



March 31, 2020

More Coronavirus Updates from the SEC

SEC Issues New Order Further Extending Temporary Filing Deadline Extension for Public Companies; Also Issues Additional Guidance on COVID-19 Disclosure

On March 25, 2020, the U.S. Securities and Exchange Commission (SEC) issued an order¹ that, subject to certain circumstances, provides affected public reporting companies an additional 45 days to file certain disclosure reports and proxy materials that otherwise would have been due on July 1, 2020, or earlier if the filer cannot meet the deadline because of COVID-19. This order supersedes the SEC's March 4, 2020, order that provided this relief for filings due on or before April 30, 2020. As under the March 4 order, a public company relying on the relief must furnish the SEC with a Form 8-K stating, among other things, why the relief is needed in its particular circumstances. In addition, the public company must state when it expects to file the delayed report and include in the current filing the company-specific risk factor(s) explaining the impact, if material, of COVID-19 on its business. The delayed filing relief extends to filings under Exchange Act Section 13(g), but relief is **not** provided for filings or amendments under Exchange Act Section 13(d) (Schedule 13D) or Section 16, such as Forms 3 and 4.

Also on March 25, 2020, the SEC's Division of Corporate Finance (Division) issued guidance regarding disclosure and other securities law obligations that companies should consider with respect to COVID-19 and related business and market disruptions². The Division reiterated that the SEC's disclosure requirements are interpreted broadly and can apply to a wide range of business risks. The Division believes that a number of existing rules or regulations require disclosure about the known or reasonably likely effects of, and types of risks presented by, COVID-19. Disclosure of these risks and COVID-19-related effects may be necessary in multiple sections of disclosure documents, including Management's Discussion and Analysis, Business, Risk Factors, Legal Proceedings, Disclosure Controls and Procedures, Internal Control Over Financial Reporting and the Financial Statements.

The Division stated that COVID-19 disclosure should be specific to the filing company's situation, stating specific risks and effects and how the company is responding. The Division included detailed suggested questions to consider in light of current and future operations, focusing on COVID-19's impact on:

- financial results;
- capital and financial resources;
- balance sheet asset valuations;
- material balance sheet impairments, increases in allowances for credit loss, restructuring charges or changes in accounting judgments;
- ability to maintain operations and financial and disclosure controls while employees work remotely;
- business continuity plans;
- demand for products and services provided;

- supply chain and distribution channels;
- human resources and productivity; and
- ability to operate and achieve business goals due to travel restrictions and border closures.

The Division reminded disclosing companies to avail themselves of the safe harbors for forward-looking statements provided in the Securities Act of 1933 and the Securities and Exchange Act of 1934. The Division also reminded disclosing companies to avoid selective disclosure about the impact of COVID-19 on their business and to take steps to ensure that officers, directors and other insiders do not trade in the company's securities prior to full public disclosure.

The Division recognized that the impact of COVID-19 on businesses may present novel and complex accounting issues and encouraged companies to address financial reporting matters and retain any necessary experts as timely as possible. The Division also reminded companies of their obligation with respect to the presentation of non-GAAP financial measures and noted, among other things, that if a GAAP financial measure is not available at the time of an earnings release presenting non-GAAP financial measures, the Division would not object to companies reconciling a non-GAAP financial measure to preliminary GAAP results that either include provisional amounts based on a reasonable estimate, or a range of reasonably estimable GAAP results.

[Click here](#) to read more *Brownstein alerts on the legal issues the coronavirus pandemic raises for businesses.*

¹ Press Release: SEC Extends Conditional Exemptions From Reporting and Proxy Delivery Requirements for Public Companies, Funds, and Investment Advisers Affected By Coronavirus Disease 2019 (COVID-19) (March 25, 2020), containing a link to the Order, available at <https://www.sec.gov/news/press-release/2020-73>.

² Securities and Exchange Commission, Division of Corporation Finance, CF Disclosure Guidance: Topic No. 9 (March 25, 2020), available at <https://www.sec.gov/corpfin/coronavirus-covid-19>.

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