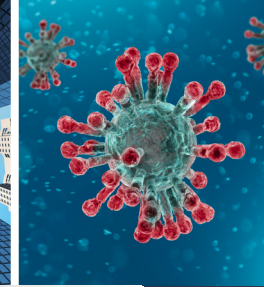


Coronavirus and Public Companies: SEC Provides Relief to Reporting Companies While Urging Appropriate Disclosure

By:
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Coronavirus and Public Companies: SEC Provides Relief to Reporting Companies While Urging Appropriate Disclosure

Public companies have been hurt by the coronavirus (COVID-19), with the most indisputable evidence of this being the drop in the Dow Jones Industrial Average by more than 20% from its February 12, 2020 high, putting it into a bear market. While the U.S. Treasury, the Fed and central banks have recently taken steps to mitigate the effects of the novel coronavirus, the Securities and Exchange Commission (SEC) has also provided regulatory relief for certain publicly traded companies based on challenges from COVID-19.

On March 4, 2020, the SEC announced in a [press release](#) conditional regulatory relief to publicly traded companies impacted by COVID-19, granting them an extra 45 days to file certain Exchange Act reports with the SEC, including annual reports on Form 10-K and quarterly reports on Form 10-Q, and Current Reports on Form 8-K, that would otherwise have been due between March 1 and April 30, 2020. The relief was issued through an [SEC Order](#) exempting the requirement of such disclosure that would otherwise have been due during that time period where certain conditions are satisfied, including in particular the relevant issuer furnishing the SEC a Form 8-K (or Form 6-K for foreign private issuers) providing a brief description of the reasons why it could not file such report on a timely basis, and, if appropriate, a risk factor section

explaining, if material, the impact of COVID-19 on its business.

The March 4 press release further clarified the SEC's position that the granting of such conditional extensions of time for the filing of Exchange Act reports per the SEC Order will not impair the eligibility of issuers (who comply with the conditions in the SEC Order) to use Form S-3 or Form S-8 as a result of not having timely filed Exchange Act reports.



The SEC is seeking to balance competing concerns of easing the reporting burden for publicly traded companies facing challenges from the coronavirus, on the one hand, while reminding

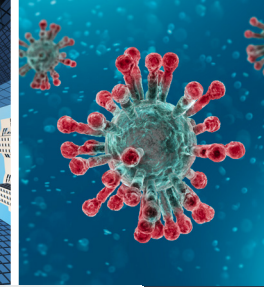
companies to provide investors with insight regarding plans for addressing material risks to their businesses and keeping markets informed of material developments, on the other hand.

The SEC Order noted that “[d]isruptions to transportation, and limited access to facilities, support staff, and professional advisors as a result of COVID-19, could hamper the efforts of public companies and other persons with filing obligations to meet their filing deadlines,” while, at the same time, “investors have an interest in the timely availability of required information about these companies.”



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The SEC had addressed coronavirus in a published statement on [January 30, 2020](#), where SEC Chairman Jay Clayton asked SEC staff to provide guidance to issuers and other market participants regarding disclosures related to the effects of the coronavirus, noting the materiality of such information, and also in a published statement on [February 19, 2020](#), where the SEC urged issuers to assess their exposure to the coronavirus and work with their audit committees and auditors to ensure that their financial reporting and related processes are as robust as practicable.



In the March 4 press release, SEC Chairman Clayton reiterated these themes and reminded reporting companies “to provide investors with insight regarding their assessment of, and plans

for addressing, material risks to their business and operations resulting from the coronavirus to the fullest extent practicable to keep investors and markets informed of material development. ... I urge companies to work with their audit committees and auditors to ensure that their financial reporting, auditing and review processes are as robust as practicable in light of the circumstances in meeting the applicable requirements.”

Since the SEC’s published statement in January regarding coronavirus disclosures, we have seen many public companies specifically mentioning coronavirus or COVID-19 in newly

created risk factor sections. Also, many reporting companies are filing reports on Form 8-K that update previously issued revenue guidance based on the potential impact of the coronavirus on the issuer and its customers. It is too soon to tell how many public companies will avail themselves of this extra 45 days relief from Exchange Act filings, but nevertheless, the SEC recognizes the rapidly changing landscape here and notes in the Order that it “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.”

If you have any questions or would like additional information, please contact your [Corporate law counsel](#) at Smith, Gambrell, & Russell, LLP or contact the following:

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