



Insights: Publications

The SEC Announces Conditional Regulatory Relief for Companies Affected by the Coronavirus Disease 2019 (COVID-19)

March 5, 2020

Please note: The below information may require updating, including additional clarification, as the COVID-19 pandemic is dynamic and continues to develop. Please monitor this site and/or your email for updates.

On March 4, 2020, the Securities and Exchange Commission (SEC) issued an exemptive order to assist publicly traded companies that have significant operations in areas affected by the current outbreak of coronavirus disease 2019 (COVID-19) with meeting their obligations under the federal securities laws. The SEC press release announcing the order is available [here](#) and the SEC order is available [here](#).

The order provides publicly traded companies with an additional 45 calendar days to file certain disclosure reports that would otherwise have been due between March 1 and April 20, 2020. Specifically, companies subject to the reporting requirements of Exchange Act Section 13(a) or 15(d) are exempt from requirements to file or furnish materials with the SEC under the following rules and regulations (as applicable, where certain conditions are satisfied):

- Exchange Act Sections 13(a), 13(f), 13(g), 14(a), 14(c), 14(f), and 15(d);
- Regulations 13A, Regulation 13D-G (except those provisions mandating the filing of Schedule 13D or amendments to Schedule 13D), 14A, 14C, and 15D; and
- Exchange Rules 13f-1 and 14f-1

Among other conditions, eligible companies ***must be unable to meet a filing deadline due to circumstances related to COVID-19*** and must file a Form 8-K or a Form 6-K with the SEC by the later of March 16 or original filing date of the report. The Form 8-K or 6-K must include a brief description of the reasons why the report could not be filed on a timely basis and the estimated date by which it is expected to be filed.

No guidance is provided in the order as to what constitutes sufficient grounds for relief but note that the “unable to file” standard is much higher than the existing Rule 12b-25 standard of “can not be filed without unreasonable effort and expense”, which buys an additional 15 days for annual filings and five days for quarterly filings. Issuers relying on the relief provided in the order should be prepared to prove that a timely filing was not possible, as opposed to just unreasonably difficult or expensive, if called upon to do so later.

Eligible companies are further exempt from the requirements of the Exchange Act and the rules thereunder to

furnish certain soliciting materials (including proxy statements and annual reports) and information materials (information statements and annual reports) where (i) the company's security holder has a mailing address located in an area where, as a result of COVID-19, the common carrier has suspended delivery service of the type used by the company making the solicitation and (ii) the company has made a good faith effort to furnish such soliciting materials to the security holder as required by applicable rules.

In its press release announcing the order, the SEC reiterated the importance of keeping investors informed regarding the material risks of COVID-19 to the company and how it plans to deal with such risks. The SEC also encouraged companies to consider their activities in light of their disclosure obligations under the federal securities laws, including with respect to insider trading and Regulation FD matters. Specifically, the SEC stated that, where a company has become aware of a material risk related to the coronavirus, it should refrain from engaging in securities transactions with the public and take steps to prevent directors, officers and other corporate insiders from initiating such transactions until investors have been appropriately informed about the risk. When companies do disclose material information related to the impacts of the coronavirus, they should take steps to avoid selective disclosures and to disseminate such information broadly.

We invite you to contact us directly if you have any questions regarding the SEC's order regarding conditional regulatory relief for companies affected by COVID-19.