

SEC Expands Accommodations for Issuers Submitting Draft Registration Statements

March 5, 2025

On March 3, 2025, the staff of the US Securities and Exchange Commission's Division of Corporation Finance issued an [announcement](#) expanding accommodations available for issuers to submit draft registration statements for nonpublic review. These accommodations have implications for virtually all securities offerings in the United States, including those related to M&A transactions.

The enhanced accommodations expand the types of forms eligible to be submitted as draft registration statements for nonpublic review and permit reporting companies to submit draft registration statements for nonpublic review regardless of how much time has passed since their initial public offering. In addition, companies now have added flexibility to start the SEC review process earlier by omitting certain underwriter disclosures from their initial submissions. The accommodations may be used immediately.

The accommodations are designed to facilitate capital formation by allowing companies greater flexibility to explore public offerings while keeping their submissions confidential. By submitting a registration statement confidentially, a company may start the SEC review process earlier, and receive initial comments from the Staff before it is required to publicly disclose a planned offering. Prior expansions of the draft registration statement process have been popular, and we expect issuers, underwriters and other market participants will welcome these enhanced accommodations.

Summary of the Enhanced Accommodations

Issuers May Omit the Name of Underwriters from the Initial Draft Registration Statement Submission

In a change of practice, the Staff will allow issuers to omit the name of the underwriters from their initial draft registration statement submissions when such information is otherwise required by Items 501 and 508 of Regulation S-K under the Securities Act of 1933. This change brings the Staff's position back to its pre-2020 position, before the Staff decided not to review any submission that did not include the names of the underwriters in response to the surge in filings during the COVID-19 pandemic. While this accommodation applies to both initial public offerings and subsequent offerings, it is only available for the initial draft registration statement submission. Subsequent amendments to the draft registration statement and public filings must include the name of the underwriters. Many issuers pursuing underwritten offerings will find this change helpful if they have not yet settled on the underwriting syndicate for their offering but want to get the review clock started.

Issuers May submit Draft Registration Statements for Post-IPO Registrations for an Unlimited Amount of Time

Prior to the new accommodations, a newly-public company was permitted to make confidential nonpublic submissions of registration statements only during the 12-month period following its initial public offering. After the 12-month period ended, any subsequent registration statement was required to be filed publicly.

Under the new accommodations, the Staff will now accept for nonpublic review a subsequent draft registration statement for any offering of securities under the Securities Act or registration of a class of securities under either Section 12(b) or Section 12(g) of the Securities Exchange Act of 1934, regardless of how much time has passed since the issuer became subject to the reporting requirements of Section 13(a) or 15(d) of the Exchange Act.

The Staff's nonpublic review is limited to the initial submission. Issuers responding to Staff comments on the draft registration statement, or otherwise filing an amendment to the registration statement, will need to do so with a public filing, not with a revised draft registration statement.

Expanded Use of Draft Registration Statements in De-SPAC Transactions

Under previous SEC practice, the use of draft registration statements in de-SPAC transactions occurring more than 12 months after the SPAC's IPO was limited to transaction structures where the target was the surviving public company (so called "target-on-top" structures) and structures where a new registrant was formed to become the surviving public company (e.g., in a "double-dummy" structure). In late 2024, the previous Director of Corporation Finance, Erik Gerding, announced at a continuing legal education seminar that the Staff had begun permitting issuers to submit a registration statement for a de-SPAC transaction for nonpublic review in all transaction structures, including so-called "SPAC-on-top" structures where the SPAC is the entity that survives as the public company, to the extent that the target company is eligible to submit a draft registration statement. This position has now been made formal through its inclusion in the written announcement.

The Staff's approach is consistent with the SEC's intent to treat a de-SPAC transaction as the functional equivalent of the target's initial public offering.

Non-Public Review of Exchange Act Registration Statements on Forms 10, 20-F and 40-F.

In a change to past practice, the Staff has expanded the availability of the nonpublic review process for the initial registration of a class of securities under Exchange Act to also include Forms 10, 20-F, or 40-F filed to register a class of securities under Exchange Act Section 12(g). As a result, an issuer may now submit for nonpublic review the initial registration of a class of securities on Forms 10, 20-F, or 40-F under either Exchange Act Section 12(b) or Exchange Act Section 12(g). This change puts Exchange Act Section 12(g) registrations on an equal footing with Securities Act registrations and Exchange Act Section 12(b) registrations.

Additional Practice Notes

Draft Registration Statement Should be "Substantially Complete"

Issuers should take all steps to ensure that a draft registration statement is substantially complete when filed. Consistent with previous Staff accommodations for issuers that are not Emerging Growth Companies ("EGCs"), issuers relying on the enhanced accommodations may omit financial information from draft registration statements if the issuer reasonably believes that the omitted financial information will not be required at the time the registration statement is publicly filed. An EGC may continue to omit financial information from its draft registration statements if the EGC reasonably believes such financial information will not be required to be included in the filing at the time of the offering.

A Cover Letter Should Accompany the Draft Registration Statement

Consistent with previous practice, an issuer submitting a confidential draft registration statement for an IPO or initial Exchange Act registration must confirm in a cover letter to the nonpublic draft submission 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.

Similarly, an issuer submitting a subsequent draft registration statement for nonpublic review under the new accommodations should confirm in a cover letter to the Staff that it will file its registration statement and nonpublic draft submission such that they are publicly available on the EDGAR system at least two business days prior to any requested effective time and date. This period is consistent with the two business day period required by Rule 461 under the Securities Act for requesting acceleration of the effective date of a registration statement. The Staff has indicated that it will consider reasonable requests to expedite this period.

The Draft Registration Statement should be Submitted Sufficiently in Advance to Comply with Other Applicable Timelines

As a reminder to issuers, the Staff's announcement notes that a registration statement on Form 10, 20-F, or 40-F under Exchange Act Section 12(b) goes effective automatically 30 calendar days after the SEC receives approval of the company's listing from the national securities exchange, and a registration statement on Form 10, 20-F, or 40-F for registration under Exchange Act Section 12(g) goes effective automatically 60 calendar days after the company files the registration statement. Accordingly, issuers taking advantage of the new accommodations 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.

Similarly, a nonpublic submission of Exchange Act Form 10, 20-F, or 40-F does not satisfy an issuer's requirement to file the registration statement within 120 calendar days from the end of its fiscal year when required to register a class of securities under Exchange Act Section 12(g). Issuers availing themselves of the accommodation to submit the registration statement confidentially should do so early enough to receive Staff comments and still meet the public filing deadline.

The Staff will continue to act upon requests for acceleration in accordance with Securities Act Rule 461.

At the Time of the "Public Flip," the Draft Registration Statement Should be Publicly Filed

Consistent with past practice, an issuer using the enhanced accommodations to submit draft registration statements for nonpublic review should publicly file the draft registration statements and any responses to Staff comments it had previously submitted for nonpublic review at the time it publicly files its registration statement.

The Staff's announcement also noted that issuers should consider Rule 83 (17 CFR 200.83) in submitting draft registration statements for nonpublic review. During the course of the nonpublic review, in its response letters to the Staff, the issuer should appropriately identify the information for which it intends to seek confidential treatment upon public filing to ensure that the Staff does not include that information in its comment letters. Upon the "public flip", issuers should follow Rule 83 procedures when publicly filing the draft registration statements and responses to Staff comments. Where possible, the Staff will keep submitted nonpublic draft registration statements and related correspondence confidential subject to the provisions of applicable law.

EGCs and FPIs may Follow Previous Guidance

In lieu of using these enhanced accommodations, issuers that qualify as EGCs may continue to submit draft registration statements for confidential review under the existing EGC process, which is summarized in prior [Staff FAQs](#).

Similarly, in lieu of using these enhanced accommodations, issuers that qualify as foreign private issuers ("FPIs") may follow the procedures available to EGCs (if they qualify as EGCs) or follow the guidance in the Staff's previous May 30, 2012, [statement](#) on nonpublic submissions by FPIs.

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