

SEC Division of Corporation Finance Expands Confidential Review Accommodations for Draft Registration Statements

March 10, 2025

On March 3, 2025, the staff of the Securities and Exchange Commission's (SEC) Division of Corporation Finance (the Division) [announced](#) that it enhanced certain existing accommodations under the Jumpstart Our Business Startups Act, which was enacted in April 2012 and which accommodations were expanded in 2012 and 2017, that allow for confidential SEC review of certain draft registration statements by expanding the availability of certain general accommodations and by including additional accommodations for companies that have gone public but have not yet achieved "Well-Known Seasoned Issuer" (WKSI) status.¹

Following Monday's announcement, issuers will now be able to submit all of the following draft registration statements for nonpublic review:

- (i) a registration statement under the Securities Act of 1933, as amended, for an initial public offering of securities or for any subsequent public offering of securities, regardless of how much time has passed since the initial public offering (rather than only up to one year later, as had previously been the case);
- (ii) a registration statement on Form 10, 20-F or 40-F for the initial registration of any class of securities under either Section 12(b) or 12(g) of the Securities Exchange Act of 1934, as amended (the Exchange Act) or any subsequent registration statement for the registration of a class of securities under either Section 12(b) or Section 12(g) of the Exchange Act, regardless of how much time has passed since the issuer became subject to the reporting requirements of the Exchange Act; or
- (iii) a registration statement for a de-SPAC transaction where the SPAC survives the business combination as the public company and the co-registrant target would otherwise be independently eligible to submit a draft registration statement.²

The new guidance is particularly significant for public companies that have been public for more than a year but have not yet achieved WKSI status, as it permits such companies to continue to confidentially submit draft registration statements indefinitely. As a result, non-WKSI's may now avoid suffering the market pressure

¹ A WKSI is an issuer that meets all of the following obligations at some point during a 60-day period preceding the date the issuer satisfied its obligation to update its shelf registration statement: (i) the issuer is eligible to register a primary offering of its securities on Form S-3 or Form F-3; (ii) as of some date within 60 days of its eligibility determination date, the issuer has an outstanding minimum \$700 million in worldwide market value of voting and non-voting equity held by non-affiliates (i.e., public float) - or - has issued at least \$1 billion aggregate amount of non-convertible securities other than common equity, in primary offerings for cash in the last three years; and (iii) the issuer is not an ineligible issuer (i.e., an issuer that has not filed all required reports under Section 13 or 15(d) of the Exchange Act in the preceding 12 months; a blank check company; an issuer in an offering of penny stock; or the like). The benefit of WKSI status is automatic effectiveness of registration statements on Form S-3 or F-3, without any SEC review.

² In essence, this accommodation puts the traditional de-SPAC structure on even footing with alternative de-SPAC structures that already allow confidential submission (i.e., where the target company or a newly formed company is the registrant).

associated with filing a registration statement publicly and effectively pre-announce a transaction before launch, as was previously required. Moreover, reporting companies may now exclude the name of the underwriter(s) from their initial draft registration statement submissions so long as the company provides such name(s) in subsequent submissions and public filings. Finally, pursuant to the 2017 expansion of accommodations, issuers that confidentially submit a draft registration statement subsequent to their initial registration statement must make such registration statement and nonpublic draft submission publicly available on the EDGAR system at least two business days prior to any requested effective time and date; under the new guidance, however, the staff will now consider reasonable requests to expedite that two-business day period.

In issuing this new guidance, the Division underscored that “further expansion of these accommodations can facilitate capital formation, without diminishing investor protection.”

CONTACT

If you have any questions about your eligibility to use the enhanced accommodations, please reach out to your Katten attorney or any of the Capital Markets attorneys listed below.



Alyse Sagalchik
+1.312.902.5426
alyse.sagalchik@katten.com



Timothy Kirby
+1.212.940.6494
tim.kirby@katten.com



Delaney Battle
+1.312.902.5211
delaney.battle@katten.com



Alexa Rollins
+1.312.902.5690
alexa.rollins@katten.com

Katten

katten.com

CHARLOTTE | CHICAGO | DALLAS | LONDON | LOS ANGELES | NEW YORK | ORANGE COUNTY | SHANGHAI | WASHINGTON, DC

Attorney advertising. Published as a source of information only. The material contained herein is not to be construed as legal advice or opinion.

©2025 Katten Muchin Rosenman LLP. All rights reserved.

Katten refers to Katten Muchin Rosenman LLP and the affiliated partnership as explained at kattenlaw.com/disclaimer.

3/10/25