

MEMORANDUM

DATE: December 22, 2011
TO: Clients and Friends
FROM: Gross, Kleinhendler, Hodak, Halevy, Greenberg & Co.
RE: **Shift in SEC Policy Regarding Initial Filings by Foreign Private Issuers**

The Securities and Exchange Commission ("**SEC**") announced this month an abrupt change to a long-standing policy permitting initial registration statements of foreign private issuers ("**FPIs**") to be filed on a confidential basis.

What was the old SEC rule regarding confidential foreign filings?

Prior to the new announcement, FPIs could submit initial public offering documents and other first-time registration statements on a confidential basis, thereby resolving all SEC comments prior to public filing. Benefits to foreign private issuers included the ability to receive and respond to SEC comments, sometimes over long periods of time, without public knowledge that a securities offering was being considered in the U.S. Indeed, if a confidential registration statement was later withdrawn, for example due to accounting concerns expressed by the SEC or for any other reason, there often would be no public disclosure at all (and no filing fee paid).

What change did the SEC announce regarding confidential foreign filings?

The SEC's new policy, effective immediately, limits confidential filing of initial registration statements to the following:

- Foreign governments registering debt securities;
- FPIs that are already listed or concurrently listing their securities on a non-U.S. exchange;
- FPIs being privatized by a foreign government; and
- FPIs able to demonstrate that public filing would conflict with foreign law.

In addition, shell companies, blank check companies, and issuers with no or substantially no business operations will not be permitted to file registration statements on a confidential basis. Even if a filing qualifies for confidential treatment under the new policy, the SEC said that it may require public disclosure under certain circumstances, such as a competing bid in an acquisition transaction or if there is already publicity about a proposed offering or listing.

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Why did the SEC make this change?

The SEC said that it acted due to a change in the profile of FPIs conducting IPOs or otherwise filing registration statements in the U.S. Whereas historically a majority of such filers had or were having their securities traded on a non-U.S. exchange, and such foreign markets ordinarily did not require disclosure of the draft filing, more recently this is no longer the case. Today, the "vast majority" of such filers have no intention of listing their securities outside the U.S. This change in profile weakened the original rationale for permitting confidential filings, leading the SEC to conclude that restricting such confidential filings would promote "transparency and investor protection".

What is the impact of this policy change?

FPIs not already listed on a non-U.S. exchange (or concurrently seeking to list on a non-U.S. exchange) looking to go public in the U.S. will now be required to make each draft registration statement public on Edgar, the SEC's electronic filing system. SEC comment letters and company responses to such letters will also be public.

Israeli companies looking to go public in the U.S. should be aware of this new policy and identify potential issues in advance of a filing of a registration in order that, to the extent possible, the draft registration statement filed is of sufficient quality to minimize SEC comments.

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This memo is intended only as a brief outline of the issues described, and is not meant to be a substitute for legal advice. Please contact any member of our U.S. securities group for additional information on this topic.