

SEC Issues Updated Guidance for Nonpublic Review of Draft Registration Statements



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On March 3, 2025, the staff of the SEC's Division of Corporation Finance announced that it is expanding the accommodations available for issuers that submit draft registration statements for nonpublic review.^[1] This announcement was consistent with the statement made by Mark T. Uyeda, Acting Chair of the U.S. Securities and Exchange Commission (the "SEC"), as part of his remarks at the Florida Bar's 41st Annual Federal Securities Institute and M&A Conference, that "the Commission has begun the process of returning to its narrow mission to facilitate capital formation, while protecting investors and maintaining fair, orderly, and efficient markets."^[2]

Overview of Expanded Accommodations

The newly announced accommodations, among other things:

- Expand the availability of nonpublic review to include Forms 10, 20-F, and 40-F filed to register a class of securities under Section 12(g) of the Securities Exchange Act of 1934, as amended (the "Exchange Act").
- Eliminate the twelve-month limitation on draft registration statement submissions following the issuer's initial public offering.
- Expand the availability of nonpublic review to include certain "de-SPAC" transactions where the SPAC is the surviving entity.
- Permit issuers to omit underwriter names from the initial draft registration statements, so long as this information is disclosed in subsequent submissions and public filings.

Background of the SEC Review of Draft Registration Statements

In 2012, the Jumpstart Our Business Startups Act (JOBS Act) introduced confidential filing privileges by allowing Emerging Growth Companies (EGCs) to submit draft registration statements for initial public offerings for nonpublic SEC staff review.

In 2017, the SEC expanded the availability of confidential filing privileges by announcing that it would review, on a nonpublic basis, draft registration statements submitted by non-EGC issuers seeking to conduct an initial public offering under the Securities Act of 1933, as amended (the "Securities Act") or Section 12(b) of the Exchange Act, and would also accept for nonpublic review draft registration statements submitted prior to the end of the twelfth month following the effective date of an issuer's initial Securities Act registration statement or an issuer's Exchange Act Section 12(b) registration statement.

The newly announced enhanced accommodations build on this guidance by further expanding the availability of confidential review of draft registration statements. The differences between the past and updated guidance are summarized in the chart below.

Comparison of Past and Updated SEC Accommodations

	Past SEC Accommodations and Practices	Updated SEC Guidance
Nonpublic review of initial public offerings and initial Exchange Act registrations	<p>Nonpublic review available for draft initial registration statements submitted under:</p> <ul style="list-style-type: none"> · the Securities Act (initial public offerings); and · Section 12(b) of the Exchange Act. 	<p>Nonpublic review available for draft initial registration statements submitted under:</p> <ul style="list-style-type: none"> · the Securities Act (initial public offerings); · Section 12(b) of the Exchange Act; and · Section 12(g) of the Exchange Act, including initial registrations on Forms 10, 20-F, and 40-F.
Nonpublic Review of Subsequent (“Follow-On”) Offerings	<p>Nonpublic review available for subsequent draft registration statements submitted prior to the end of the twelve-month period following the effective date of an issuer’s initial Securities Act registration statement or an issuer’s Exchange Act Section 12(b) registration statement.</p>	<p>Nonpublic review available for any offering under the Securities Act or registration of a class of securities under either Section 12(b) or Section 12(g) of the Exchange Act 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.</p>
De-SPAC Transactions	<p>Nonpublic review not available for de-SPAC transactions.</p>	<p>Nonpublic review available for registration statements submitted for de-SPAC transactions where the SPAC survives the business combination as the public company, if the co-registrant target company would otherwise be independently eligible to submit a draft registration statement. An issuer is permitted to submit a de-SPAC transaction registration statement as if it were an initial Securities Act registration statement (i.e., an initial public offering).</p>
Content of Draft Registration Statements	<p>Pursuant to Items 501 and 508 of Regulation S-K, issuers must disclose the names of underwriters within the initial submissions.</p>	<p>Issuers may omit the names of underwriters from the initial submissions, provided that they include the name of the underwriter(s) in subsequent submissions and public filings.</p>

Timing Considerations

- The Staff's announcement notes that a registration statement on Form 10, 20-F, or 40-F for registration under Section 12(b) of the Exchange Act 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 Section 12(g) of the Exchange Act goes effective automatically 60 calendar days after the company files the registration statement. Accordingly, issuers 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.
- In addition, the nonpublic submission 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 Section 12(g). The Staff's announcement notes that issuers availing themselves of the accommodation to submit the registration statement nonpublicly should do so early enough to receive staff comments and still meet the public filing deadline.

Public Filing of Draft Registration Statement

- The Staff's announcement notes that an issuer should file the draft registration statement it had previously submitted for nonpublic review at the time it publicly files its registration statement.
- The Staff's announcement also reminds issuers that they should consider the SEC's Rule 83 confidential treatment request procedures in submitting draft registration statements for nonpublic review. Where possible, the Staff will keep submitted nonpublic draft registration statements and related correspondence confidential subject to the provisions of applicable law.

Cover Letters

- Consistent with past practice, an issuer submitting draft initial registration statements on a nonpublic basis 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.
- An issuer submitting a subsequent draft registration statement for nonpublic review should confirm in its cover letter 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. The two business-day period in the enhanced accommodation is consistent with the two business days in Rule 461 for requesting acceleration of the registration statement effective date.

Substantial Completeness; Omission of Financial Information

- The Staff's announcement notes that an issuer should take all steps to ensure that a draft registration statement is substantially complete when submitted.
- However, the Staff will not delay processing if an issuer reasonably believes omitted financial information will not be required at the time the registration statement is publicly filed.

EGCs and Foreign Private Issuers

- Enhanced accommodations do not limit the process by which EGCs submit draft registration statements for confidential review, and the SEC will

continue to process those submissions and filed registration statements in the normal course.

- Instead of submitting draft registration statements under the enhanced accommodations, foreign private issuers may elect to proceed in accordance with the procedures available to EGCs (if they qualify as EGCs), or follow the SEC's previous guidance with respect to foreign private issuers.

Conclusion

According to Cicely LaMothe, Acting Director of the SEC's Division of Corporation Finance, the "enhanced accommodations will further support capital formation while retaining investor protections available to purchasers in public offerings".^[3] Given the significance of newly announced enhancements, including the expanded form eligibility, the accommodation of certain de-SPAC transactions, the removal of time restriction for post-IPO registrations, and the underwriter disclosure flexibility, the SEC's Division of Corporation Finance updated guidance can be expected to facilitate capital formation and increase access to public capital markets for both new and existing issuers.

[1] [SEC.gov | Enhanced Accommodations for Issuers Submitting Draft Registration Statements](https://www.sec.gov/newsroom/whats-new/draft-registration-statement-processing-procedures-expanded) | <https://www.sec.gov/newsroom/whats-new/draft-registration-statement-processing-procedures-expanded>

[2] [SEC.gov | Remarks at the Florida Bar's 41st Annual Federal Securities Institute and M&A Conference](https://www.sec.gov/newsroom/speeches-statements/uyeda-remarks-florida-bar-022425) | <https://www.sec.gov/newsroom/speeches-statements/uyeda-remarks-florida-bar-022425>

[3] [SEC.gov | SEC Staff Facilitates Capital Formation for Companies Planning Public Offerings](https://www.sec.gov/newsroom/press-releases/2025-50) | <https://www.sec.gov/newsroom/press-releases/2025-50>