



Securities Law Alert

SEC Filings During The Government Shutdown

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January 2, 2019

On December 22, 2018, a partial shutdown of the federal government began. On December 27, 2018, the operational status of the Securities and Exchange Commission (SEC) was changed to "closed," and the SEC began operating according to its Operations Plan under a Lapse in Appropriations and Government Shutdown. This means that the SEC "will have only an extremely limited number of staff members available to respond to emergency situations involving market integrity and investor protection, including law enforcement."

EDGAR Status

During the shutdown, EDGAR will continue to accept registration statements, offering statements and any other required filings. Accordingly, reporting companies must continue to file periodic and current reports (Forms 10-K, 10-Q and 8-K) when due.

Effectiveness of Registration Statements

The SEC Staff will not be able to declare registration statements effective or qualify Form 1-A offering statements during the shutdown. This should not affect WKSJ issuers as EDGAR will remain open and their registration statements are automatically effective. All reporting companies with an effective shelf registration statement can continue to complete takedowns off such shelf registrations and file their prospectus supplements on EDGAR as long as any update does not trigger the need to file a post-effective amendment.

Pricing Offerings

Registration statements that do not involve a delayed offering must be priced within 15 days of the effective date. If an issuer does not want its registration statement to go effective at that time, it may file a post-effective amendment under Rule 462(c) and restart the 15-day period. Post-effective amendments filed under Rule 462(c) are deemed to be effective upon filing. In this way, the issuer may include the pricing information at the time of the pricing in a Rule 424(b)

prospectus supplement. Unfortunately, substantive changes to the final prospectus may trigger a post-effective amendment. In the case of an IPO, a significant change in the price in comparison to the previously disclosed price range would require a post-effective amendment.

Delaying Amendments

Under the Securities Act, a registration statement filed without a “delaying amendment” becomes effective automatically after 20 days unless the SEC issues a stop order. It is customary for issuers to include a delaying amendment in registration statements to delay effectiveness to give the SEC the opportunity to have more time to review the filing before declaring it effective while still allowing the SEC to declare the registration statement effective prior to the end of the 20-day period.

The SEC Staff has noted that during a shutdown, issuers could file an amendment to remove the delaying amendment, which would cause the registration statement to become effective 20 days after the filing of such an amendment unless the SEC issued a stop order. If the issuer needs to further delay the effective date under these circumstances, the issuer could file a pre-effective amendment prior to the end of the applicable 20-day period, which would delay effectiveness until 20 days after the latest pre-effective amendment.

Companies filing a registration statement during the shutdown could do so without including the customary delaying amendment, but the registration statement would have to include all of the required information, including the offering price, before it could go effective.

If the SEC becomes operational after the shutdown ends and a registration statement without a delaying amendment is within the 20-day period prior to effectiveness, the SEC Staff would consider a request to accelerate to an earlier date. The SEC Staff may ask the issuer to amend the registration statement to include the delaying amendment.

Shareholder Proposals

Although the SEC has not provided any guidance in this respect, we do not believe that the SEC Staff will review shareholder proposals or no-action requests during the shutdown. Nevertheless, reporting companies should continue to meet the requirements under Rule 14a-8.

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