

KIRKLAND ALERT

June 30, 2017

SEC Allows *All* Companies to File Confidential Draft IPO Registration Statements

On June 29, 2017, the U.S. Securities and Exchange Commission (“SEC”) announced that, effective July 10, 2017, all companies will be permitted to confidentially file a draft registration statement with the SEC for:

- an initial public offering or
- any other offering during the first 12 months after the effectiveness of a company’s IPO registration statement.

Previously, only emerging growth companies (companies with total annual gross revenues of less than \$1 billion during the most recently completed fiscal year) and certain foreign private issuers were permitted to submit confidential draft registration statements with the SEC.

All companies will now be permitted to confidentially file a draft registration statement with the SEC for an IPO or any other offering during the first 12 months after the effectiveness of a company’s IPO registration statement.

	Deadline for Public Filing	What is Confidential
IPOs	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 (which is the same as the requirement for emerging growth companies)	<ul style="list-style-type: none"> • initial filing and subsequent amendments until the first public filing • once a public filing is made, all previous confidential filings must be made public
Offering during the first 12 months after IPO	48 hours before the requested effective time of the registration statement	<ul style="list-style-type: none"> • only initial filing (not subsequent amendments) • once a public filing is made, all previous confidential filings must be made public

Financial Statements

If a company reasonably believes that certain financial information will not be required at the time the registration statement is publicly filed (such as financial

statements for an earlier fiscal year), it can be omitted from the confidential submission. Emerging growth companies are currently afforded similar relief.

Expedited Review

The SEC invited reasonable requests for expedited review of a registration statement (either the initial draft confidential filing or subsequent public filings). Typically, the SEC has responded with initial comments within 30 days of an initial filing. Companies should communicate the anticipated timing of the transaction to the SEC as early as possible, and keep the SEC updated regularly if the planned timing changes.

For more information, see <https://www.sec.gov/corpfin/announcement/draft-registration-statement-processing-procedures-expanded>.

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If you have any questions about the matters addressed in this *Kirkland Alert*, please contact the following Kirkland authors or your regular Kirkland contact.

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