

Internet appendix A. Confidential treatment request process to redact information at the IPO

Prior to issuing public securities, the SEC requires that a firm file a registration statement (e.g. S-1, SB-2, F-1) containing offering information, key shareholders, company descriptions and certain financial information. Item 601 of Regulation S-K also requires that particular types of exhibits be furnished to the public in conjunction with the initial registration statement or in a subsequent amendment.¹ These agreements are noted in a table toward the bottom of the registration statement. Items listed as 10.XX are material contracts or agreements that an investor might find important when making investment decisions.

If a firm wishes to redact particular components from one or more agreements, it can request confidential treatment for such material with the SEC under Rules 406 and 24b-2. The process starts when the firm privately submits the full non-redacted agreement in writing to the SEC along with a legal analysis on the potential competitive harm that could occur if the information were publicly disclosed. The firm must also specify the requested duration of the confidential treatment. The length generally corresponds to the length of the agreement, but is generally not allowed to exceed 10 years.

The SEC reviews the confidential treatment request and makes written or verbal comments to the firm if the reviewers require more detail or have concerns. In the meantime, the firm must make note in the exhibit index of the registration statement that it has requested confidential treatment for particular agreements. The firm files the redacted exhibit with either the initial registration statement or with one of the subsequent amendments. It also must place a notation in the publicly filed version of the agreement each time material is omitted from public view. Instead of black-lining as is often the case in the redaction of documents, the redacted portions are indicated with asterisks inside of brackets (see examples in Appendix B). This redaction method makes it difficult to know precisely how many words or lines of a document were redacted.

¹ For a complete description of the required exhibits see the Cornell University Law School website: <http://www.law.cornell.edu/cfr/text/17/229.601>

To have the request granted, the redacted material must not have been previously publicly disclosed, the redaction cannot be overly broad, and most information required to be reported under Regulation S-K cannot be redacted. Examples of these restrictions include: key customer identity, interest expense, MD&A discussion, and related-party transactions.

If the request is granted, then the omitted material is exempted from disclosure associated with requests under the Freedom of Information Act (FOIA) for the duration of the confidential treatment period. If the SEC does not grant the confidential treatment request, then the firm must file the full non-redacted contract. The company could also voluntarily withdraw the request if it no longer feels the information is proprietary or the contract is no longer material. Unfortunately, we do not have access to information on withdrawn confidential treatment requests so we cannot examine that subset of firms. The confidential treatment review may be lengthy, so the SEC suggests that firms file the request simultaneously with the initial registration statement. Moreover, the firm must resolve any issues raised by the SEC in regards to the request before the registration statement can be declared effective. This requirement could potentially delay the public offering.

Once the confidential treatment order expires, the information is subject to FOIA requests. If the contract is still material with sensitive information, the firm can request an extension of the previous order. If the contract is still considered relevant and material and no extension request is made, the firm should file the unredacted agreement with public EDGAR.

Internet appendix B. Examples of redaction from material agreements at the IPO

Firm: Trius Therapeutics, Inc.

IPO date: August 2, 2010

Material agreement: Research agreement with the regents of the University of California

Excerpt from agreement:

- **1.0 – Objective:** ...We will minimize the time for discovery of novel mechanism antibacterials using our unique collection of *Bacillus anthracis* antisense strains hypersensitized to [...***...] different bacterial-specific essential targets. We will accelerate ..., thus allowing semi-synthetic modification to optimize the drug properties. [...***...] The resulting therapeutics will show no...
- **2.0 – Scope:** ...The scope of work for this contract falls into the following 4 stages: [...***...] ...
- In Option Task 1, [...***...]
- It is anticipated that[...***...]. However, the other studies in Option 3 are budgeted for a single compound. DTRA [...***...] and [...***...] to be triggered at the discretion of DTRA (see figure below).

Firm: Zynga, Inc.

IPO date: December 16, 2011

Material agreement: Developer agreement with Facebook, Inc.

Excerpt from agreement:

- **Co-Marketing.** We acknowledge and agree that you have the right to issue up to [*] of the value of your paid Zynga In-Game Currency per Covered Zynga Service per month through advertising co-marketing relationships with third parties.
- **Payment terms for Facebook credits resold by you.** There will be [*] payment periods [*] for all Facebook Credits sold by you pursuant to Section 4.b(ii)(3)(a) or Section 4.b(ii)(3)(b): [*]. You will pay out to us for each period within [*] days after the end of each period.