

SEC Provides Further Filing Relief and Corp Fin Issues Disclosure Guidance No. 9

MARCH 26, 2020

Following the conditional extensions issued earlier this month, the SEC announced further relief from upcoming reporting and delivery deadlines for public companies, funds, and investment advisors. The Division of Corporation Finance (the Division) also issued [Disclosure Guidance Topic No. 9](#) providing guidance on disclosure obligations relating to COVID-19 business disruptions.

Conditional Filing Extension

The SEC order (the Order) (available [here](#)) covers filings^[1] due on or before July 1, 2020, and permits a 45-day extension to any public company unable to meet a filing deadline due to circumstances related to COVID-19.

Affected public companies must file a Form 8-K no later than the original filing deadline of the report for which an extension is sought and should include the following:

- state that it is relying on the recent Order;
- include a brief description of the reasons why it could not file such report, schedule, or form on a timely basis;
- provide the estimated date by which the report, schedule, or form is expected to be filed;
- disclose a company-specific risk factor or factors explaining the impact, if material, of COVID-19 on its business; and
- if the reason the subject report cannot be filed timely relates to the inability of any person, other than the registrant, to furnish any required opinion, report or certification, the Form 8-K shall have attached as an exhibit a statement signed by such person stating the specific reasons why such person is unable to furnish the required opinion, report or certification on or before the date such report must be filed.

The underlying filing must be made within 45 days of the original due date. Once filed, the filing must include an additional disclosure stating that the filer is relying on the Order in making the delayed filing and the reasons why it could not file such report on a timely basis.

The SEC has also provided certain relief with respect to the delivery of proxy and information statements in the event there is a disruption in delivery services. The Order exempts public companies from the rules and

requirements of the Securities Exchange Act of 1934 to furnish proxy statements, annual reports, and other soliciting materials if the following conditions are met:

- the public 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 customarily used by the registrant; and
- the public company has made a good faith effort to furnish the soliciting materials to the security holder, as required by the applicable rules.

The SEC staff will continue to monitor the impact of COVID-19 and may issue further orders or guidance as the situation evolves. The SEC also encourages companies to reach out to the SEC if there are certain requirements that companies believe warrant additional relief.

Disclosure Guidance Topic No. 9

The Division of Corporation Finance issued Disclosure Guidance Topic No. 9 to address the Division's views on disclosure and securities law obligations in connection with COVID-19 and the various disruptions affecting many issuers.

The Disclosure Guidance instructs public companies to carefully consider COVID-19-related disclosures within the context of the federal securities laws and the principals-based disclosure system to allow investors to make informed investment decisions. The SEC staff notes that disclosure requirements can apply to a broad range of evolving business risks even in the absence of a specific line item requirement. Such disclosures may be necessary or appropriate in the MD&A, the business section, risk factors, legal proceedings, disclosure controls and procedures, internal control over financial reporting, and the financial statements.

To aid public companies in crafting meaningful disclosures, the Disclosure Guidance includes a number of topics to consider when assessing the impact of COVID-19. We encourage all filers to review these topics when preparing any filing.

The Disclosure Guidance also includes a number of reminders of existing rules and regulations in light of current market conditions. These include the following:

- *Trading Prior to Dissemination of Material Non-Public Information.* As the impact of COVID-19 evolves, company insiders may become aware of a COVID-19-related risk that would be material to investors. The company and all insiders who are aware of these matters must refrain from trading in company securities until such information is properly disclosed. The Division also warns against selective disclosures when disseminating information to the public. Companies are also advised to regularly revisit previous disclosures to ensure that the information has not become materially inaccurate due to the passage of time.
- *Reporting Earnings and Financial Results.* The Division recognizes that COVID-19-related delays may impact a company or its auditors' ability to timely prepare filings and that current conditions may present novel and complex accounting issues. As a result, the Division suggests that companies address financial reporting matters on an accelerated basis and promptly engage any experts that the company or auditors will require in order to gauge any impact on assets (such as impairment of goodwill).
- *Use of Non-GAAP Financial Measures.* The release notes that all prior Division guidance with respect to obligations under Item 10 of Regulation S-K and Regulation G remain in effect. Companies reporting non-GAAP measures in response to COVID-19-related matters are urged to highlight the reasons why management finds the measures useful in aiding investors in assessing the impact of the virus on the company. The Division acknowledges that certain GAAP financial measures may not be readily available if COVID-19-related inputs require further information or analysis. In such cases, the Division will permit issues to reconcile a non-GAAP financial measure to preliminary results that reflect a reasonable estimate or range of reasonably estimable GAAP figures. For filings where GAAP financial statements are required (such as Forms 10-Q and 10-K), companies should not use provisional or estimated figures in reconciliations. As always, a non-GAAP measure should be displayed more prominently than the most directly comparable GAAP measure.

View all of our COVID-19 perspectives [here](#). Contact a member of our COVID-19 Legal Task Force [here](#).

[1] Covered filings include those required under Securities Exchange Act of 1934 Sections 13(a), 13(f), 13(g), 14(a), 14(c), 14(f), and 15(d) and Regulations 13A, 13D-G (except for those provisions mandating the filing of Schedule 13D or amendments to Schedule 13D), 14A, 14C, and 15D, and Exchange Act Rules 13f-1 and 14f-1.

5 Min Read

Authors

[Michael J. Blankenship](#)

[J. Eric Johnson](#)

[John P. Niedzwiecki](#)

[Ben D. Smolij](#)

Related Locations

[Chicago](#)

[Houston](#)

Related Topics

[COVID-19](#)

[Securities and Exchange Commission \(SEC\)](#)

[Disclosures](#)

Related Capabilities

[Capital Markets](#)

[Transactions](#)

[Financial Services](#)

Related Regions

[North America](#)

Related Professionals



[Michael J. Blankenship](#)



J. Eric Johnson



John P. Niedzwiecki



Ben D. Smolij

This entry has been created for information and planning purposes. It is not intended to be, nor should it be substituted for, legal advice, which turns on specific facts.