

SEC expands non-public review option for new registrants to foster more US listings

Effective July 10, 2017, the US Securities and Exchange Commission ("SEC") is expanding availability of its non-public review process for draft registration statements. This regulatory accommodation is meant to encourage more companies to seek listings on US securities exchanges and participate in the US public company disclosure-based system. The SEC's related announcement is available [here](#).

Non-public staff review of draft registration statements is a popular accommodation for IPO issuers that are "emerging growth companies" under the Jumpstart Our Business Startups Act (JOBS) Act and for certain foreign private issuers that qualify under a separate policy. Pursuant to this accommodation, registration statement drafts and the related correspondence remain non-public during in the early stages of registration, permitting an issuer some flexibility regarding timing for accessing the US capital markets. As a result of the SEC's expanded non-public review process, all issuers seeking to list on a US exchange will have the opportunity to take advantage of this regulatory benefit. The staff of the SEC's Division of Corporation Finance will accept draft registration statement submissions for non-public review from all types of companies (excluding asset-backed issuers), beginning July 10th, subject to the following conditions:

- **Initial Public Offerings:** For initial registrations under the US Securities Act of 1933, as amended (the "**Securities Act**"), any issuer may choose to submit a draft registration statement as well as revised drafts for non-public staff review, provided the issuer confirms in a cover letter that it will publicly file its registration statement and all 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.
- **Equity listings on a US national securities exchange:** For initial registrations under Section 12(b) of the US Securities Exchange Act of 1934, as amended (the "**Exchange Act**"), any issuer may choose to submit a draft registration statement as well as revised drafts for non-public staff review, provided the issuer confirms in a cover letter that it will publicly file its registration statement and all draft submissions at least 15 days prior to the anticipated effective date of the registration statement for its listing on a national securities exchange (such as the New York Stock Exchange or the Nasdaq Stock Market). Previously, non-public staff review was not available for these registration statements - which are required when establishing a Level 2 ADR program.
- **First year after initial registration:** Any issuer may submit a draft registration statement for non-public staff review prior to the end of the twelfth month following the effective date of its initial registration statement under the Securities Act or Section 12(b) of the Exchange Act, provided the issuer confirms in a cover letter that it will publicly file its registration statement and non-public draft submission such that it is publicly available on the EDGAR system at least 48 hours prior to any requested effective time and date. For these types of registrations, non-public staff review is only available for the initial draft submission. Any revised registration statements responsive to staff comments would need to be filed publicly. The availability of this non-public review process in the first year after an initial exchange listing is aimed at reducing the potential for lengthy exposure to market fluctuations that could adversely affect the offering process.

- **Registration statement drafts should be substantially complete:** The SEC staff expects draft registration statements to be substantially complete when submitted, but 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.
- **No impact on existing non-public staff review procedures:** Companies already eligible for non-public staff review, such as emerging growth companies under the JOBS Act and certain foreign private issuers, may continue to follow existing procedures and guidance.

As a result of this expanded non-public review option, all issuers seeking to list on a US exchange – regardless of whether they are concurrently seeking to raise capital or qualify as emerging growth companies – will have the option to take advantage of non-public staff review of draft registration statements. Issuers and their advisors should review their proposed transaction timing with the SEC staff assigned to review the filing, as expedited non-public review may be available upon request.

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