

U.S.: SEC CHAIRMAN URGES “PROMPT” EARNINGS DISCLOSURE

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In remarks at a special meeting of the Investor Advisory Committee on April 2, Chairman Jay Clayton encouraged public companies to promptly provide as much information as possible about period-end earnings information, even if filings are delayed due to COVID-19. He stated that the conditional relief afforded by the 45-day extension and the Staff’s guidance on COVID-19 disclosures should allow issuers to “provide prompt, period-end earnings information, and information regarding their past and expected future efforts to address the effects of COVID-19, regardless of whether they are able to comply with filing deadlines.”

Chairman Clayton stated that investors and markets “thirst for information as a general matter,” and that this is exacerbated in a period of economic uncertainty. He stated plainly that an inability to file required reports on time due to COVID-19 challenges does not prevent public companies from issuing their earnings releases and filing current reports on Form 8-K.

While many companies typically release earnings and other financial results prior to filing the Form 10-Q or Form 10-K, for those issuers who cannot file timely due to the impacts of COVID-19, it may also not be possible to have sufficient certainty to go out with earnings releases. In its earlier guidance (CF Disclosure Guidance: Topic No. 9), the staff stated that “timely, robust, and complete information is essential to functioning markets” and encouraged timely reporting if possible. The staff also, however, acknowledged that the COVID-19 impacts might present “novel or complex accounting issues” and make it difficult for companies and their auditors to complete the work necessary to make a timely filing. That had been the rationale for the 45-day extension. Much of that work is required to generate reliable information about earnings and financial results, even before completion of a full required report.

The staff’s guidance about COVID-19 disclosures – referenced in Chairman Clayton’s statement to be included in earnings releases – provides a list of disclosure issues for companies to consider, from how the pandemic has affected the company’s financial condition, results of operations, financial resources and liquidity, to what companies expect the COVID-19 impacts to be in the future. The staff encouraged that this be tailored to a company’s particular facts and circumstances.

Public companies, particularly those eligible for the 45-day extension to file reports, should consider the extent to which they could proceed to issue an earnings statement with tailored disclosure around the impacts, and management's expectations about future impacts, of the COVID-19 pandemic on their business and financial position. But the reality may be that the complexities, challenges and uncertainties posed by the ongoing public health crisis may prevent early release of complete and accurate information for many companies.

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