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SEC Extends Relief Period for Late Disclosure Reports and Updates Coronavirus-Related Disclosure Guidance

March 26, 2020

On March 25, 2020, in response to the ongoing impact of coronavirus, the SEC issued an order¹ granting exemptions from certain reporting and proxy delivery requirements for public companies. On the same date, the Division of Corporation Finance issued guidance regarding disclosure and other securities law obligations to consider with respect to coronavirus.

Extended relief period for disclosure reports. Recognizing the ongoing challenges of meeting timing requirements in light of the crisis, the order supersedes the SEC order of March 4, 2020 and provides companies impacted by coronavirus with a 45-day extension to file certain disclosure reports that are otherwise due under the prior order to July 1, 2020 (two months longer than the period covered by the prior order). In addition, the order notes that the SEC “intends to monitor the current situation and may, if necessary, extend the time period during which this relief applies, with any additional conditions the Commission deems appropriate and/or issue other relief.” Separately, the SEC has also emphasized that health and safety are the first priority and “should not be compromised to meet reporting requirements.”

The conditions to rely on such relief remain the same for this order as the previous order. Among other conditions, companies must furnish a Form 8-K explaining the need for such relief for each delayed disclosure report and disclose reliance on this order and the reason for the untimely filing in the delayed report once filed.

In connection with the order, the Staff of the Commission announced that, for purposes of Form S-3/F-3 eligibility, 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 the

¹ Available [here](#).

first day of the relief period and it files any report due during the relief period within 45 days of the filing deadline for the report. Similar flexibility will apply to Form S-8 eligibility.²

Relaxed delivery requirements for proxy statements and other shareholder communications. The order also provides that a registrant is exempt from delivery requirements of proxy statements, information statements, annual reports and other soliciting materials if: (1) the registrant's security holder has a mailing address located in an area where, as a result of coronavirus, the common carrier has suspended delivery service of the type or class customarily used by the registrant or other person making the solicitation; and (2) the registrant or person making the solicitation has made a good faith effort to furnish the soliciting materials or information statement materials, as applicable.

Updated disclosure guidance for the impact of coronavirus. Also on March 25, 2020, the Division of Corporation Finance issued guidance regarding disclosure and other securities law obligations related to coronavirus.³ The majority of those considerations are addressed in our previous Client Update of March 16, 2020 available [here](#). Newly released guidance of note is that where a GAAP financial measure is not available at the time of an earnings release because the measure may be impacted by coronavirus-related adjustments requiring additional information and analysis to complete, the SEC "would not object to companies reconciling a non-GAAP financial measure to preliminary GAAP results that either include provisional amount(s) based on a reasonable estimate, or a range of reasonably estimable GAAP results." Such flexibility is, however, limited to "those non-GAAP financial measures [a company] is using to report financial results to the Board of Directors" and requires that a company "explain, to the extent practicable, why the line item(s) or accounting is incomplete, and what additional information or analysis may be needed to complete the accounting."

As discussed previously, all reporting companies should consider the impact of coronavirus on their business and be ready to make the necessary coronavirus-related disclosure if and when the obligation arises, including in connection with their regular SEC and investor relations reporting calendar.

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For more information regarding the coronavirus, please visit our [Coronavirus Resource Center](#).

² Press release available [here](#).

³ Available [here](#).

Please do not hesitate to contact us with any questions.



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