



BDO BULLETIN

NEW ACCOMMODATIONS FOR NONPUBLIC REVIEW OF DRAFT REGISTRATION STATEMENTS

MARCH 2025

WHAT'S NEW?

The SEC's Division of Corporation Finance recently announced new accommodations available to issuers submitting draft registration statements for nonpublic review. The new accommodations:

- ▶ Expand the nonpublic review process to initial registrations under Section 12(g) of the Exchange Act and de-SPAC transactions
- ▶ Allow issuers to submit draft registration statements at any time after their IPOs
- ▶ Permit issuers to omit the name of the underwriter(s) in initial submissions of draft registration statements

The expanded accommodations aim to facilitate capital formation while maintaining investor protection.

NEW ACCOMMODATIONS

The Jumpstart Our Business Startups (JOBS) Act of 2012 provided Emerging Growth Companies (EGCs) with the ability to submit Securities Act draft registration statements for initial public offerings (IPOs) for confidential, nonpublic review. In 2017, the SEC staff expanded the nonpublic review process to non-EGCs, certain Exchange Act registration statements, and other Securities Act draft registration statements submitted one year after an issuer's IPO. The new accommodations further expand the nonpublic review process and allow issuers to omit the name of the underwriter(s) from initial submissions.

Expanded Nonpublic Review Process

Initial Registration of Securities on Exchange Act Forms

The nonpublic review process now extends to initial registrations under Section 12(g) of the Exchange Act. Accordingly, issuers may submit an initial registration of a class of securities using Forms 10, 20-F, or 40-F under Exchange Act Sections 12(b) and 12(g) for nonpublic review.

As a reminder, issuers that submit draft initial registration statements for nonpublic review must confirm in a cover letter accompanying the submission that they will publicly file their registration statement and nonpublic draft submissions at least 15 days before any road show, or at least 15 days before the requested effective date of the registration statement if no road show is planned. Additionally, SEC staff comment letters and issuer responses are publicly released no earlier than 20 business days following the effective date of the registration statement.

Material discussed in this Bulletin is meant to provide general information and should not be acted upon without first obtaining professional advice appropriately tailored to your individual facts and circumstances.

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Draft Registration Statements After the IPO

Issuers may now submit draft registration statements for any offering under the Securities Act or registration of a class of securities under Sections 12(b) or 12(g) of the Exchange Act, regardless of the time elapsed since the IPO. Previously, draft registration statements were only permissible within one year following the effective date of an issuer's IPO. Issuers must confirm in their cover letter that they will publicly file such registration statements at least two business days before the requested effective date.¹ Additionally, Exchange Act registration statements on Forms 10, 20-F, or 40-F must be publicly filed for a 30- or 60-day period, as applicable, prior to effectiveness.²

As a reminder, the nonpublic review is limited to the initial submission. Subsequent submissions, including responses to staff comments, must be publicly filed.

De-SPAC Transactions

The SEC's SPAC rules effective in July 2024 treat targets in de-SPAC transactions as co-registrants because the de-SPAC is the functional equivalent of the target's IPO. Accordingly, registration statements for a de-SPAC transaction (when the SPAC is the surviving entity) may now be submitted for nonpublic review, provided the co-registrant target is also eligible to submit a draft registration statement. See our Bulletin, [SEC Adopts Rules on SPACS, Shell Companies, and Projections](#), for more guidance on the SEC's SPAC Rules.

Omitted Information

Issuers may now omit the name of the underwriter(s) from initial draft registration statement submissions. The underwriter(s) must be named in subsequent submissions and public filings.³ While draft registration statements must otherwise be substantially complete when submitted, issuers may continue to omit financial information they reasonably believe will not be required when the registration statement is publicly filed.

As a reminder, issuers may omit other historical financial information from their IPO draft registration statements as follows:

- ▶ EGCs may omit annual and interim periods that will not be required to be presented separately at the time of the offering
- ▶ Non-EGCs may omit annual and interim periods that will not be required to be presented separately at the time of the public filing

Additional accommodations may be available. See our publication, [A Guide to Going Public](#), for more guidance.

Foreign Private Issuers

Foreign Private Issuers (FPIs) have the option to utilize these enhanced accommodations or the procedures available to EGCs, if they qualify. Alternatively, FPIs may follow the guidance outlined in the SEC staff's [2012 statement](#).

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Link to the SEC staff's [Announcement](#)

Additional guidance on the nonpublic review process:

- ▶ Recently Enacted Transportation Law Includes a Number of Changes to the Federal Securities Laws [Announcement](#) (2015)
- ▶ Jumpstart Our Business Startups Act [FAQs](#) (revised in 2015)
- ▶ Fixing America's Surface Transportation (FAST) Act [C&DIs](#) (updated in 2017)

¹ The SEC staff may comment on public filings, potentially affecting the issuer's planned timeline for effectiveness.

² Exchange Act registration statements filed pursuant to Section 12(g) are automatically effective 60 days after the public filing. Exchange Act registration statements filed pursuant to Section 12(b) are automatically effective 30 days after the applicable exchange approves the issuers listing.

³ When required by Items 501 and 508 of Regulation S-K.

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