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If the Government Shuts Down, Corp Fin Will Barely Function



We barely avoided a federal government shutdown, but it still could happen 45 days hence since what Congress funded was a stopgap measure. If there is a shutdown in mid-November, the SEC would be operating in accordance with this [operations plan](#). Late last week, Corp Fin posted this [announcement](#) that includes 22 FAQs to inform us that its activities would be extremely limited during a shutdown, just like during other shutdowns (the guidance is similar to the guidance provided during those other shutdowns).

Here are seven things to know from the FAQs:

1. **Edgar Would Still Be Open** – Edgar would still continue to function normally and accept filings (FAQ #13).
2. **The Staff Would Not Declare Registration Statements Effective** – Under FAQ #15, the Staff wouldn't be able to declare registration statements effective. The first group of the FAQs is about working to get your deals done before a shutdown occurs - if you're doing a deal, you should read those ahead of the next possible shutdown.
3. **Removing "Delaying Amendments" Would Be Risky** – You need the Staff to accelerate effectiveness of a registration statement because a "delaying amendment" was included in it. If you file an amendment of the registration statement to specifically remove a delaying amendment - you need specific "magic" language in that amendment to accomplish that - so that it would go automatically effective in 20 days, that is technically feasible – but the Staff warns of the risks involved in doing so (FAQs #11-12). The Staff notes the risks include the liability and antifraud provisions of the federal securities laws, as well as include whether the company is Form S-3 eligible, whether the company is a repeat issuer, whether the registration statement is subject to review, and whether significant unresolved staff comments remain outstanding. The SEC is still able to issue a stop order during a shutdown if it decides it wants to stop a registration statement from automatically becoming effective.

If you do remove a delaying amendment - or file a registration statement without one - and Corp Fin's operating status changes due to the end of a shutdown, the Staff likely will contact you to add one (FAQs #21-22).

4. **"Shutdown Days" Are Considered "Business Days"** - For purposes of figuring out the timing of filing things like Form 8-Ks and Form 4s, the fact that the government is shut down doesn't change a business day into a weekend or holiday (FAQ #18).
5. **You Can File Definitive Proxies After Filing a Preliminary One Without Hearing From the Staff** – If you have a proxy that meets the criteria that it first needs to be filed in preliminary form, you can file a definitive proxy after 10 calendar days without hearing from the Staff during a shutdown (FAQ #16).
6. **Shareholder Proposal (and Other) No-Action Requests Wouldn't Be Processed** – The Staff won't be processing Rule 14a-8 or other no-action requests during a shutdown. FAQ #19 asks that companies and proponents work together to resolve questions in the absence of the normal Rule 14a-8 process.
7. **The SEC Wouldn't Be Adopting Any Rules** - The SEC won't be conducting any of its normal rulemaking activities during a shutdown (although the SEC's website would still accept comment letters on proposals; but I'm not sure if they would be posted until the shutdown was over). I wonder if this means the climate rules will be adopted before the next possible shutdown...

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