

In brief

The latest news in financial reporting



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At a glance

The SEC's Division of Corporation Finance announced new guidance regarding the processing of draft registration statements that greatly expands the number of issuers who may take advantage of their nonpublic review process.

SEC announces policy changes designed to facilitate capital formation

What happened?

On June 29, the SEC's Division of Corporation Finance announced a number of [policy changes](#) intended to facilitate capital formation. Many of these changes were to give a broader group of issuers the opportunity to apply some of the accommodations previously limited to Emerging Growth Companies (EGCs).

The SEC staff will review the following registration statements on a nonpublic basis:

- Draft registration statements (and related revisions) for initial public offerings and other initial registrations under the Securities Act of 1933;
- Draft registration statements (and related revisions) for the initial registration of a class of securities under Section 12(b) of the Exchange Act; and
- Draft registration statements (but not related revisions) submitted within twelve months after the effective date of one of the registration statements referred to above.

The SEC staff's nonpublic review is conditioned on the issuer providing a cover letter with the nonpublic submission indicating that the draft registration statement (and related revisions) will be made public at specified intervals (depending on the filing type) prior to a road show or effectiveness (as appropriate).

All SEC staff comment letters and responses related to the draft registration statements will become public no earlier than 20 business days after the effective date of the related registration statement.

The SEC staff also indicated that issuers may exclude from their nonpublic submissions financial information not expected to be required at the time the registration statement is publicly filed. Similar relief is currently afforded EGCs.

In addition, the SEC staff reminded issuers that they will consider requests to waive or modify the financial statements required by Regulation S-X based on specific facts and circumstances and that they will consider reasonable requests for expedited reviews.

Why is this important?

This announcement was made as part of the SEC's ongoing focus on facilitating capital formation while maintaining important investor protections. It has the potential to allow issuers greater flexibility and access to the public markets and may reduce some of the costs of raising capital in the public markets. For instance, issuers may not need to prepare certain financial statements that would otherwise be required (and may be difficult and costly to provide).

What's next?

The SEC's policy change will allow the submission of draft registration statements for nonpublic review beginning July 10, 2017. The other provisions in the announcement became effective immediately. Issuers expecting to take advantage of the provisions in the announcement are encouraged to read the related [SEC staff FAQs](#). They may also wish to discuss their particular fact pattern (including the process for obtaining confidential treatment) with their legal counsel.

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