SEC Creates New File Transfer System for Supplemental Materials and Rule 83 Confidential Treatment Requests

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The SEC announced last week that in light of COVID-19 concerns, the Division of Corporation Finance is providing a temporary secure file transfer process for the submission of (i) supplemental materials that are requested by the SEC about registrants and their registration statements, reports and activities pursuant to Rules 418 and 12b-4 and (ii) information subject to Rule 83 confidential treatment requests.

Rule 83 requests are those confidential treatment requests for which no other confidential treatment process applies. For example, a Rule 83 request can apply to supplemental information requested by the SEC in connection with the its review of redacted exhibits under Item 601(b)(2) and (10) of Regulation S-K and Form 20-F. For Rule 83 confidential treatment requests, the SEC stated that the issuer may continue to submit requests in paper, but this could cause a delay in the review of the materials. An issuer desiring to make a request via file transfer should first contact a staff member associated with the request to request the initiation of a secure file transfer.

The new file transfer system is not available for confidential treatment requests under Rules 406 (for information required to be filed under the Securities Act of 1933) or 24b-2 (for information required to be filed under the Securities Exchange Act of 1934), which must continue to be filed in paper with the Office of the Secretary.

For supplemental materials, the SEC stated that it would not retain the information after the materials have been reviewed.

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