

## **CORONAVIRUS: SEC STAFF GUIDANCE AND CONDITIONAL REGULATORY RELIEF FOR AFFECTED U.S. PUBLIC COMPANIES**

On March 13, 2020, the staff of the U.S. Securities and Exchange Commission (the “**SEC**”) provided guidance to U.S. public companies affected by the coronavirus pandemic (“**COVID-19**”) regarding changing the time, date or location of annual shareholder meetings (the “**Staff Guidance**”, available [here](#)). In addition, on March 4, 2020, the SEC issued an order (the “**Exemptive Order**”, available [here](#)) providing conditional regulatory relief to extend certain filing deadlines for companies unable to make timely filings due COVID-19 during March and April 2020. This briefing provides an overview of the regulatory relief provided by the Staff Guidance and Exemptive Order.

### **Changing Time, Date or Location of Annual Shareholder Meetings**

To avoid contributing to the spread of the coronavirus, many U.S. public companies have been considering postponing their annual meetings or switching to a virtual annual shareholder meeting format this year. The Staff Guidance, permits a company affected by COVID-19 that has already mailed and filed its definitive proxy materials to notify its shareholders of any change in the date, time, or location of its annual meeting due to the coronavirus pandemic, without mailing additional soliciting materials or amending its proxy materials, if it:

- issues a press release announcing such change;
- files the announcement as definitive additional soliciting material on EDGAR; and
- takes all reasonable steps necessary to inform other intermediaries in the proxy process (such as any proxy service provider) and other relevant market participants (such as the appropriate national securities exchanges) of such change.

The SEC staff expects companies to take these actions promptly after deciding to make a change, and to do so sufficiently in advance of the annual meeting so the market is alerted to the change in a timely manner. If a public company has not yet mailed and filed definitive proxy materials, it should consider whether to include disclosures regarding the possibility that the date, time, or location of the annual meeting will change due to the coronavirus pandemic.

In a proxy statement that contemplates a virtual meeting, a company generally needs to include specific instructions to shareholders for joining the meeting, participating and casting votes electronically. If a U.S. public company plans to conduct a virtual

meeting, the SEC staff expects the company to notify its shareholders, intermediaries in the proxy process, and other market participants of such plans:

- in a timely manner; and
- disclose clear directions as to the logistical details of the virtual meeting, including how shareholders can remotely access, participate in, and vote at such meeting.

Issuers that have already filed and mailed their definitive proxy materials would not need to mail additional soliciting materials (such as new proxy cards) solely for the purpose of switching to a virtual meeting if they follow the steps described above for announcing a change. Company that are currently considering a virtual meeting format should be aware, however, that some virtual meeting service providers require that codes be printed on proxy cards for purposes of shareholder verification for the annual meeting. In addition, companies will need to consider to what extent their certificate of incorporation, bylaws and applicable state corporate law permit, or impose any significant restrictions or requirements regarding, virtual meetings.

The Staff Guidance also addresses the Rule 14a-8(h) requirement for a shareholder proponent to appear and present their proposals at the annual meeting. Companies are encouraged to provide shareholder proponents with alternative means, such as by telephone, to present their proposals at the annual meetings. If a shareholder proponent or representative is not able to present the proposal due to the inability to travel or other hardships related to COVID-19, the staff would consider this to be “good cause” for purposes of Rule 14a-8(h) – in other words, companies should not expect to be able to rely on such an absence as a basis for excluding the proposal in the following two calendar years.

## **Conditional Relief Extending SEC Filing Deadlines in March and April 2020**

To address potential compliance issues for SEC-reporting companies affected by COVID-19, the SEC issued the Exemptive Order that, subject to specified conditions, provides companies with an additional 45 days to file certain disclosure reports that would otherwise have been due in March and April of 2020.

Key SEC filing deadlines for calendar year-end companies in March and April	
March 16	Annual report on Form 10-K due for accelerated filers
March 30	Annual report on Form 10-K due for non-accelerated filers
April 29	Definitive proxy statement due if Part III of Form 10-K incorporates information from the proxy statement by reference
April 30	Annual report on Form 20-F due for foreign private issuers

The SEC has indicated it may extend the time for the relief or provide additional relief as it deems appropriate.

To take advantage of this relief, an SEC-reporting company must be unable to meet a filing deadline in March or April 2020 **due to circumstances related to COVID-19** and must furnish a Form 8-K (or, if a foreign private issuer, a Form 6-K) by the later of March 16 and the original filing deadline, which:

- states that the reporting company is relying on the Order;
- provides a brief description of the reasons why the reporting company is unable to file the report, schedule or form on a timely basis;
- sets forth the estimated date by which the report, schedule or form is expected to be filed; and
- provides, if appropriate, a risk factor explaining, if material, the impact of the coronavirus on the reporting company's business.

If the reason the report cannot be filed timely relates to the inability of any third party (for example, an independent audit firm) to furnish any required opinion, report or certification, the Form 8-K or Form 6-K must attach as an exhibit a statement signed by that third party stating the specific reasons why the required opinion, report or certification cannot be timely furnished.

A company that relies on the Exemptive Order will:

- not need to file a Form 12b-25 so long as the filing is made by the extended due date;
- for purposes of its eligibility to use Form S-3 or Form F-3 as well as for purposes of Form S-8 eligibility requirements and the current public information eligibility requirements of Rule 144(c), be considered current and timely in its Exchange Act filing requirements if current and timely as of the first day of the relief period and it files any report due during the relief period within 45 days of the filing deadline for the report; and
- will be permitted to rely on the filing extension provisions of Rule 12b-25 if it continues to be unable to file the required reports past the extended due date.

### **Additional Disclosure Considerations for All Companies**

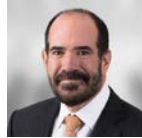
In connection with the Exemptive Order, the SEC reminds public companies to continue to evaluate their obligations to make materially accurate and complete disclosures in accordance with U.S. federal securities laws. If a company becomes aware of a risk related to the coronavirus that would be material to investors but has not yet been disclosed, the company and its insiders should refrain from engaging in securities transactions with the public until the risk has been appropriately disclosed to investors, while seeking to also avoid any potential violations of Regulation FD.

## **CONTACTS**

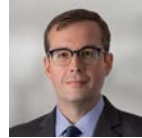
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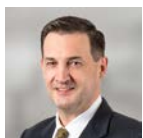


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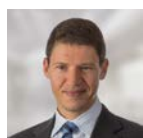
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