

SEC Provides Additional Extension of Filing Deadlines and Other Guidance for Companies Affected by the Coronavirus Pandemic

On March 25, 2020, the Securities and Exchange Commission (“SEC”) issued a press release and an exemptive order (the “Extension Order”)¹ to provide additional relief for SEC registrants affected by COVID-19. The Extension Order supersedes and extends the SEC’s prior order dated March 4, 2020 (the “March 4 Order”).²

The filing relief applies to SEC reports that would otherwise be due between March 1 and July 1, 2020. Annual Reports on Form 10-K, Quarterly Reports on Form 10-Q, Current Reports on Form 8-K and Preliminary and Definitive Proxy Statements are included within the scope of the Extension Order. As a result, the relief will now cover Forms 10-K and 10-Q for periods ended March 31 or later. The prior relief was only available to filings due on or before April 30, 2020.

The Extension Order allows registrants an additional 45 days to file such reports.

To qualify for the relief, a registrant must meet each of the following conditions:

- The registrant must be unable to timely file the report due to conditions caused by COVID-19;
- The registrant must file a Form 8-K (or a Form 6-K for foreign private issuers) by the later of March 16 or the original reporting deadline;
- The registrant must file the required report no later than 45 days after the original deadline; and
- In the filed report, the registrant must disclose that it relied upon the Extension Order and the reasons for its inability to file by the original deadline.

The Form 8-K or Form 6-K referenced above must disclose that the registrant is relying on the Extension Order and include the following additional disclosures:

- The reasons the registrant is unable to file timely the report;
- The estimated date by which the report is expected to be filed;
- If appropriate, a risk factor explaining, if material, the impact of COVID-19 on its business; and
- If the reason the report cannot be filed timely relates to the inability of a third party to furnish an opinion, report or certification, an exhibit containing a statement signed by such third party stating the reasons for such inability.

¹ The SEC’s press release may be found at <https://www.sec.gov/news/press-release/2020-73>. The Extension Order may be found at <https://www.sec.gov/rules/exorders/2020/34-88465.pdf>. The Extension Order was issued by the SEC pursuant to Section 36 of the Securities Exchange Act of 1934, as amended.

² The March 4 Order may be found at <https://www.sec.gov/rules/other/2020/34-88318.pdf>. For additional discussion of the March 4 Order, see Maynard’s prior client alert at <https://www.maynardcooper.com/publications/sec-extends-filing-deadlines-and-gives-other-guidance-for-companies-affected-by-the-coronavirus-outbreak/>.

In addition, on March 25, the Division of Corporation Finance of the SEC issued CF Disclosure Guidance Topic No. 9 (the “Guidance”),³ which addresses disclosure and other securities law obligations relating to COVID-19. The Guidance:

- Provides a series of sample questions that registrants should ask themselves when preparing disclosure documents;
- Reminds registrants and insiders to refrain from engaging in securities transactions where they are aware of non-public information related to the impact of COVID-19, and to refrain from selective disclosure;
- Discusses non-GAAP disclosure issues,⁴ and provides circumstances when the SEC staff would not object to the use of reasonable estimates for the comparable GAAP measure in the required reconciliation; and
- Encourages registrants to proactively address financial reporting matters earlier than usual, including engagement with auditors and outside experts.

Some of the disclosure-related questions the SEC staff suggests registrants should be asking include:

- How has COVID-19 impacted your financial condition and results of operations?
- How has COVID-19 impacted your capital and financial resources, including your overall liquidity position and outlook?
- Do you anticipate any material impairments (e.g., with respect to goodwill, intangible assets, long-lived assets, right of use assets, investment securities), increases in allowances for credit losses, restructuring charges, other expenses, or changes in accounting judgments that have had or are reasonably likely to have a material impact on your financial statements?
- Have COVID-19-related circumstances such as remote work arrangements adversely affected your ability to maintain operations, including financial reporting systems, internal control over financial reporting, and disclosure controls and procedures?
- Do you expect COVID-19 to materially affect the demand for your products or services?
- Do you anticipate a material adverse impact of COVID-19 on your supply chain or the methods used to distribute your products or services?

Registrants should refer to the text of the Guidance for the full list of questions.

The SEC staff also issued a statement regarding Rule 302(b) of Regulation S-T, which requires each signatory to manually execute a signature page or other document that appears in typed form in documents filed electronically with the SEC. Due to the COVID-19 pandemic, the SEC staff said it will not recommend enforcement action related to this requirement if certain conditions are met.

For additional information about any of the above developments, or to discuss any questions that you may have, please contact a member of [Maynard Cooper’s Public Company Advisory Group](#).

This Client Alert is for information purposes only and should not be construed as legal advice.
The information in this Client Alert is not intended to create and does not create an attorney-client relationship.

³ The Guidance may be found at <https://www.sec.gov/corpfin/coronavirus-covid-19>.

⁴ Registrants are reminded to refer to the SEC’s guidance on non-GAAP measures, available at <https://www.sec.gov/divisions/corpfin/guidance/nongaapinterp.htm>, and its additional guidance on the use of key performance indicators and metrics, available at <https://www.sec.gov/rules/interp/2020/33-10751.pdf>.