

NEWSLETTER – DECEMBER 2011

SEC LIMITS CONFIDENTIAL SUBMISSIONS BY FOREIGN PRIVATE ISSUERS

On December 8, 2011, the U.S. Securities and Exchange Commission (the “SEC”) issued a new policy¹ limiting the ability of foreign private issuers to submit registration statements to the SEC on a confidential basis in connection with their first time registration statements, which will typically be in connection with their initial public offering. Foreign issuers planning to list only in the United States (without a concurrent listing in their home jurisdiction or on other foreign exchange) will be most impacted by this new policy².

Prior Policy

Prior to December 8, 2011, foreign issuers were able to submit initial registration statements and related amendments (i.e. on Form F-1 for an initial public offering or on Form 20-F for a listing with no associated public offering) to the SEC for review on a confidential basis. That confidential review procedure was put in place to accommodate the majority of foreign issuers that were also listing on a foreign exchange since many foreign exchanges ordinarily did not require public disclosure of the registration statement before completion of review. This practice also enabled foreign issuers to prepare to access the U.S. markets, respond to SEC comments and resolve any complicated issues, without publicly revealing their plans until they were ready to launch the offering. If necessary, they could also quietly withdraw their registration statement without notifying the public markets. The prior policy was itself a modification of an earlier policy that had allowed confidential filing of all registration statements (not just the initial one) filed with the SEC by foreign private issuers. These provisions were considered very attractive to foreign private issuers considering filing in the United States.

However, in enacting the new policy, the SEC noted that the majority of foreign private issuers currently using the confidential review procedure were not listing their securities on exchanges outside of the United States. Therefore, the SEC stated that it is appropriate to limit its policy as provided below.

New Policy

As of December 8, 2011, the SEC will review initial registration statements of a foreign issuer on a confidential basis only if such issuer is: (1) a foreign government registering its debt securities; (2) a foreign private issuer that is listed or is concurrently listing its securities on a non-US securities exchange³; (3) a foreign private issuer that is being privatized by a foreign government; or (4) a foreign private issuer that can demonstrate that the public filing of an initial registration statement would conflict with the law of an applicable foreign jurisdiction. In addition, shell companies, blank

¹ The SEC release can be found at <http://sec.gov/divisions/corpfin/internatl/nonpublicsubmissions.htm>

² It should be noted that despite this change, once traded in the US, foreign issuers will continue to enjoy other benefits not available to domestic US issuers.

³ A company (i) previously listed on the Tel Aviv Stock Exchange or (ii) applying to concurrently list on both the Tel Aviv Stock Exchange and on a U.S. stock exchange, would remain eligible for the confidential submission process.

check companies, special purpose acquisition companies and issuers with no, or substantially no, business operations will not be permitted to use the non-public submission procedure. The SEC added that this change in policy will promote transparency and investor protection.

The SEC also noted that other circumstances could develop in which the SEC might request a foreign issuer to publicly file its registration statement even though it comes within any of the four categories listed above. Examples include circumstances involving a competing bid in an acquisition transaction or publicity about a proposed offering or listing. Confidential submissions by issuers that do not fall within the new policy guidelines but that were received by the SEC before December 8, 2011 will continue to be reviewed by the SEC without a public filing. However, the next draft of the registration statement must be filed publicly on EDGAR.

While this new policy was effective as of December 8, 2011, the SEC noted that it will continue to assess use of this procedure and may make changes in the future.

* * *

Please direct any queries you may have regarding these developments to:

Adrian Daniels
adrian@arnon.co.il
+972-3-608-7726

Eric Spindel
erics@arnon.co.il
+972-3-608-7726