

SEC Reporting & Compliance Alert

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SEC Staff Explains Options Available for Expiring Confidential Treatment Orders

On September 9, 2020, the staff of the SEC Division of Corporation Finance (Staff) updated [CF Disclosure Guidance: Topic No. 7 \(Confidential Treatment Applications Submitted Pursuant to Rules 406 and 24b-2\)](#) to explain the options available for companies where a confidential treatment order covering redacted terms in material agreements is about to expire. The availability of those options, described below, will depend on the particular facts and circumstances.

- **Refile the redacted exhibit** in accordance with the updated exhibit-filing rules (without a confidential request) if more than three years have passed since the initial confidential treatment order was issued, the agreement remains material to investors, and the redacted terms are not material and would be competitively harmful if publicly disclosed. For additional information, refer to our guide (linked below) under “[Refiling Redacted Exhibits Under Updated Exhibit Rules.](#)”
- **Refile the unredacted exhibit** if the agreement remains material to investors but none of the previously redacted information continues to require protection from public disclosure.
- **Request an extension of the confidential treatment order** if the agreement remains material to investors and the previously redacted information continues to be confidential.
 - If the initial order was issued less than three years prior to its impending expiration: The company may submit a one-page [short-form extension request](#) to the SEC at CTExtensions@sec.gov. For additional information, refer to “[Short-Form Extension Requests](#)” in our guide.
 - If the initial order was issued more than three years prior to its impending expiration: The company is not permitted to submit a short-form application but may submit an entirely new confidential treatment request under Rule 406 or 24b-2 (as described in our guide under “[Confidential Treatment Requests Under Rules 406 and 24b-2](#)”). This option usually is less desirable than refiling the redacted exhibit in accordance with the updated exhibit-filing rules, given that the former entails sending another unredacted version of the agreement to the SEC along with producing and submitting a new confidential treatment request.

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For additional information regarding the requirements for redacting exhibit filings and submitting confidential treatment requests or extension requests, please see our updated "[Guide to Maintaining Confidentiality of Commercially Sensitive Information in Agreements Filed With SEC.](#)"

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