



Back in Business: What the SEC's Post-Shutdown Guidance Means for Issuers and Underwriters

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On November 13, 2025, following the end of the federal government shutdown, the Securities and Exchange Commission (SEC) issued guidance that offers much-needed clarity to issuers, underwriters, and advisors navigating filings made during and immediately after the shutdown. With more than 900 registration statements filed during the shutdown, questions quickly mounted regarding automatic effectiveness, the treatment of missing information under Rule 430A, acceleration mechanics, and the status of filings already in the review pipeline. The staff of the SEC's Division of Corporation Finance addressed these topics directly through a series of Questions and Answers. This alert explains the guidance, describes the practical implications for capital markets and M&A participants, and recommends near-term steps to adapt filing and transaction timelines.

WHAT THE SEC SAID: ANSWERS THAT MATTER FOR PENDING AND NEW FILINGS

EFFECTIVENESS OF REGISTRATION STATEMENTS FILED DURING SEC CLOSURE

The Staff confirmed that issuers that removed a delaying amendment, or that filed a new registration statement without a delaying amendment while the Division's operations were closed, do not need to add a delaying amendment now that the Division has reopened. Those registration statements will become effective by operation of law after 20 days under Section 8(a) of the Securities Act and Rule 459. The standard liability and antifraud provisions continue to apply to these filings, which means companies and their advisors should reconfirm that the registration statement contains no material misstatements or omissions of information required to be stated therein or necessary to make the statements not misleading.

STAFF GUIDANCE ON RULE 430A OMISSIONS DURING SEC SHUTDOWN

With respect to offerings that relied on Rule 430A, the Staff stated it will not recommend enforcement action if an issuer omitted information specified in Rule 430A from the form of prospectus filed as part of a registration statement during the shutdown and that registration statement later goes effective by operation of law under Section 8(a) and Rule 459. This is meaningful relief for issuers that advanced their filing processes during the closure. That said, the antifraud standards still govern; companies should carefully evaluate whether any omission could be materially misleading, and consider whether to supplement the disclosure before commencing offers and sales.

REQUESTING EARLY EFFECTIVENESS AFTER REMOVING A DELAYING AMENDMENT

For issuers that removed a delaying amendment or filed without one and whose 20-day period has not yet run, the Staff will consider requests to accelerate effectiveness prior to the end of that period if the registration statement is amended to include a delaying amendment and if acceleration under Rule 461 is otherwise appropriate. In practical terms, if market windows or deal calendars require an earlier effective date now that the Division is operational, acceleration remains available—provided the filing reverts to the standard delayed-effectiveness framework first.

EFFECTIVENESS OF POST-EFFECTIVE AMENDMENTS FILED DURING SEC CLOSURE

Post-effective amendments filed while the Division was closed will be declared effective by the Staff unless the company requests otherwise. Companies that prefer to control the effective date—for example, in connection with a shelf takedown program or coordinated disclosure events—should promptly contact their assigned industry office to request a delay. Underwriters likewise should track the status of any such amendments to ensure that offering schedules and diligence steps align with the timing of effectiveness.

TIMING AND REVIEW OF PRELIMINARY PROXY AND INFORMATION STATEMENTS

The guidance also addresses proxy and information statements. If an issuer filed a preliminary proxy statement (PRE14A or PREM14A) or a preliminary information statement (PRE14C or PREM14C) while the Division was closed, the issuer may file the definitive materials once the applicable 10-calendar-day period under Exchange Act Rules 14a-6 or 14c-5 has expired, even though the Division has since reopened. If, however, the Staff indicated prior to the shutdown that it would review the preliminary filing, that review will continue notwithstanding the expiration of the 10-day period. Issuers in this position should plan for SEC comments and potential revisions consistent with the Division's pre-shutdown posture.

FORM 10 REGISTRATION AND POST-EFFECTIVENESS REPORTING OBLIGATIONS

For companies that filed a Form 10 shortly before or during the closure to register a class of securities under Section 12(g) of the Exchange Act, the Staff confirmed that the Form 10 will become automatically effective after 60 calendar days. Once the Form 10 is effective, the company will be obligated to begin current and periodic reporting under the Exchange Act. Although effectiveness will occur automatically, the Staff may review subsequent periodic reports filed after effectiveness, so companies should ensure that they are ready for public-company reporting obligations and have associated disclosure controls in place.

ACCELERATION REQUESTS FOR REGISTRATION STATEMENTS NOT PREVIOUSLY UNDER REVIEW

If, prior to the shutdown, the Staff communicated that it was not reviewing a pending registration statement, the issuer may now request acceleration of the effective date. Issuers whose offerings are time-sensitive should prepare and submit acceleration requests when ready, confirming that all conditions for acceleration under Rule 461 are satisfied.

STAFF REVIEW PRIORITIES AND BACKLOG CONSIDERATIONS

Filings that were under review before the shutdown will continue to be reviewed in the order in which they were received. Issuers in active review should maintain dialogue with their assigned reviewers and anticipate that response times may be longer due to the backlog. Planning for iterative amendments and comment resolution remains important, particularly for transactions with fixed signing or launch windows.

QUEUE MANAGEMENT FOR FILINGS SUBMITTED DURING SEC SHUTDOWN

For filings that included a delaying amendment and were submitted while the Division was closed, the Staff will process those filings in the order received once operations resume. The same first-in, first-out approach will apply to confidential draft submissions made during the closure. Companies that submitted during the closure should expect their submissions to enter the queue based on submission time, and should adjust transaction timetables accordingly.

PRACTICAL IMPLICATIONS FOR ISSUERS, UNDERWRITERS, AND ADVISORS

The guidance provides reassurance on several fronts: automatic effectiveness by operation of law remains intact for filings that omitted delaying amendments during the closure; omissions of Rule 430A information in that circumstance will not result in an enforcement recommendation; post-effective amendments will become effective absent a contrary

request; preliminary proxy and information statements can proceed to definitive filing after the standard 10-day period; and Form 10s will automatically become effective after 60 days. At the same time, the Staff emphasized continuity in liability exposure and review practices. Antifraud obligations continue to apply, and the Division will continue reviews and processing in the order in which filings were received. Issuers and underwriters should expect the filing backlog to affect their timelines, and should incorporate additional buffer time into launch plans for capital markets transactions.

Acceleration remains an option for issuers whose filings were not under review and for those that re-insert a delaying amendment, but it is not a cure-all. The Staff will consider acceleration requests consistent with Rule 461, and issuers should be prepared to demonstrate that the registration statement fully complies with disclosure requirements and that acceleration is in the public interest. Underwriters assessing whether to support an acceleration request should align the distribution plan, due diligence, and marketing calendar with any anticipated effective date.

WHAT TO DO NOW

Issuers and other market participants should:

- Confirm whether any registration statement is approaching effectiveness by operation of law, and whether any information omitted under Rule 430A requires supplemental disclosure or a pre-effective amendment to avoid material omissions.
- For post-effective amendments filed during the shutdown, decide promptly whether to allow the Staff to declare them effective now or to request a delay to coordinate with offering activity.
- Recalibrate transaction and disclosure calendars to the order in which the Division is processing filings. For deals that depend on the completion of SEC review, plan for longer review times and ensure that gating items—such as financial statement updates, comfort procedures, and rating agency interactions—are sequenced with realistic milestones. Where appropriate, consider whether inserting a delaying amendment and then seeking acceleration would better align the timing of effectiveness with market windows.
- Reinforce governance and controls. The Staff’s guidance underscores that even when operations are disrupted, the core expectations of accuracy, completeness, and timeliness of disclosure persist. Companies should reconfirm disclosure committee processes, documentation of materiality judgments, and coordination among legal, finance, and underwriting teams to mitigate risk as filings move toward effectiveness in a compressed and backlogged environment.

BOTTOM LINE

The Division’s post-shutdown guidance aims to deliver clarity without compromising investor protection. It preserves automatic effectiveness where appropriate, provides limited relief for Rule 430A omissions, and reaffirms an orderly queue for reviews and processing—including for filings and drafts submitted during the closure. Issuers and underwriters that promptly focus on timing, disclosure quality, and acceleration strategy will be best positioned to navigate the backlog and execute transactions effectively as the SEC’s operations normalize.

Winston’s Capital Markets and Securities Law Watch will continue to monitor developments and will provide our readers with additional updates as they become available. For more information, or if you have any questions, please contact the authors of this blog post or your regular Winston contacts.

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Michael J. Blankenship

David A. Sakowitz

[Ben D. Smolij](#)

[Matthew Regens](#)

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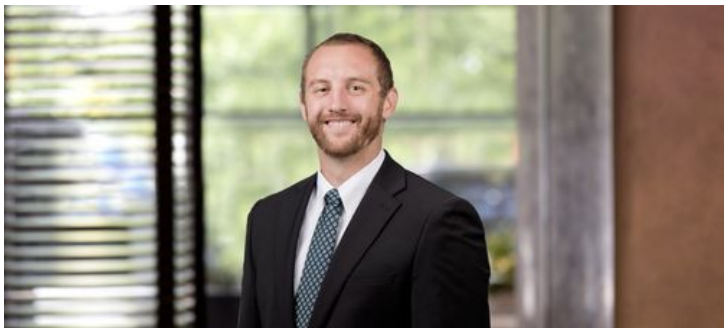
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Matthew Regens

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