

Snapshot

SEC extends COVID-19 relief and issues guidance

MARCH 27, 2020
SNAPSHOT 2020-12

Exchange Act filing deadlines

The SEC recently issued a new [Order](#), superseding the March 4 Order, to extend the conditional regulatory relief and assistance provided to SEC registrants affected by the COVID-19 pandemic. To address potential issues with meeting reporting obligations under the federal securities laws, SEC registrants are now provided with an additional 45 days to file certain disclosure reports that would otherwise be due from March 1 to July 1, 2020 (under the preceding order, from March 1 to April 30, 2020).

The conditions to rely on the new Order are consistent with the conditions in the March 4 Order, which are discussed in [“SEC relieves companies affected by COVID-19.”](#)

As a reminder, registrants seeking to rely on the Order are required to furnish Form 8-K or Form 6-K, as applicable, for each filing that is delayed, by the later of March 16, 2020, or the original reporting deadline.

Funds and investment advisers relief

The SEC also issued new Orders, superseding the March 13 Orders, to extend the conditional regulatory relief and assistance provided to [funds](#) and [investment advisers](#) affected by COVID-19, including relief from in-person board meetings through Aug. 15, 2020 (previously for meetings through June 15, 2020), and a 45-day extension for certain filing and delivery obligations that have original due dates on or before June 30, 2020 (previously extended to April 30, 2020).

The conditions to rely on the new Orders are consistent with the conditions in the March 13 Orders, which are discussed in [“SEC relieves funds, advisers affected by COVID-19.”](#)

As a reminder, an affected entity must notify the SEC of its intent to rely on an order and must disclose such reliance on its website.

CorpFin Disclosure Guidance

The SEC’s Division of Corporation Finance (CorpFin) issued CF Disclosure Guidance: Topic No. 9, [Coronavirus \(COVID-19\)](#). The guidance provides CorpFin’s views on disclosure and other securities law obligations companies should consider when preparing disclosure documents in relation to business and market disruptions caused by COVID-19.

CorpFin is monitoring how companies are disclosing the impact and risks of COVID-19 on their businesses, financial condition, and results of operations. CorpFin also recognizes that it may be difficult to assess the impact of the pandemic at this time, but reminds companies that what management expects the future impact to be, how management responds, and how it is planning for COVID-19-related uncertainties can all be material to investors. As a result, companies should consider the need for related disclosures within the context of the federal securities law and other principles-based disclosure systems.

Disclosing evolving impact of COVID-19

Disclosing the impact of COVID-19 may be necessary or appropriate in certain sections of the disclosure document, such as in Management's Discussion and Analysis (MD&A), the business section, risk factors, legal proceedings, disclosure controls and procedures, internal control over financial reporting (ICFR), and the financial statements. The guidance includes a non-exhaustive list of questions for companies to consider with respect to their present and future operations and the impact of COVID-19. CorpFin encourages disclosure that allows investors to evaluate the impact through the eyes of management.

CorpFin also reminds companies of the safe-harbor provisions in Section 27A of the Securities Act of 1933 and Section 21E of the Exchange Act of 1934 (Exchange Act) in relation to the disclosure of forward-looking information about material developments, including known trends and uncertainties regarding COVID-19.

Dissemination of information to investors

CorpFin reminds companies to avoid selectively disclosing material information related to COVID-19; rather, the information should be distributed broadly. Further, the company, its directors and officers, and any corporate insiders should refrain from trading in the company's securities prior to the distribution of any non-public material information.

Reporting earnings

CorpFin reminds companies of their obligations under Regulation S-K, Item 10 and Regulation G with respect to the presentation of non-GAAP measures, as well as recently issued Commission [guidance](#) on MD&A with respect to their presentation of any performance metrics. For companies considering the presentation of a non-GAAP measure to adjust for the impact of COVID-19, CorpFin reiterates that they should explain why management believes the measure is useful and how it helps investors assess the impact of COVID-19 on the company's financial position and results of operations.

Additionally, the CorpFin guidance clarifies that if a company issues an earnings release and its GAAP financial results are not available due to pending final adjustments related to the impact of COVID-19, CorpFin will not object to the company reconciling a non-GAAP measure to preliminary GAAP results. However, a reconciliation to such preliminary results will not be permitted in periodic filings, which require GAAP financial statements.

The guidance also encourages companies to proactively identify and address financial reporting

matters earlier than usual, such as the effects of COVID-19 on their assets, including impairment of goodwill or other assets, which might require assistance from an expert.

Disclosure of changes in ICFR

CorpFin provided considerations regarding disclosure of changes in ICFR under Regulation S-K, Item 308(c). In Form 10-Q or Form 10-K, registrants must disclose any change in ICFR during the last fiscal quarter that has materially affected, or is reasonably likely to materially affect, the registrant's ICFR. To the extent changes are made or will be made to ICFR, the registrant considers its obligation to disclose such changes. This is true whether the changes are due to remediation of an existing material weakness or as a result of other developments, such as changing work circumstances as a result of COVID-19.

Grant Thornton insights

Registrants that can file periodic reports by the prescribed due dates, and do not need the relief provided by the Commission, may still be impacted by COVID-19. Although the impact of COVID-19 is evolving and its future impact is difficult to predict, existing Commission rules require disclosure of known trends and uncertainties that a registrant reasonably expects will have a material impact on net sales or revenues or on income from continuing operations. Registrants are encouraged to proactively update disclosures as facts and circumstances change or become inaccurate in light of the COVID-19 pandemic.

Additionally, while most US-based registrants are impacted in some way by the COVID-19 pandemic, careful consideration and discussion with counsel may be necessary to determine whether the appropriate path to receive additional time to file certain disclosure reports is to use the regulatory relief described in the Orders. In some cases, the relief generally available under Exchange Act, Rule 12b-25 may be sufficient.

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