

SEC EXTENDS REPORTING RELIEF FOR U.S. COMPANIES AFFECTED BY COVID-19; STAFF ISSUES INTERPRETATIVE GUIDANCE

Apr 01, 2020

Last week, the SEC [announced](#) that it [issued an order](#) (the Order) further extending its prior relief for public companies affected by COVID-19, as well as for others required to file reports with respect to such companies.

On March 31, 2020, the SEC Staff published two new interpretations of the Order ([New Exchange Act Rule CDIs 135.12 and 135.13](#)), supplementing the relief announced last week and described below.

The relief provides public companies subject to the reporting requirements of Sections 13(a) or 15(d) of the Securities Exchange Act of 1934 with a 45-day extension to file certain reports that would have otherwise been due between March 1 and July 1, 2020, thereby superseding and extending the SEC's prior order of March 4, 2020.

Covered Filings. The relief applies to, among others, Form 10-Ks, 10-Qs, 8-Ks, proxy statements on Schedule 14A, information statements filed on Schedule 14C, and Schedule 13Gs – as well as any other filings under Sections 13(a), 13(f), 13(g), 14(a), 14(c), 14(f), 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.

Conditions. The extension is available to those companies who are unable to meet a filing deadline because of circumstances related to COVID-19. To take advantage of the extension, a company must furnish a Form 8-K or Form 6-K (as applicable) by the original filing deadline for each affected filing and disclose (i) that the company is relying on the Order, (ii) a brief description of the reasons why it could not file the report on a timely basis, (iii) the estimated date by which the report is expected to be filed, (iv) a company-specific risk factor explaining, if material, the impact of COVID-19 on its business and (v) if the reason the report cannot be timely filed relates to the inability of a third party to provide any required opinion, report or certification, the filing should include as an exhibit a statement signed by the third party specifying the reasons they were unable to provide the document.

The Order further states that the company (or person required to make the filing with respect to such company) must complete the delayed filing with the SEC no later than 45 days after the original due date and it must contain disclosure that the Order was relied upon and the reasons the filing could not be made on a timely basis.

The SEC noted that it may provide further extensions, or impose additional conditions.

Proxy and Information Statements. The Order also exempts public companies (or persons required to make any filings with respect to such companies) from requirements under the Exchange Act to furnish proxy or information statements, annual reports and other soliciting materials, where the following conditions are satisfied:

- The security holder has a mailing address in an area where, as a result of COVID-19, the common carrier has suspended delivery service of the type or class customarily used; and
- The company or other person making a solicitation or dissemination has made a good faith effort to furnish the materials as required by applicable rules.

Companies considering relying on such relief should also consider the impact of notice requirements under state law and their organizational documents.

New SEC Guidance. The new CDIs emphasize:

- In order to rely on the 45-day relief period, a company (or other filing person) must furnish the 8-K or 6-K pursuant to the Order on or before the original filing deadline.
- A company that complies with the Order can utilize the 45-day relief period and would be permitted to subsequently file a Form 12b-25, and then timely file within the period provided by Rule 12b-25, if unable to file the report by the extended due date.

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