

SEC STAFF PROVIDES ROADMAP FOR EXTENDING CONFIDENTIAL TREATMENT ORDERS

Sep 14, 2020

The SEC staff amended [CF Disclosure Guidance: Topic No. 7](#) on September 9, 2020 to address the options for companies with confidential treatment orders that are about to expire. The guidance explains that companies have three choices:

- ***Refile the unredacted exhibit.*** If the contract is still material and none of the redacted information still needs to be protected, the company should refile it in complete, unredacted form.
- ***Extend the confidential period pursuant to Rules 406 or 24b-2.*** If the contract continues to be material, and the previously redacted information continues to be confidential, the company may request to extend the period of confidential treatment by filing an application under [Rule 406](#) of the Securities Act of 1933 or [Rule 24b-2](#) of the Securities Exchange Act of 1934.
- ***Short-form application for orders about to expire and initially issued less than three years ago.*** If the order is about to expire and was initially issued less than three years ago, companies may use the [short-form application](#), which provides a streamlined process to file an application to extend the time for which confidential treatment has been granted. If the company reduces the extent of omitted information, it must file the revised redacted version of the exhibit on Edgar when submitting the application.

Short-form applications should be submitted to CExtensions@sec.gov. That email address should not be used for any other confidential treatment request.

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- ***New application for orders about to expire and initially issued more than three years ago.*** If the order is about to expire and initially was issued more than three years ago, the company may file a new, complete application for confidential treatment under Rule 406 or Rule 24b-2.

New applications should be submitted to the Office of the Secretary before an order will expire and provide sufficient time for staff review and processing.

- ***Transition to new Rule 601(b)(10) rules.*** If it has been more than three years since the initial confidential treatment order was issued, and if the contract continues to be material, the company has the option to transition to compliance with the redacted exhibit rules contained in Regulation S-K Item 601(b)(10) and other parallel rules. Those rules allow for the filing of redacted exhibits without submitting an explanation or substantiation to the SEC, or providing an unredacted copy of the exhibit, except upon request of the staff. In order to transition to the redacted exhibits rules in these situations, a company would only be required to refile the material contract in redacted form and comply with the legend and other requirements of the applicable redacted exhibit rule, most commonly Item 601(b)(10)(iv) of Regulation S-K.

The SEC staff expressed the view that many if not most companies will likely decide to transition to this process since substantiation of compliance and submission of unredacted materials is only required if requested by the staff.

With regard to the timing, the SEC staff stated that will not recommend enforcement action if a company refiles a redacted exhibit in compliance with the redacted exhibit rules in the company's first Exchange Act report following the expiration of the confidential treatment order.

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