



# SEC Update

March 11, 2025

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## SEC staff expands availability of nonpublic registration statement review process

On March 3, the SEC's Division of Corporation Finance announced that it has expanded the availability of the nonpublic review process for registration statements under which issuers may voluntarily submit draft Securities Act or Exchange Act registration statements to the SEC for nonpublic review before their public filings.

The accommodations extend the nonpublic review process to additional registration statement forms, allow issuers to submit draft registration statements regardless of how long they have been subject to Exchange Act reporting requirements, and permit issuers to make their initial submissions without naming the underwriters of the offering. The changes will make the transaction execution benefits of nonpublic submissions more widely available.

A chart summarizing the new accommodations is presented at the end of this *SEC Update*.

The Division's announcement may be accessed [here](#).

### Expanded accommodations at a glance

The new accommodations expand the availability of the nonpublic review process for U.S. domestic issuers and foreign private issuers inaugurated in 2012, when the JOBS Act permitted emerging growth companies to submit for nonpublic review their draft registration statements for an initial public offering (IPO).

In 2017, the Division expanded the availability of the process to all U.S. domestic issuers and foreign private issuers conducting IPOs and follow-on offerings. We discussed the enhanced accommodations in the **SEC Update** we issued on July 7, 2017.

The new changes announced by the Division:

- extend the nonpublic review process to the initial registration of a class of securities under Exchange Act Section 12(g) on Form 10, 20-F, or 40-F;

- permit issuers to submit subsequent registration statements for nonpublic review regardless of how much time has elapsed since the issuer became subject to the reporting requirements of Exchange Act Section 13(a) or 15(d) (removing the previous limit that had allowed an SEC-reporting issuer to submit a draft registration statement only if the submission occurred within 12 months after the effective date of the issuer's initial Securities Act or Exchange Act registration statement);
- expand the availability of nonpublic review of registration statements of a Special Purpose Acquisition Company (SPAC) for de-SPAC transactions to circumstances in which the SPAC is the surviving publicly traded company and the target is eligible for nonpublic review; and
- permit issuers to omit underwriter names from initial draft registration statements so long as they include the names in their subsequent submissions and public filings.

The Division notes that the new accommodations do not limit the process by which emerging growth companies may submit draft registration statements for nonpublic review, which the staff will continue to process in a manner consistent with its prior practice.

Instead of making a nonpublic submission under the process outlined in the announcement or under the nonpublic review process for emerging growth companies (if the issuer qualifies as an emerging growth company), a foreign private issuer may proceed under the procedures for nonpublic submissions made available to foreign private issuers under the Division's guidance issued on May 30, 2012. These procedures permit the nonpublic review of initial registration statements of foreign issuers (that are not shell companies, blank check companies, or companies with no or substantially no business operations) where the issuer is:

- a foreign government registering its debt securities;
- a foreign private issuer that is listed or is concurrently listing its securities on a non-U.S. securities exchange;
- a foreign private issuer that is being privatized by a foreign government; or
- a foreign private issuer that can demonstrate that the public filing of an initial registration statement would conflict with the law of an applicable foreign jurisdiction.

## Securities Act IPOs and initial Exchange Act registrations

Since 2017, the nonpublic review process has been available to all issuers for draft initial registration statements submitted under the Securities Act and Exchange Act Section 12(b).

Under this process, the issuer is required to confirm to the SEC staff in a cover letter accompanying the first nonpublic draft submission that it will file its registration statement and nonpublic draft submissions at least 15 days before any road show or, in the absence of a road show, at least 15 days before the requested effective date of the registration statement. Staff comment letters on such submissions, and issuer responses, are posted on the SEC's website no earlier than 20 U.S. business days following the effective date of the registration statement.

The Division's announcement extends the availability of the nonpublic review process to registration statements on Exchange Act Form 10, 20-F, or 40-F that register a class of equity security for the first time under Exchange Act Section 12(g). The nonpublic review process was previously available only for Exchange Act registrations under Section 12(b), which provides for registration of a class of equity security on a national securities exchange and is the Exchange Act section under which the securities of most U.S. IPO issuers are registered.

Section 12(g) establishes shareholder and asset thresholds at which an issuer is required to register its securities with the SEC and becomes subject to the periodic reporting and disclosure requirements of the U.S. federal securities laws. Following the announcement, an issuer registering securities to comply with Section 12(g) may initiate this process with a nonpublic submission.

## Subsequent Securities Act offerings and Exchange Act registration

Before the Division's announcement, the staff accepted draft registration statements from SEC-reporting issuers if the statements were submitted before the end of the 12-month period following the effective date of the issuer's initial Securities Act registration statement or Exchange Act Section 12(b) registration statement. Following the announcement, the nonpublic review process is available for a draft subsequent registration statement for any offering under the Securities Act or registration of a class of equity security under either Exchange Act Section 12(b) or Section 12(g) without regard to the amount of time that has passed since the issuer became subject to the reporting requirements of Exchange Act Section 13(a) or 15(d).

The Division underscores that for subsequent registrations, in contrast to the process it follows for IPO and initial Exchange Act registrations, the staff will continue to limit the nonpublic review process to the first submission only, after which the second version of the registration statement must be filed publicly. At the time of the public filing, the issuer should also file the draft registration statement that it submitted for nonpublic review. The Division reminds issuers that they should respond to staff comments on the initial submission with the public filing and not with a revised draft registration statement.

The issuer submitting a draft subsequent registration statement for nonpublic review should confirm in its cover letter to the staff that it will make the registration statement and nonpublic draft submission publicly available on the EDGAR system at least two business days before the requested effective time and date, compared to 48 hours under the prior process. The staff adds that it will consider reasonable requests to expedite the two business-day period.

If the issuer submits a draft registration statement under the Exchange Act on Form 10, 20-F, or 40-F, it will be required to make its public filing by a date sufficient to ensure that the full 30-day filing period (for a Section 12(b) registration) or 60-day filing period (for a Section 12(g) registration) will elapse before automatic effectiveness.

The Division cautions that, in planning their transaction timing, issuers should take into account the time it may take to clear any staff comments on their publicly filed registration statements.

Under the expanded process for subsequent registrations, issuers that are not well-known seasoned issuers (WKSIs), and therefore ineligible to file automatically effective shelf offering registration statements on Securities Act Form S-3 or F-3, may submit their shelf registration statements on these forms for nonpublic review. The new accommodations could enable non-WKSI issuers to avoid alerting the market to potential SEC-registered offerings until closer in time to the targeted market window for launching an offering.

The delayed public filing under the new process also may offer transaction execution benefits to issuers registering securities on Securities Act Form S-4 or F-4 for issuance in connection with business combination and exchange offer transactions.

## Content of draft registration statements and staff processing

The announcement affirms the staff's 2017 policy that, while an issuer should ensure that a draft registration statement is substantially complete at submission, the issuer may omit financial information that it reasonably believes will not be required at the time the registration statement is publicly filed. We discussed the staff's policy in the **SEC Update** we issued on August 31, 2017.

The staff indicates it will also consider an issuer's specific facts and circumstances in connection with requests to omit or substitute required financial statements under Rule 3-13 of Regulation S-X. With the extension of nonpublic review of subsequent registration statements, the ability to omit financial information from a draft submission could create significant timing benefits for foreign private issuers that do not routinely obtain PCAOB interim review of their quarterly or semi-annual financial statements.

In another change providing flexibility in transaction planning, the staff will now allow issuers to omit the names of the underwriters of the offering from their initial registration statement submissions, when the information is otherwise required, so long as the issuer includes the names of the underwriters in any subsequent submission and the public filings.

The staff indicates that it continues to be open to discussing transaction timetables in advance, and that it will consider reasonable requests for expedited processing of draft submissions and related public filings. The Division encourages issuers to review

transaction timing with the staff members assigned to the review.

## De-SPAC transaction draft registration statements

Following the effectiveness of the SEC's SPAC rules in July 2024, the SEC updated its guidance on the voluntary submission of draft registration statements to provide that the primary registrant in a de-SPAC transaction is eligible for the nonpublic review process. In connection with the SPAC rules, the SEC considered how the target co-registration requirements in the rules would affect submission of draft registration statements for nonpublic review in other circumstances, particularly where the SPAC survives as the publicly traded company in the business combination.

The Division's announcement permits issuers to submit for nonpublic review a draft registration statement for a de-SPAC transaction in which the SPAC is the surviving entity as long as the co-registrant target would otherwise be independently eligible to submit a draft registration statement for nonpublic review. The staff believes this position is consistent with the SEC's statement that a de-SPAC transaction is the functional equivalent of the target's IPO.

## Looking ahead

The changes announced on March 3 represent welcome enhancements of the process for nonpublic review of registration statements. The expanded accommodations will not change the SEC review process for U.S. domestic issuers and foreign private issuers considering an IPO or listing in the United States, since the nonpublic review option has been available to these issuers since 2017. By removing the 12-month limit on submissions for subsequent registrations, however, the announcement increases the ability of SEC-reporting issuers to advance the SEC review process on a confidential basis, if only by a single draft submission, before they are required to make public filings. These changes could be particularly attractive to U.S.-listed foreign private issuers if their home market and non-U.S. stock exchange do not require public disclosure of any prospectus or offering review process.

The Division's announcement continues a line of agency actions designed to promote public capital-raising. The staff's initiative is also in accord with

recent statements by Acting SEC Chairman Mark Uyeda and Commissioner Hester Peirce about the new SEC leadership's desire to increase issuer interest in pursuing IPOs by identifying and addressing hurdles to becoming and staying public, enhancing the disclosure and compliance on-ramp for smaller issuers, and scaling public company disclosure requirements.

*This SEC Update is a summary for guidance only and should not be relied on as legal advice in relation to a particular transaction or situation. If you have any questions or would like any additional information regarding this matter, please contact your relationship partner at Hogan Lovells or any of the lawyers listed in this update.*

## **Summary of changes to nonpublic review process**

	<b>Pre-announcement (excl. emerging growth company and foreign issuer processes)</b>	<b>Post-announcement (excl. emerging growth company and foreign issuer processes)</b>
<b>Availability of nonpublic review process for initial registration statements</b>	<ul style="list-style-type: none"> <li>• Securities Act IPO registration statements</li> <li>• Exchange Act Section 12(b) registration statements</li> </ul>	<ul style="list-style-type: none"> <li>• Securities Act IPO registration statements</li> <li>• Exchange Act Section 12(b) registration statements</li> <li>• Exchange Act Section 12(g) registration statements</li> </ul>
<b>Availability of nonpublic review process for subsequent registration statements</b>	<ul style="list-style-type: none"> <li>• Within 12 months of initial registration statement effective date, any subsequent: <ul style="list-style-type: none"> <li>— Securities Act registration statements</li> <li>— Exchange Act Section 12(b) registration statements</li> </ul> </li> <li>• After 12 months of initial registration statement effective date, not permitted</li> </ul>	<ul style="list-style-type: none"> <li>• After initial registration statement effective date, nonpublic review for initial submission of any subsequent: <ul style="list-style-type: none"> <li>— Securities Act registration statements</li> <li>— Exchange Act Section 12(b) registration statements</li> <li>— Exchange Act Section 12(g) registration statements</li> </ul> </li> </ul>
<b>Availability of nonpublic review process for de-SPAC registration statements</b>	<ul style="list-style-type: none"> <li>• Securities Act registration statements for de-SPAC transactions where the primary registrant is eligible for nonpublic review</li> </ul>	<ul style="list-style-type: none"> <li>• Securities Act registration statements for de-SPAC transactions where the primary registrant is eligible for nonpublic review</li> <li>• Securities Act registration statements for de-SPAC transactions where the SPAC is the surviving entity and the co-registrant target is independently eligible to submit a registration statement for nonpublic review</li> </ul>
<b>Naming of underwriters in initial draft registration statement</b>	<ul style="list-style-type: none"> <li>• At least one underwriter required to be named</li> </ul>	<ul style="list-style-type: none"> <li>• May omit as long as included in any subsequent submissions and the public filings</li> </ul>



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