

CORPORATE

ALERT

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COVID-19 and New Disclosure Considerations for Public Companies

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Many publicly traded companies across business sectors are currently, or could be, materially impacted by COVID-19. In addition to the standard considerations for disclosure and reporting, the uncertainties presented by COVID-19 pose additional challenges for affected businesses. The U.S. Securities and Exchange Commission (“SEC”) has recently issued several policy statements related to these issues. Companies should closely monitor these fast-moving developments and carefully consider the best approach for handling disclosure and reporting responsibilities.

SEC Policy Announcements

The SEC issued two public statements on [January 30](#) and [February 19, 2020](#) addressing disclosure and reporting by public companies relating to the potential effects of COVID-19. These two statements primarily gave notice that the SEC was assessing the impact of the coronavirus on issuers and other market participants, and the likely effects on financial reporting.

On March 4, 2020, in light of the ongoing challenges of COVID-19, the SEC issued a press release (the “Conditional Regulatory Relief Release”) and an order (the “Order”) providing publicly traded companies with an extended time period to file certain disclosure reports that would have been due between March 1 and April 30, subject to certain conditions. This includes the requirement to furnish a Form 8-K (in the case of U.S. reporting companies) or a Form 6-K

(in the case of non-U.S. reporting companies) by the latter of March 16 or the original reporting deadline.

At the same time, the SEC 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 COVID-19 to the fullest extent practicable to keep investors and markets informed of material developments.

The Conditional Regulatory Relief Release can be found [here](#) and the Order can be found [here](#).

The Effects on Disclosure and Reporting

SEC chairman Jay Clayton “urge[d] 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.”

To this end, reporting companies should consider taking steps to minimize the impact on their internal controls and disclosure controls and procedures from potential disruptions to operations or other effects of COVID-19.

Reporting companies that already have filed their Annual Reports for 2019 may consider updating risk factors in their quarterly reports or supplementing them in a Form 8-K (or a Form 6-K for non-U.S. reporting companies) if COVID-19 has caused or could potentially cause material changes to their businesses or operations.

Companies may consider making disclosures related to COVID-19 in their SEC filings within their risk factors section, their forward-looking statements legend, their business description, their Management's Discussion and Analysis of Financial Condition and Results of Operations (MD&A) section, and/or in a separate section directly addressing COVID-19.

SEC rules require companies to include more specific rather than generic risks related to their business which would also apply to any new risk factors as the effects of COVID-19 become clearer. This may include risk factors about the existing and potential impacts of COVID-19 on their businesses, such as: supply chain disruptions; environmental, social, and governance factors; changes in business operations in the U.S. and internationally; and changes in estimated company growth, revenue, profits, and other financial impacts. While most companies are considering the negative implications, some companies have included positive effects and predictions in their disclosures, citing projected increases in production and sales as a result of COVID-19.

Concurrent with a review of risk factors, reporting companies may also review their forward-looking statements. Chairman Clayton noted that "companies providing forward-looking information in an effort to keep investors informed about material developments, including known trends or uncertainties regarding coronavirus, can take steps to avail themselves of the safe harbor in Section 21E of the Exchange Act for forward looking statements." SEC rules suggest that for cautionary statements to be meaningful, they should be specific rather than generic.

Regulation S-K requires reporting companies to identify in the MD&A sections of their Annual and Quarterly Reports the known trends or uncertainties that will result in, or that are reasonably likely to result in, material changes in their liquidity, capital resources, results of operations, or net sales, revenues, or income from continuing operations. If COVID-19 could impact a reporting company's future financial performance, such impacts may be addressed in its MD&A, as well as other sections of filings.

The SEC reminded reporting companies that have "become aware of a risk related to the coronavirus that would be material to [their] investors, [they] should refrain from engaging in securities transactions with the public and take steps to prevent directors and officers . . . from initiating such transactions until investors have been appropriately informed about the risk." Further, the SEC cautioned reporting companies to avoid selective disclosures and to disseminate broadly all material information related to the impacts of COVID-19 on their businesses.

Takeaways

In light of COVID-19, companies may face challenging decisions about making disclosures or supplementing prior disclosures even when uncertainties exist. Examples of such circumstances may include:

- The company is uncertain about outcomes, but the outcomes could be material.
- COVID-19 has already impacted the business and may affect its future operations.
- The company is developing and implementing plans to respond to the impacts and risks, including actions taken to mitigate those risks.
- The company recently made disclosures that may now be incomplete based on newly learned information or based on new SEC guidance.

Reporting companies should seek guidance from their legal counsel, accountants, and auditors for any accounting specific disclosure obligations, and from the staff at the SEC if they have particular areas for concern.

This Alert was based on information available at the time of publishing. It is subject to change. You should consult government websites and publications for the most up-to-date information. ◆

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