

Memorandum

SEC Updates Confidential Treatment Request Guidance

December 24, 2019

On December 19, 2019, the SEC's Division of Corporation Finance ("Corp Fin") replaced its existing guidance with respect to the submission of "traditional" confidential treatment requests. Corp Fin's [updated guidance](#) follows up on the SEC's March 2019 changes to several of its exhibit filing requirements in Regulation S-K to allow companies to omit immaterial, competitively harmful information without submitting a confidential treatment request. Although no longer required in most instances, companies may still submit a traditional confidential treatment request if desired. While the updated guidance is essentially a streamlined version of the prior guidance, it does provide an updated case law reference that Corp Fin suggests would be helpful in establishing that the omitted material is exempt from the Freedom of Information Act.¹ The updated guidance also applies to those filings, such as Schedule 13D or filings whose exhibit requirements are set out in Item 1016 of Regulation M-A, where traditional confidential treatment applications requests are still the only available method to protect private information in filed exhibits.

Extensions Require "Traditional" Request But Short Form Permitted

Following up on its April 16, 2019 [announcement](#), Corp Fin has clarified that companies that previously have obtained a confidential treatment order which is about to expire must continue to file extension applications if they want to protect the confidential information from public release. Filing the redacted exhibit on EDGAR following the procedures set forth in the amendments to the exhibit filing requirements in Regulation S-K will not provide confidential treatment for the previously filed information. Fortunately, Corp Fin has developed a [short form application](#) to facilitate and streamline the process for those seeking an extension request. The streamlined application only requires a brief explanation to support the request and does not require the applicant to provide the supporting analysis presented in the previous application if the analysis remains the same and the applicant can affirm that the most recently considered application continues to be true, complete and accurate regarding the information for which the applicant continues to seek confidential treatment. Completed short form extension applications may be submitted to CTExtensions@sec.gov.²

¹ Corp Fin has indicated that the Supreme Court's recent decision in *Food Marketing Institute v. Argus Leader Media*, 139 S.Ct. 2356 (2019) addresses the definition of confidential and may be helpful in establishing that the omitted material qualifies as confidential commercial or financial information.

² Corp Fin has indicated that companies should not use this email address for any other type of confidential treatment or extension request.

If you have any questions or would like additional information, please do not hesitate to contact **Bradley P. Goldberg** at +1-212-455-2064 or bgoldberg@stblaw.com, **Shari A. Ness** at +1-212-455-2383 or shari.ness@stblaw.com, or any other member of the Firm's Public Company Advisory Practice.

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