SEC EXPANDS NONPUBLIC REVIEW PROCESS FOR DRAFT REGISTRATION STATEMENTS

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US Corporate Alert

By: Jeffrey K. Pititto, Patrick J. Rogers

On 3 March 2025, the Division of Corporation Finance of the Securities and Exchange Commission (the SEC) announced that it is expanding the scope of availability for companies to submit draft registration statements for nonpublic review. The SEC initially created the option in 2012 as part of the Jumpstart Our Business Startups Act to enable emerging growth companies to submit draft registration statements for staff review on a confidential basis for initial public offerings. In 2017, the SEC expanded eligibility to include all issuers and follow-on offerings taking place within 12 months of an initial public offering.

KEY CHANGES

The SEC announced the following:

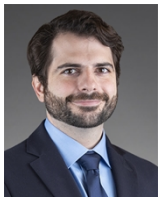
- The nonpublic review process is now also available for Forms 10, 20-F, or 40-F filed to register a class of securities under Section 12(g) of the Exchange Act.
- Companies can now submit a draft registration statement for nonpublic review at any time, rather than being limited to the 12 months following their initial public offering.
- Companies can now submit a nonpublic draft registration statement for a de-SPAC transaction as if it were an initial Securities Act registration statement, so long as the co-registrant target would otherwise be independently eligible to submit a draft registration statement.
- Companies can now omit the name of the underwriter(s) on the draft registration statement, so long as it is included in subsequent submissions and public filings.

While the SEC's guidance continues to require any company using the draft registration process for a follow-on offering to publicly file its registration statement and nonpublic draft submission no later than 48 hours prior to any requested effective date and time, the updated policy notes that the staff “will consider reasonable requests to expedite this two business-day period and encourage issuers and their advisors to review their transaction timing with the staff assigned to the filing review.”

Since its initial adoption, the nonpublic draft registration statement submission process has proven useful to many companies. The recent enhancements, particularly the elimination of the one-year limitation for follow-on offerings, will further facilitate capital formation by allowing more companies to reduce the risk of prolonged exposure to market fluctuations during the offering process. These accommodations are immediately available, and companies may submit questions regarding their eligibility to CFDraftPolicy@sec.gov.

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KEY CONTACTS



JEFFREY K. PITITTO
ASSOCIATE

CHARLOTTE
+1.704.331.7522
JEFF.PITITTO@KLGATES.COM



PATRICK J. ROGERS
PARTNER

CHARLOTTE
+1.704.331.5712
PATRICK.ROGERS@KLGATES.COM

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