

Securities Lawyer 101

Confidential Submission of Draft SEC Registration Statements



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The Jumpstart Our Business Startups Act (the "JOBS Act") allows an "emerging growth company" to submit a draft of its registration statement and exhibits to the Securities and Exchange Commission (the "SEC") on a confidential basis. This Q & A addresses the common questions we receive about confidential registration statement submissions.

Q. When does an emerging growth company have to file its registration statement if I want it to be a confidential submission?

A. The [JOBS Act](#) requires that emerging growth companies file the initial confidential submission of their registration statement and all amendments to the registration statement with the SEC within 21 days prior to the registration statement's anticipated effectiveness or road shows. These prior confidential submissions should be included as exhibits to the company's later publicly filed registration statement, if any.

Q. How long will my company's registration statement remain confidential?

A. Registration statements submitted to the SEC on a confidential basis do not remain confidential if a company completes its Direct Public Offering, Initial Public Offering ("IPO") or pre-IPO offering.

Q. Will SEC comment letters to a registration statement and company responses to the registration statement remain confidential?

A. The registration statement comments and responses will become publicly available after the completion of the securities offering but not earlier than 20 business days following the effective date of the registration statement.

Q. What are the benefits of confidential submission of a registration statement to the SEC?

A. The confidential submission of a registration statement allows a company to keep the registration statement confidential and out of the public domain until it decides whether it will proceed with its public offering. If a company abandons its offering before its registration statement becomes effective, its submission remains confidential.

Q. If I submit my company's registration statement on a confidential basis can the company still announce its registration statement or IPO?

A. SEC Rule 135 allows an issuer to announce limited information about the confidential submission of a registered securities offering submitted to the SEC.

Q. Does anything contained within a confidentially submitted registration statement remain confidential?

A. Limited information from the confidential submission of a registration statement can remain confidential. Rule 406 allows a company to keep portions of its registration statement confidential. Rule 406 requires the issuer to state the specific reasons why a confidential request is made and provide a detailed explanation of why, based on the related facts and circumstances, disclosure of the information is unnecessary to protect investors. The most common request for confidential submission of certain information in a registration statement is made for trade secrets, proprietary information, confidential commercial or financial information that would cause substantial competitive harm to the issuer if disclosed.

For further information about the [Confidential Submission of Draft Registration Statements](#), please contact [Brenda Hamilton](#), Securities Attorney at 101 Plaza Real South, Suite 202 North, Boca Raton, Florida, (561) 416-8956, or by email at info@securitieslawyer101.com. This securities law Q&A is provided as a general informational service to clients and friends of [Hamilton & Associates Law Group, P.A.](#) and should not be construed as, and does not constitute legal advice on any specific matter, nor does this create an attorney-client relationship. Please note that the prior results discussed herein do not
