

UPDATES

SEC Provides Conditional Filing Relief to Companies Affected by Coronavirus

March 6, 2020

On March 4, the U.S. Securities and Exchange Commission (SEC) [announced](#) the issuance of an [SEC Order](#)¹ providing conditional relief to public companies that are unable to timely comply with their filing obligations as a result of the novel coronavirus (COVID-19) outbreak.² Most notably, the Order provides an additional 45 days to file Exchange Act reports (e.g., Forms 10-K, 20-F, 10-Q, 8-K, 6-K and proxy statements) due between March 1 and April 30, 2020, subject to specified conditions, including the filing of a Form 8-K or Form 6-K by the later of March 16 or the report's original filing deadline. The Order also exempts companies preparing for their upcoming annual meetings from the requirement to furnish proxy statements and other soliciting materials to stockholders when mail delivery is impossible.

The relief is available to companies located in regions affected by COVID-19 but also to U.S. companies with significant operations in the "affected areas" (which is not defined). The SEC will continue to monitor developments and may extend the relief period beyond April 30 or provide additional types of relief if deemed appropriate.

45-Day Extension of Filing Deadlines

The Order provides an additional 45 days to file certain disclosure reports that would otherwise have been due between March 1 and April 30, 2020, subject to the following conditions:

- The company (or any person required to make any filings with respect to the company) is unable to meet a filing deadline due to circumstances related to COVID-19 (e.g., disruptions to transportation; limited access to facilities, support staff and professional advisors).
- Any company relying on the Order furnishes to the SEC a Form 8-K or Form 6-K by the later of March 16, 2020 or the original filing deadline of the report that
 - states that it is relying on the Order;
 - briefly describes the reasons why it could not file the report, schedule or form on a timely basis;
 - provides an estimated date by which it expects to file the report, schedule or form; and
 - includes, if appropriate and material, a risk factor explaining the impact of COVID-19 on its business.

- If the reason a report cannot be timely filed relates to the inability of any person (other than the company) to furnish any required opinion, report or certification, the Form 8-K or Form 6-K must have attached as an exhibit a statement signed by the person giving the specific reasons why the person is unable to furnish the required opinion, report or certification on or before the report's filing deadline.
- The company (or any person required to make any filings with respect to the company) files with the SEC any required report, schedule or form no later than 45 days after the original due date.
- In any report, schedule or form filed by the extended deadline, the company (or any person required to make any filings with respect to the company) must disclose that it is relying on the Order and state the reasons why it could not file such report, schedule or form on a timely basis.

The Order notes that a company relying on the Order would not be required to file a Form 12b-25 so long as the report, schedule or form is filed by the extended due date.

The relief applies to companies subject to the reporting requirements of Exchange Act Section 13(a) or 15(d) and any person required to make any filings with respect to such a company. The relief applies to reports and other filings required to be filed or furnished with the SEC under Exchange Act Sections 13(a), 13(f), 13(g), 14(a), 14(c), 14(f), 15(d) and Regulations 13A, Regulation 13D-G (but specifically excluding Schedule 13D filings), 14A, 14C and 15D and Exchange Act Rules 13f-1 and 14f-1, as applicable. These materials include, among others, Forms 10-K, 20-F, 10-Q, 8-K, 6-K and proxy statements. The relief does not apply to beneficial ownership reports (e.g., Forms 3, 4 and 5) required under Section 16 of the Exchange Act.

The time period for the relief outlined in the Order is March 1 through April 30, 2020, subject to extension by the SEC if necessary.

SEC Staff Positions Related to the Extension of Filing Deadlines

The SEC announced that its staff will take the following positions in connection with the relief granted in the Order:

- For purposes of Form S-3 eligibility (and well-known seasoned issuer status), a company relying on the Order will be considered current and timely in its Exchange Act filing requirements if it was current and timely as of March 1, 2020, and files any report due during the relief period within 45 days of the report's filing deadline.
- For purposes of Form S-8 eligibility and the current public information eligibility requirements of Rule 144(c), a company relying on the Order will be considered current in its Exchange Act filing requirements if it was current as of March 1, 2020, and files any report due during the relief period within 45 days of the report's filing deadline.
- Companies that receive an extension on filing Exchange Act annual or quarterly reports pursuant to the Order will be considered to have a due date 45 days after the report's filing deadline. These companies will be allowed to rely on Rule 12b-25 if they are unable to file the required reports on or before the extended due date.

Relief From Furnishing Proxy Statements When Mail Delivery Is Impossible

The Order also provides an exemption from the requirement to furnish proxy statements and other soliciting materials pursuant to Exchange Act Section 14 and related rules when mail delivery is not possible, subject to the following conditions:

- The stockholder has a mailing address in an area where mail delivery has been suspended due to COVID-19.
- The company has made a good faith effort to furnish the proxy statement or other soliciting materials to the stockholder as required by applicable rules.

SEC Staff Standing By to Offer Additional Assistance

The SEC encouraged companies to contact the SEC staff if they need additional assistance in meeting their filing obligations. The SEC provided as an example a situation where a company is unable to obtain the required signature of an executive who is located in a quarantined zone. The SEC staff will address these fact-specific issues on a case-by-case basis.

General Reminders About Disclosure Obligations In Light of the COVID-19 Outbreak

In the SEC's announcement, SEC Chair Jay Clayton urged companies to work with their audit committees and auditors to ensure that their financial reporting, auditing and review processes are sufficiently robust to enable them to meet their obligations under the federal securities laws in the current environment. He added that, to the fullest extent practicable, a company should provide investors with insight regarding its assessment of, and plans to address, material risks to its business and operations resulting from COVID-19.

The announcement also highlighted the following disclosure considerations:

- If a company becomes aware of a COVID-19-related risk that would be material to investors, it should refrain from trading in the company's stock, and prevent company insiders from doing so, until investors have been notified about the risk.
- When a company discloses material information about the effects of COVID-19, it should avoid selective disclosures and disseminate the information broadly.
- A company that has made previous disclosures about COVID-19 should consider the need to update any disclosure that has become materially inaccurate.
- A company that provides forward-looking information such as known trends or uncertainties regarding COVID-19 may avail itself of the safe harbor in Exchange Act Section 21E for forward-looking statements.

¹ *Order Under Section 36 of the Securities Exchange Act of 1934 Granting Exemptions from Specified Provisions of the Exchange Act and Certain Rules Thereunder*, Release No. 34-88318 (March 4, 2020).

² The staff of the SEC's Division of Investment Management also issued a [statement](#) providing investment fund boards with relief from certain in-person voting requirements through June 15, 2020, in light of the COVID-19 outbreak.

CONTACTS

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