

# SEC Announces Changes to Confidential Treatment Process

Insights

April 16, 2019

On April 1, 2019, the SEC announced streamlined **rules and procedures** for seeking confidential treatment of immaterial, but competitively harmful information contained in agreements required to be filed as exhibits to SEC filings.

## ***New Process for Confidential Treatment for New Exhibits***

Companies would still redact the immaterial, competitively sensitive information from the exhibit being filed with the Registration Statement or periodic report. However, there is no longer a need to separately prepare an application seeking confidential treatment of the redacted information. Instead companies would:

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

The SEC will still undertake compliance reviews of any redacted exhibits as part of its review process for Registration Statements under the Securities Act or for periodic filings under the Securities Exchange Act. As part of these compliance reviews, the SEC Staff will request an unredacted copy of the exhibit to be provided

supplementally and may provide comments regarding the redactions in separate correspondence. This correspondence would be separate from comment letters relating to the review of any Registration Statement or periodic report and neither the letters nor the responses to comments be submitted via EDGAR, although the initial request for the unredacted exhibit as well as the closing letter would be available on EDGAR. The SEC will provide specific instructions as to how the company should submit the agreement and any responses to questions or comments from the Staff of the SEC.

The SEC also noted that as has been the case with the traditional confidential treatment request process, Registration Statements under the Securities Act will not be declared effective until all comments relating to the redactions have been resolved.

### ***Extensions of Existing Confidential Treatment Orders***

For companies that have previously obtained a confidential treatment order for a material contract, the SEC has implemented a new streamlined process for extending the order.

The SEC has created a new **short form application** that must be filed before the expiration of the original confidential treatment order. The order can be extended for three, five or ten years. The company must include the reason for the extension of the order and must certify that the most recently-filed application for confidential treatment continues to be true. This short form may not be used to add additional exhibits or to make additional redactions to an exhibit. If a company reduces the number of redactions, it must refile the agreement reflecting the changed redactions.

Companies may also continue to file an application for extensions as they have traditionally done.

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