submissions **at least 15 days** prior to any road show. If there is no road show, then the issuer must confirm that it will make such public filings **at least 15 days** prior to the requested effective date of the registration statement.
- **Initial Exchange Act Section 12(b) Registration for Listing on National Securities Exchanges**—The SEC will also now review confidential submissions of draft Exchange Act registration statements and related revisions for the initial registration of a class of securities under Section 12(b) of the Exchange Act. Similar to the process for confidentially submitting Securities Act registration statements, an issuer must include a cover letter with its draft Exchange Act registration statement that confirms that it will publicly file its registration statement and nonpublic draft submissions **at least 15 days** prior to the anticipated effective date of the registration statement for its listing on a national securities exchange.
- **Securities Act Registration Statements Within One Year of Initial Public Offering or Exchange Act Section 12(b) Registration**—Not only will the SEC Staff review initial Securities Act registration statements on a nonpublic basis, they will also review

subsequent draft Securities Act registration statements that are submitted within one year following the effective date of an issuer's initial Securities Act registration statement or an issuer's Exchange Act Section 12(b) registration statement. For these submissions, an issuer must include a cover letter that confirms that it will publicly file its registration statement and nonpublic draft submission so that it is publicly available on EDGAR **at least 48 hours** prior to any requested effective time and date.

Unlike the process for initial Securities Act registration statements, the SEC Staff will limit its nonpublic review of these Securities Act registration statements to the first submission. If the issuer receives comments from the SEC Staff on the draft registration statement, it must respond to those comments with a public filing, not a revised confidential draft registration statement. Any further review by the SEC Staff will be done through the Staff's normal procedures, and any requests for acceleration must be in accordance with Securities Act Rule 461. When the issuer publicly files its registration statement, it must file the draft registration statement that was previously submitted for nonpublic review.

- **Foreign Private Issuers**—According to the announcement, Foreign Private Issuers (FPI) have the option of following the procedures for EGCs (if the FPI qualifies as an EGC), the guidance in the Staff's May 30, 2012, statement or the procedures set forth in the announcement for non-EGCs.
- **Omission of Certain Financial Information**—In the announcement, the SEC Staff points out that an issuer should ensure that a draft registration statement is substantially complete when submitted. However, the Staff notes that it will not delay processing of a draft registration statement if an issuer reasonably believes that omitted financial information will not be required at the time the registration statement is publicly filed. As explained in the announcement, this relief is intended to be similar to what is provided to EGCs by Section 71003 of the FAST Act, which allows an EGC to omit financial information in its draft submission that “relates to a historical period that the issuer reasonably believes will not be required to be included at the timing of the contemplated offering.” The announcement acknowledges that the SEC Staff will consider an issuer's specific facts and circumstances in connection with any request made under Rule 3-13 of Regulation S-X, which permits the omission of one or more financial statements where such omission is requested and consistent with the protection of investors.
- **Expedited Processing**—The SEC Staff notes that it will consider reasonable requests to expedite the processing of draft and filed registration statements. Issuers and their

advisors are encouraged to review their transaction timing with the Staff members assigned to the filing review.

- **Technical Note**—New issuers that need to obtain EDGAR access codes must file a Form ID. Until the Form ID is updated to reflect the new nonpublic review process, any new issuer should indicate on the form that it intends to use the codes to submit a draft registration statement pursuant to JOBS Act § 106. Even if the new issuer is not an EGC, this will ensure that the nonpublic status of the issuer’s drafts is maintained until publicly filed.

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