



APRIL 2020

SEC Provides COVID-19 Relief for Public Companies

Guidance on COVID-19 Reporting Issued; Effectiveness of SOX 404 Relief for Smaller Reporting Companies

The Securities and Exchange Commission has extended the filing periods for certain public company filing obligations under the federal securities laws.

To accommodate reporting companies that may be unable to meet filing deadlines because of the COVID-19 pandemic, the Commission extended by 45 days the date by which certain periodic reports due between March 1 and July 1 must be filed with the SEC. Companies relying on the relief must, before the due date, file or furnish a report on Form 8-K or Form 6-K (applicable to foreign private issuers) setting forth, among other things, a brief description of why the company could not timely file the report in question and the estimated time by which it will be filed. If a report cannot be filed due to the inability of another person to furnish an opinion, report or certification, that person must provide the same information regarding his or her inability to furnish the required document. A separate Form 8-K or 6-K is required regarding each delayed filing.

As most domestic registrants with a calendar fiscal year-end will have already filed their annual reports on Form 10-K or likely have substantially completed the work relating to those reports, the primary filings affected are the proxy statement on Schedule 14A (required within 120 days of the fiscal year ended for information to be incorporated by reference into

Part III of the Form 10-K), an annual report for a foreign private issuer with a calendar fiscal year-end (due by the end of the fourth month following the fiscal year-end), the quarterly report on Form 10-Q for the first quarter of 2020 (generally due at the beginning to the middle of May 2020 for companies with a calendar fiscal year-end, depending on filer status), and analogous forms applicable to companies subject to continued reporting under Regulation A and Regulation Crowdfunding.

Companies relying on the relief generally will remain eligible to use Forms S-3, F-3 and S-8 and will be considered “current” for purposes of Rule 144(c). (The SEC Staff did not provide clarification on the treatment of Form S-3 filed during this time and prior to the actual filing of the Part III information, which may be incorporated by reference to the Schedule 14A or contained in an amendment to the Form 10-K. In the past, the Staff has declined to make such filings effective during this so-called gap period.) Rule 12b-25 will be available to companies needing additional time to file at the end of the COVID-19 extension period.

Concurrently, the Division of Corporation Finance issued disclosure guidance ([CF Disclosure Guidance: Topic 9](#)) setting forth the Staff’s views regarding disclosure and other securities law obligations that companies should consider with respect to COVID-19 and related business and market disruptions.

The guidance encourages timely reporting while

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recognizing that it may be difficult to assess or predict with precision the broad effects of COVID-19 on industries or individual companies. In an attempt to assist companies engaging in this analysis, the Staff sets forth a series of questions for consideration in evaluating the adequacy of a proposed disclosure. In addition, the Division provided its views regarding a company's use of non-GAAP measures to adjust for the impact of COVID-19 on its business. The Commission's relief regarding periodic reporting deadlines was part of a series of temporary rules, orders and other forms of relief granted regarding topics ranging from Form ID notarization requirements for those seeking EDGAR codes (waived for a 90-day period), "wet signature" requirements applicable to EDGAR filers (a good faith standard for signers to maintain wet signatures during the pendency of the pandemic before providing to filers) and certain transfer agent activities that may be precluded while transfer agent employees work remotely. Just prior to this series of Commission actions, the SEC approved a change to the definition of "accelerated filer:" Those smaller reporting companies with less than \$100 million in revenues will no longer be required to obtain a separate attestation of their internal control over financial reporting, sometimes referred to as a "SOX 404" report. This change becomes effective April 27, 2020.

COVID-19 Resource Center

For more information on the business impacts of COVID-19, we encourage you to visit our [COVID-19 Resource Center](#), which we will continue to update as the situation evolves. If you have questions about COVID-19's impact on your business, please reach out to your Loeb relationship partner, or email us directly at COVID19@loeb.com.

Related Professionals

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