



SEC Staff Issues New Guidance Making Capital Raising Easier for Non-WKSI Form S-3 Issuers

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On March 20, 2025, the staff of the U.S. Securities and Exchange Commission's (the SEC) Division of Corporation Finance issued [new guidance](#) that permits Form S-3 registration statements that are not automatically effective upon filing, typically used by issuers that are not well-known seasoned issuers (WKSI), to be declared effective after the issuer files its Annual Report on Form 10-K but before filing the proxy statement containing information required by Part III of Form 10-K (Part III Information) that was properly omitted from the issuer's timely filed Form 10-K. This guidance, reflected in revised Compliance and Disclosure Interpretations (C&DIs) for Securities Act Forms Question [114.05](#) and Securities Act Rules Question [198.05](#), and the withdrawal of Securities Act Forms Question [123.01](#), reverses the staff's prior guidance (in effect since July 1997) that required non-WKSI Form S-3 issuers to file their definitive proxy statements or include the Part III Information in their Form 10-Ks, including by amendment, before such Form S-3s could be declared effective.

The new guidance aligns the SEC staff's views with its long-standing guidance, in effect since 2009, applicable to automatically effective Form S-3s filed by WKSI, thereby ensuring parity among all Form S-3 filers. The SEC staff reminds all Form S-3 filers that they remain responsible for ensuring that any prospectus used in connection with a registered offering contains the information required to be included in it by Securities Act Section 10(a) and related Schedule A.

The new guidance may enable non-WKSI Form S-3 issuers to access the capital markets more swiftly and efficiently after filing their Form 10-Ks, without having to wait for the filing of their proxy statements or amending their Form 10-Ks to include Part III information.

In addition, the SEC staff issued a new C&DI, Exchange Act Forms Question [110.10](#), clarifying that the requirement in Item 16F(a) of Form 20-F to disclose any change in a registrant's certifying accountant is satisfied if the information was previously disclosed in a Form 6-K.

Winston's Capital Markets & Securities Law Watch will continue to monitor developments on SEC guidance and C&DIs, and we 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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