

SEC Staff Provides Additional Relief to Facilitate IPO Filings

August 21, 2017

Changes Previous Guidance to Allow for Exclusion of Interim Financial Statements

On August 17, the SEC's Division of Corporation Finance announced [updated guidance](#) that should reduce the time and expense for companies who are preparing to go public. Under the new guidance, a company that submits a draft registration statement to the SEC can now exclude interim financial statements if that interim financial information would not need to be included in the registration statement when it is publicly filed, or at the time of the offering, for emerging growth companies ("EGCs").

Prior to this announcement, companies could only exclude annual periods that would not be required to be included in the publicly filed registration statement (or the registration statement at the time of the offering, for EGCs) in draft registration statement submissions, but were required to include interim financial statements for any period that would be included in the eventual public filing. For example, if a year-end fiscal year company made a nonpublic or confidential submission in November 2017 and planned to publicly file (or for an EGC, launch its offering) in April 2018, the draft registration statement would need to include interim financials for the nine months ended September 30, 2017 since the publicly filed registration statement (or final prospectus, for EGCs) would be required to include 2017 financial information. Under the new guidance, if a year-end fiscal year company reasonably believes that it will publicly file a registration statement (or for an EGC, launch its offering) in April 2018, a draft registration statement that is submitted in November 2017 would not be required to have unaudited interim financial statements for the nine months ended September 30, 2017 and 2016 because a registration statement publicly filed (or for an EGC, an offering launched) in April 2018 would not include any interim financial statements and instead would include audited financial statements for 2017.

This policy should permit registrants to submit registration statements more quickly due to fewer required financial statements, and should eliminate the unnecessary costs for auditor review of financial statements that are not used in the disclosure document that investors ultimately receive.

This policy offers relief for all draft registration statement submissions by EGCs and issuers using the staff's nonpublic review process for draft registration statements (see our [earlier memo](#)). The financial statement requirements for registration statements that are publicly filed are unchanged.

The August 17 revisions to the [June 29 guidance](#) for nonpublic submission of draft registration statements provided additional clarifications. Notably, an issuer that has filed a registration statement that is under review and not yet effective may switch to a nonpublic review process. The issuer must be eligible to participate in the nonpublic review process and agree to publicly file its amended registration statement and all draft amendments in accordance with the timing stated for public filings in the nonpublic review guidelines.

If you have any questions regarding the matters covered in this publication, please contact any of the lawyers listed below or your regular Davis Polk contact.

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