

insights

TYPES NOT MAPPED YET May 08, 2019 | TTR not mapped yet | Michele C. Kloeppel, Sarah E. Larson

SEC adopts new procedure for confidential treatment requests and extensions

Earlier this year, the Securities and Exchange Commission (the “SEC”) [finalized amendments](#) to its regulations to modernize and simplify disclosure requirements for public companies, investment advisors and investment companies, consistent with the Commission’s mandate under the Fixing America’s Surface Transportation (FAST) Act. The amendments are intended to improve the readability and navigability of disclosure documents and discourage repetition and disclosure of immaterial information.

The amendments included new procedures for filing redacted material agreements with the SEC without the need to make a formal confidential treatment request.

New rule requirements

Companies may now file redacted material contracts without applying for confidential treatment so long as the redacted information (i) is not material and (ii) would be competitively harmful if publicly disclosed. This is the same standard as the prior confidential treatment requirements.

To file redacted material contracts, companies must:

- 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 review these filings for compliance with the new rules and may request supplemental information in connection with this review.

Extension of a previously granted confidential treatment request

Shortly following the release of the finalized amendments, the SEC’s Division of Corporation Finance [announced a streamlined procedure](#) to extend confidential treatment for exhibits that are subject to a previously granted confidential treatment request.

The SEC Staff has developed a [short form application](#) to facilitate the process of filing an application to extend the time for which confidential treatment has been granted.

In this one-page document, companies must:

- Affirm that the most recently considered application continues to be true, complete and accurate regarding the information for which the company continues to seek confidential treatment;
- Request that the time period for confidential treatment be extended for an additional three, five or ten years; and
- Provide a brief explanation to support the request.



Companies are not required to refile the unredacted documents with the request or provide the supporting analysis previously provided if the analysis remains the same as presented in the most recent application.

The short form application is to be submitted by email to CTExtensions@sec.gov. If the SEC Staff has questions relating to the application, they will contact the company.

Please reach out to one or more of the authors of this alert if you would like more information regarding the changes being implemented by the amendments.

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