

Client Update

Confidential SEC Review of IPOs Now Available To All Companies

Beginning on July 10, 2017, all issuers will have the option to submit the following types of registration statements to the Securities and Exchange Commission (the “SEC”) for nonpublic review:

- Registration statement submissions for initial public offerings (“IPO”) or spin-offs; and
- Initial registration statement submissions (but not any related amendments) during the 12 months following an IPO.

Confidential submission and review of registration statements, a popular JOBS Act benefit, was previously available only to Emerging Growth Companies (“EGCs”). With this change, non-EGCs will be able to keep their initial registration statement, and all amendments filed in response to SEC comments, confidential until 15 days prior to the beginning of the IPO roadshow or, in the absence of a roadshow, 15 days prior to the requested effective date of the registration statement. Issuers may also keep confidential the initial draft of any registration statement submitted to the SEC during the 12- month period following an IPO or initial registration of a class of equity securities (but not any related amendments) until 48 hours prior to effectiveness.

Non-EGCs will now have greater flexibility when planning an IPO or registered follow-on offering, and these issuers and selling stockholders will be able to take steps to mitigate market-related risk and market “overhang” associated with follow-on equity offerings. Companies considering a “dual track” IPO and sale process should consider the potential disadvantages of submitting registration statements on a confidential basis.

This extension of confidential filing procedures is part of the SEC’s ongoing effort to facilitate capital formation in U.S. public markets. According to data compiled by Ernst & Young, approximately 88% of the EGCs that filed IPO registration statements between April 2012 and November 2016 submitted draft registration statements for confidential SEC review. The SEC’s new confidential submission procedures do not affect JOBS Act benefits currently available to EGCs or make any other JOBS Act benefits available to non-EGCs.

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Please do not hesitate to contact us with any questions.

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