

Corporate & Financial Weekly Digest

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SEC Limits Availability of Review for Non-Public Submissions by Foreign Private Issuers

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Effective immediately, however, the staff will only review initial registration statements submitted on a non-public basis where the issuer is: (i) a foreign government registering its debt securities; (ii) a foreign private issuer that is listed or is concurrently listing its securities on a non-U.S. securities exchange; (iii) a foreign private issuer that is being privatized by a foreign government; or (iv) a foreign private issuer that can demonstrate that the public filing of an initial registration statement would conflict with the law of an applicable foreign jurisdiction. In addition, shell companies, blank check companies and issuers with no or substantially no business operations will not be permitted to use the non-public submission procedure. The staff noted that circumstances may develop in which the staff will request a foreign issuer to publicly file its registration statement even though it comes within the general parameters of the policy. Examples of these circumstances include a competing bid in an acquisition transaction or publicity about a proposed offering or listing.

The staff will continue to review registration statements that do not come within one of the above categories that were submitted on a non-public basis prior to December 8 without a public filing. However, the next draft of any such registration statement,

whether filed in response to staff comments or otherwise, must be filed through the EDGAR system.

The staff cautions that the non-public submission of a registration statement does not constitute a “filing” for purposes of the Securities Act of 1933 and so offers of the securities covered may not be made in the U.S. until an EDGAR filing is made.

Click [here](#) to view the full text of the staff’s announcement.

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