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March 6, 2020

SEC Provides Conditional Regulatory Relief for Companies Affected by COVID-19

On March 4, 2020, the SEC issued an [exemptive order](#) providing conditional regulatory relief to public companies affected by the recent coronavirus disease 2019 (COVID-19) outbreak.

The order provides public companies that are unable to meet a reporting deadline due to circumstances related to COVID-19 with an additional 45 days to file certain Exchange Act reports (e.g., Forms 10-K, 10-Q and 20-F) that would otherwise have been due between March 1 and April 30, 2020.

Companies seeking to rely on this relief must furnish a Form 8-K or Form 6-K (for foreign private issuers) by the later of March 16, 2020 or the original filing deadline of the report that includes:

- a statement that it is relying on the order;
- a brief description of the reasons why it could not file such report, schedule or form on a timely basis;
- the estimated date by which the report, schedule or form is expected to be filed;
- if appropriate, a risk factor explaining, if material, the impact of COVID-19 on the company's business; and/or
- an exhibit signed by any person, other than the company, stating the specific reasons why such person is unable to furnish any required opinion, report or certification, if that inability to furnish such required opinion, report or certification is the reason why the subject report cannot be timely filed.

In addition, a company must file the report, schedule or form no later than 45 days after the original due date, and such filing must disclose that the company is relying on the order and provide the reasons why the report, schedule or form could not be timely filed. The SEC also clarified in its [press release](#) that companies complying with the order will be considered "current" and "timely" for purposes of eligibility to use Form S-3 and Form S-8 and the current public information eligibility requirements of Rule 144(c), assuming that a company was current and timely as of March 1, 2020 and it files any delayed report within 45 days of the filing deadline for such report. Notwithstanding the SEC's order, however, companies intending to rely on this filing relief should review the terms of the reporting obligations contained in any material debt agreements as those provisions may require additional attention.

The order also provided relief to companies that are furnishing proxy statements, annual reports and other soliciting materials to stockholders that are located in an area where, as a result of COVID-19, mail delivery service has been suspended. Relatedly, a company might also begin to consider whether, due to public health concerns relating to COVID-19, it should change the location or date of its annual stockholders meeting or, if state law permits, change from an in-person meeting to a "virtual-only" meeting.

The SEC has [previously acknowledged](#) that the effects of COVID-19 "may be difficult to assess or predict with meaningful precision . . . where actual effects will depend on many factors beyond the control and knowledge of issuers." That said, Chairman Clayton advised that "how issuers plan for that uncertainty and how they choose to respond to events as they unfold can nevertheless be material to an investment decision." In its press release, the SEC reminded all companies to consider their activities in light of their disclosure obligations under the federal securities laws. For

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example, where a company has become aware of a risk related to COVID-19 that would be material to its investors, the SEC has advised that such a company should refrain from engaging in securities transactions with the public and to take steps to prevent its directors and officers from initiating such transactions until investors have been appropriately informed about the risk.

The SEC may extend the time period for the relief, with any additional conditions it deems appropriate, or provide additional relief as circumstances warrant. We will continue to monitor SEC news and developments and will update our clients on any material updates.

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If you would like to learn more about the issues in this Alert, please contact your usual Ropes & Gray attorney.