

PUBLICATION

SEC Allows Non-EGCs to Submit Certain Draft Registration Statements for Confidential Review

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Effective July 10, 2017, the Securities and Exchange Commission's Division of Corporation Finance began accepting draft registration statement (DRS) submissions from issuers filing registration statements in connection with (a) an initial public offering, (b) registering securities pursuant to Section 12(b) of the Securities Exchange Act of 1934, as amended, and (c) a follow-on offering for a company whose IPO or initial Section 12(b) registration statement went effective within 12 months. These changes apply to foreign private issuers but do not apply to post-effective amendments.

The Jumpstart Our Business Startups Act of 2012 (the JOBS Act) originally permitted submissions of draft registration statements only from emerging growth companies (EGCs), companies with less than \$1.07 billion of revenue in their most recently completed fiscal year. With this change, larger companies seeking to go public may enter the IPO pipeline without immediate public scrutiny until they are reasonably certain to go public.

Issuers submitting draft registration statements in connection with an IPO must provide a letter to the SEC accompanying the initial submission stating that it will publicly file its registration statement and any revisions or amendments at least 15 days prior to any road show or, in the event there is no road show, at least 15 days prior to the requested effective date of the IPO registration statement. For issuers submitting draft registration statements in connection with a Section 12(b) registration statement, the letter must specify that the public filing of the registration statement and any revisions or amendments will be made at least 15 days prior to the anticipated effective date of the registration statement for listing of the securities on a national securities exchange. For newly public companies submitting a draft registration statement in connection with a follow-on offering, (i) only the initial draft may be submitted on a confidential basis, (ii) the company must confirm in a letter that it will publicly file its registration statement at least 48 hours prior to the requested effective time and (iii) responses to SEC comments must include a public filing of the initial registration statement and any amendments or revisions.

The SEC also announced that a non-EGC issuer may omit financial statements from the draft registration statement if it reasonably believes that it will not be required at the time the registration statement is publicly filed. No other benefits of EGC status were extended, such as reduced financial statement requirements and use of testing-the-waters communications. The SEC did not change any procedures applying to the filing of draft registration statements via EDGAR, and SEC staff will continue to process those submissions "in the normal course." However, draft registration statements by non-EGCs do not have the same confidentiality protections as those by EGCs, and may be subject to release under a FOIA request, so the SEC recommends requesting confidential treatment for such filings.

View the full SEC announcement [here](#).

If you have any questions about this alert or are considering an initial public offering, please reach out to Noah Kressler.

