

INSIGHTS

SEC Expands Confidential Submission Process to All IPOs

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The Staff of the Division of Corporation Finance of the Securities and Exchange Commission announced that it will permit all companies to submit draft registration statements relating to initial public offerings (IPOs) for review on a non-public basis, broadening the benefit previously reserved for “emerging growth companies” under the Jumpstart Our Business Startups Act (JOBS Act). The policy will take effect on July 10, 2017.

Confidential submission of registration statements is intended to provide flexibility to companies considering going public, allowing a company to begin the SEC review process without publicly disclosing sensitive financial and competitive information. A company that takes advantage of the confidential submission process and proceeds with an IPO must make its registration statement public at least 15 days before launching a roadshow in connection with the offering.

The Staff also announced that confidential submission will be permitted for companies initially registering securities under Section 12(b) of the Securities Exchange Act of 1934, as amended, and to foreign private issuers.

Further, the SEC will also allow confidential submission of registration statements of existing public companies pursuing an additional public offering with one year of its IPO or Section 12(b) registration so long as the company publicly files its registration statement and nonpublic draft submission at least 48 hours prior to any requested effective date. The Staff’s non-public review of such post-IPO registration statements will be limited to the initial draft submission.

A company submitting its draft registration statement for non-public review should include a cover letter conveying its agreement to the public filing requirements described in the Staff’s announcement and follow other applicable SEC guidance for making a confidential submission. The full announcement published on June 29, 2017 by the SEC’s Division of Corporation Finance is available [here](#).