



A Robinson+Cole Legal Update

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SEC's Conditional Regulatory Relief for Companies Affected by the Coronavirus (COVID-19)

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On March 4, 2020, the Securities and Exchange Commission (the "SEC") [announced](#) that it is providing conditional regulatory relief and assistance for certain publicly traded companies located, or with significant operations, in the areas affected by the outbreak of coronavirus disease 2019 (COVID-19). The SEC acknowledged that public companies subject to the reporting requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934 (the "Exchange Act") and any person required to make any filings with respect to such a company (collectively, "Filers") may not be able to meet their filing deadlines due to disruptions to transportation and limited access to facilities, support staff and professional advisors as a result of COVID-19.

The SEC issued an [order](#) (the "Order") which provides that, if certain conditions are satisfied, Filers will have an additional 45 days to file certain disclosure reports (including annual reports and quarterly reports) that would otherwise have been due within the period from and including March 1, 2020 to April 30, 2020.

The conditions specified by the SEC include (but are not limited to) the filing of a Form 8-K (or a Form 6-K, if applicable) with the SEC by the Filer by the later of March 16 or the original filing deadline of the report, stating, among other things, that it is relying on the Order and the reasons it could not file the report on a timely basis. The Filer must file with the SEC such report required to be filed no later than 45 days after the original due date.

In connection with the relief, the SEC staff will take the following positions with respect to certain obligations under the Securities Act of 1933, as amended, and the Exchange Act:

- For purposes of eligibility to use Form S-3 (and for well-known seasoned issuer status), Form S-8 and Rule 144, a company relying on the Order will be considered current and timely in its filing requirements under the Exchange Act if it was current and timely as of the first day of the relief period and it files the required reports by the extended deadline.
- Companies that rely on the extension on filing 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. As such, those companies will be permitted to rely on Rule 12b-25 (which allows a 15-day extension for annual reports and a 5-day extension for quarterly reports) if they are unable to file the required reports on or before the extended deadline.

In addition, the Order also provides relief for public companies seeking to comply with the requirements of Sections 14(a) and (c) of the Exchange Act and Regulation 14A, Regulation 14C and Rule 14f-1 promulgated thereunder to furnish proxy/information statements and other materials to shareholders when mail delivery is not possible due to COVID-19, if certain conditions are satisfied, including that the shareholder has a mailing address located in an area affected by COVID-19, in which the common carrier has suspended delivery service of the type or class customarily used.

If necessary, the SEC may further extend the time period for the relief, with any additional conditions it deems appropriate, or provide additional relief as circumstances warrant.

Companies affected by COVID-19 are encouraged to consult with their legal counsel with questions or issues of particular concern and actions to be taken.

FOR MORE INFORMATION

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