

SEC Expands Circumstances in Which Issuers Can Submit Draft Registration Statements for Nonpublic Review

In March of 2025, the Securities and Exchange Commission (the “SEC”) [announced](#) that it has expanded the circumstances in which issuers can submit draft registration statements for nonpublic review, a move the SEC believes “can facilitate capital formation, without diminishing investor protection.” The enhanced accommodations relate to: (1) the availability of nonpublic review for issuers filing on Forms 10, 20-F, and 40-F; (2) the period following initial effectiveness during which the nonpublic review process will be available for follow-on offerings; (3) nonpublic review of registration statements relating to “de-SPAC” transactions; and (4) exclusion of the names of underwriters in registration statements submitted for nonpublic review.

Under the enhanced accommodations:

- In addition to being available to issuers filing for the initial registration of a class of securities under Section 12(b) of the Securities Exchange Act of 1934 (the “Exchange Act”), nonpublic review is now also available to issuers filing for the initial registration of a class of securities under Section 12(g) of the Exchange Act on Form 10, 20-F, or 40-F. Consequently, issuers are now permitted to use the nonpublic review process for the initial registration of a class of securities on Form 10, 20-F, or 40-F under either Section 12(b) or Section 12(g) of the Exchange Act;
- Issuers are now permitted to submit draft registration statements without regard to how much time has passed since they became subject to the reporting requirements of the Exchange Act, where they had previously only been permitted to do so during the 12-month period following the effective date of the issuer’s initial Securities Act of 1933 (the “Securities Act”) or Exchange Act registration. Consequently, the SEC will allow issuers to submit an initial draft registration statement for nonpublic review no matter how long they have been public;
- The nonpublic review process is now available for so-called “de-SPAC” transactions¹ where the SPAC is the surviving entity if the target is eligible to use the nonpublic review process. The review will be conducted as if the registration statement were an initial Securities Act registration statement (i.e., an initial public offering) where the target (a co-registrant on the registration statement) would otherwise be independently eligible to submit a draft registration statement under nonpublic review process; and

¹ Generally speaking, a “de-SPAC” transaction is one in which a Special Purpose Acquisition Company (a “SPAC”) merges with or otherwise acquires a private target company, resulting in the target effectively becoming a public company.

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- Issuers are now permitted to omit the names of any underwriters from their initial draft registration statement submissions, when otherwise required by Regulation S-K, so long as they include the names in subsequent submissions and public filings.

It is worth noting that the nonpublic review process will continue to apply only to the initial draft submission, meaning that, as in the past, responses to any staff comments on the nonpublic submission will need to be made in a public filing. Furthermore, consistent with the nonpublic review process prior to the announced enhancements, issuers will continue to be required to file the previously-submitted draft registration statement when they file the registration statement. Additionally, the enhanced accommodations do not limit the process by which Emerging Growth Companies (“EGCs”) submit draft registration statements for nonpublic review, and Foreign Private Issuers may still elect to proceed in accordance with those procedures available to EGCs (if the issuer qualifies as an EGC).

Although it remains to be seen how impactful these expanded accommodations will be in practice, it is clear that issuers will now have greater flexibility to access the SEC’s nonpublic review process due to the ability to submit drafts on Forms 10, 20-F, and 40-F for nonpublic review, the removal of time limitations on nonpublic submissions, the applicability of the process to certain de-SPAC transactions, and the ability to omit underwriters’ names from drafts submitted for nonpublic review. It seems the most likely impact of these enhancements will be on smaller public companies that can now access this process regardless of how long they have been public and can now submit their draft registration statements for nonpublic review without tipping the market to their financing plans, thereby increasing their flexibility to respond to, and reducing their exposure to, changes in market conditions during the review process.

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If you have any questions about the issues addressed in this memorandum, or if you would like a copy of any of the materials mentioned in it, please do not hesitate to call or email authors Javier Ortiz (partner) at 212.701.3301 or jortiz@cahill.com, Geoffrey E. Liebmann (senior counsel) at 212.701.3313 or gliebmann@cahill.com, or Landon Walls (associate) at 212.701.3522 or lwalls@cahill.com; or email publications@cahill.com