

Corp Fin Issues Guidance on How to Redact Your Material Contracts Without Filing a Confidential Treatment Request

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Late last month we [blogged](#) about rule amendments adopted by the Securities and Exchange Commission that are intended to modernize and simplify disclosure requirements for public companies, including an amendment that allows registrants to redact confidential information from most exhibits without filing a confidential treatment request. On April 1, 2019, the SEC's Division of Corporation Finance released an [announcement](#) explaining how they will review redacted agreements and providing guidance regarding various transition issues.

New Rules

The new rules, effective as of April 2, 2019, permit registrants to file redacted material contracts without applying for confidential treatment if the registrant determines that the redacted information (1) is not material and (2) would be competitively harmful if publicly disclosed. Under the new rules, the registrant must:

- mark the exhibit index to indicate that information in a given exhibit has been redacted;
- include a prominent statement on the first page of the exhibit itself indicating that certain information has been excluded because it is both (i) not material and (ii) would be competitively harmful if publicly disclosed; and
- indicate, using brackets, where the redacted information has been omitted from the filed version of the exhibit.

Compliance Reviews

The Division indicated in its announcement that it intends to review registrant exhibit filings for compliance with the new rules. In order to preserve the confidentiality of sensitive information, any comments will be sent to the registrant under a separate cover from regular comments. Likewise, all responses to comments will be submitted separately from other responses. Any comments with respect to redacted exhibit filings will not be made publicly available.

Once a filing or registrant is selected for review, the Division will notify the registrant and request that an unredacted copy of the filed exhibit be submitted. The SEC may or may not request further substantiation of the registrant's redaction decisions. Once any review is complete, the SEC will send the registrant a letter indicating same. Consistent with historical practice, the Division will ask registrants to resolve any questions relating to redacted exhibits in registration statements before submitting a request for acceleration of the effective date.

A registrant may request confidential treatment of supplemental materials while in the Division's possession

pursuant to Rule 83. Upon completion of a compliance review, the Division will destroy all supplemental materials so long as the registrant has complied with the procedures outlined in Rules 418 or 12b-4.

Transition Guidance

If a registrant has a pending confidential treatment request pursuant to Rule 406 or Rule 24b-2, the Division has stated that such request may be withdrawn so that the registrant may instead rely on the new rules. A registrant who elects to withdraw its confidential treatment application and rely on the new rules must amend its filing to conform to the new rule requirements. Transition questions may be directed to the Division at RedactedExhibits@sec.gov.

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