



March 6, 2020

SEC Issues Exemptive Order Relating to Coronavirus

Advisory

Recognizing the potential impact of coronavirus disease 2019 (COVID-19) on reporting companies and others, on March 4, 2020, the SEC issued an [order](#) (Order) that, subject to certain conditions, provides publicly traded companies with an additional 45 days to file certain disclosure reports that would otherwise have been due between March 1 and April 30, 2020. The Order is particularly relevant to calendar-year companies; Form 10-K filing deadlines are March 2nd, March 16th, and March 30th for large accelerated filers, accelerated filers, and non-accelerated filers, respectively, and the Form 20-F filing deadline (for foreign private issuers) is April 30th. The Order exempts registrants subject to the reporting requirements of Exchange Act Section 13(a) or 15(d), and any person required to make any filings with respect to such a registrant (Filers), from many requirements to file or furnish materials with the SEC¹, where the following conditions are satisfied:

- a) The Filer is unable to meet a filing deadline due to circumstances related to COVID-19;
- b) Any registrant relying on the Order must furnish a Form 8-K or 6-K, as applicable, by the later of March 16 or the original filing deadline of the report including: (i) a statement that it is relying on the Order; (ii) a brief description of the reasons why it could not file such report, schedule or form (Form) on a timely basis; (iii) the estimated date by which the Form is expected to be filed; (iv) if appropriate, a risk factor explaining, if material, the impact of COVID-19 on its business; and (v) 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 or Form 6-K must attach 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;
- c) The Form is filed no later than 45 days after the original due date; and
- d) In any Form filed by the applicable deadline pursuant to paragraph (c), the Filer must disclose that it is relying on the Order and state the reasons why it could not file such report, schedule or form on a timely basis.

¹ The Order exempts Filers from any requirement to file or furnish materials with the SEC under Exchange Act Sections 13(a), 13(f), 13(g), 14(a), 14(c), 14(f), 15(d) and Regulations 13A, Regulation 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, as applicable.

Any registrant relying on the Order would not need to file a Form 12b-25 so long as the Form is filed within the time period prescribed by the Order.

In addition, the Order exempts registrants or other persons from the requirements of the Exchange Act and the rules thereunder to furnish proxy statements, annual reports, and other soliciting materials, as applicable (Soliciting Materials) and information statements and annual reports, as applicable (Information Materials) to security holders, where the following conditions are satisfied:

- a) The registrant'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 or class customarily used by the registrant or other person making the solicitation; and
- b) The registrant or other person making a solicitation has made a good faith effort to furnish the Soliciting Materials to the security holder, as required by the rules applicable to the particular method of delivering Soliciting Materials to the security holder, or, in the case of Information Materials, the registrant has made a good faith effort to furnish the Information Materials to the security holder in accordance with the rules applicable to Information Materials.

The relief in the Order is applicable for the period from and including March 1, 2020 to April 30, 2020. The SEC intends to monitor the current situation and may, if necessary, extend the time period during which the relief applies, with any additional conditions it deems appropriate.

In the press release accompanying the Order, the SEC noted that the SEC staff will take the following positions with respect to certain obligations under the Securities Act and the Exchange Act:

- For purposes of eligibility to use Form S-3 (and for well-known seasoned issuer status, which is based in part on Form S-3 eligibility), a company relying on the Order will be considered current and timely in its Exchange Act filing requirements if it was current and timely as of the first day of the relief period and it files any report due during the relief period within 45 days of the filing deadline for the report.
- For purposes of the Form S-8 eligibility requirements and the current public information eligibility requirements of Rule 144(c), a company relying on the Order will be considered current in its Exchange Act filing requirements if it was current as of the first day of the relief period and it files any report due during the relief period within 45 days of the filing deadline for the report.
- Companies that rely on the extension for filing Exchange Act annual reports or quarterly reports pursuant to the Order will be considered to have a due date 45 days after the filing deadline for the report. Those companies will be permitted to rely on Rule 12b-25 if they are unable to file the required reports on or before the extended due date.

The SEC emphasized that public companies and other persons who are the subjects of the Order must continue to evaluate their obligations to make materially accurate and complete disclosures in accordance with the federal securities laws. For example, where a company has become aware of a risk related to the coronavirus that would be material to its investors, it should refrain from engaging in securities transactions with the public and to take steps to prevent directors and officers (and other corporate insiders who are aware of these matters) from initiating such transactions until investors have been appropriately informed about the risk.

When companies do disclose material information related to the impacts of the coronavirus, they are reminded to take the necessary steps to avoid selective disclosures and to disseminate such information broadly. Depending on a company's particular circumstances, it should consider whether it may need to revisit, refresh, or update previous disclosure to the extent that the information becomes materially inaccurate.