

Memorandum

SEC Expands Accommodations for Draft Registration Statements

March 6, 2025

On March 3, 2025, the Division of Corporation Finance of the SEC announced that, effective immediately, the SEC has expanded accommodations for its nonpublic review of draft registration statements.¹ The new guidance follows a series of prior accommodations for confidential review of registration statements by Emerging Growth Companies in 2012 and by all companies in 2017.

The accommodations are set forth as follows:

- **Initial Exchange Act Registrations.** Previously, the SEC permitted nonpublic review of draft initial registration statements submitted under the Securities Act of 1933, as amended (the “Securities Act”), and Section 12(b) of the Securities Exchange Act of 1934, as amended (the “Exchange Act”), provided that in each case the issuer confirms in a cover letter that it will publicly file its registration statement and nonpublic draft submissions at least 15 days prior to any road show or, in the absence of a road show, at least 15 days prior to the requested effective date of the registration statement. Under the expanded accommodations, issuers will now also be able to submit for nonpublic review the initial registration of a class of securities under Section 12(g) of the Exchange Act on the same basis, including registration statements on Forms 10, 20-F and 40-F. These modifications are anticipated to benefit, among others, companies that are looking to register one or more classes of securities under the Exchange Act but not have those securities listed on the New York Stock Exchange or the Nasdaq Stock Market.
- **Subsequent Securities Act Offerings and Exchange Act Registrations.** Previously, the SEC accepted draft registration statements for subsequent offerings only if submitted prior to the end of the twelve-month period following the effective date of an issuer’s initial Securities Act registration statement or an issuer’s Section 12(b) registration statement. Under the expanded accommodations, the SEC will accept draft registration statements for subsequent offerings and registrations regardless of the amount of time since the issuer became subject to Exchange Act reporting requirements, in each case limited to the initial submission, provided that the issuer confirms in a cover letter that it will publicly file its registration statement and nonpublic draft submissions at least two business days prior to the requested effective date of the registration statement. In addition, issuers will need to publicly file Exchange Act registration statements on Forms 10, 20-F and 40-F so that the full 30- or 60-day period, as applicable, will run prior to effectiveness.

¹ The SEC’s guidance is available [here](#).

- ***Draft Registration Statements Regarding De-SPAC Transactions.*** The SEC has expanded the nonpublic review process for a de-SPAC transaction as if it were the initial Securities Act registration statement in situations where the SPAC is the surviving entity, so long as the target would be independently eligible to submit the draft registration statement. This follows the SEC's view that a de-SPAC is the functional equivalent of the target's IPO.
- ***Additional Accommodations Relating to Staff Processing of Registration Statements.*** Issuers may omit the names of the underwriters from initial draft registration statement submissions, when otherwise required by Items 501 and 508 of Regulation S-K, provided that they include the name of the underwriter(s) in subsequent submissions and public filings. In addition, the SEC reiterated 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 is publicly filed. Finally, the SEC stated that it will consider an issuer's specific facts and circumstances in connection with requests made under Rule 3-13 of Regulation S-X to omit the inclusion of certain financial statements in registration statements otherwise required by Regulation S-X.

The new guidance will provide more flexibility to issuers as they plan for their IPOs, follow-on offerings and Exchange Act registrations, including spin-off transactions. We will continue to monitor any changes in guidance or practice by the SEC's Division of Corporation Finance in this area.

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