
Securities Law Considerations Related to the Coronavirus

MARCH 6, 2020

Earlier this week, the Securities and Exchange Commission issued an [Order](#) granting conditional relief from certain obligations under the federal securities laws for companies facing challenges as a result of the current coronavirus disease ("COVID-19"). Details about this relief, which provides helpful flexibility, most notably as it relates to the filing of Exchange Act reports, can be found in our [Client Alert](#).

There are a number of other securities law considerations that public companies face with respect to COVID-19, including:

- *Upcoming shareholder meetings.* Many companies that are actively preparing for their annual meetings of shareholders, are reconsidering whether a large, in-person meeting remains prudent and evaluating whether they have the option to hold virtual-only or hybrid meetings, or to otherwise move their physical meeting location (for example, to not hold the meeting at a company facility). This will require confirming that applicable state law and governing documents permit the change, including with regard to the use of a virtual meeting, obtaining necessary board or committee approval and including appropriate disclosure in the proxy statement. Additional considerations apply for companies considering a change after their definitive proxy statements have been sent to shareholders, such as what additional notice may be required and what meeting procedures may be required to implement an alternative meeting location or format.
- *Disclosure considerations.* All companies are encouraged to evaluate their SEC disclosures with respect to COVID-19, as suggested in the [press release](#) accompanying the Order. Disclosures related to COVID-19 extend beyond risk factors and could impact forward-looking statement disclaimers, business sections and MD&A. Some disclosure-related suggestions and reminders include:
 - Consider whether previous forward-looking disclosures in SEC filings or earnings releases should be updated.
 - Avoid selective disclosures, and broadly disseminate information regarding COVID-19.
 - Avoid providing "hypothetical" risk factors (for example, do not state "we may be adversely impacted by the Coronavirus" if the company knows that it is already being

adversely impacted).

- Utilize the Section 21E safe harbor to provide forward-looking information about material developments and known trends and uncertainties regarding COVID-19.
- *Disclosure controls and procedures.* Companies should ensure that their disclosure controls and procedures are operating effectively with respect to the disclosure considerations described above. Given the pervasive, ongoing developments associated with COVID-19 and the potentially material nature of such information, companies should confirm that effective policies are in place to guard against insider trading and selective disclosure violations. The SEC has reminded companies to take steps to prevent directors and officers (and other corporate insiders who are aware of undisclosed COVID-19 risks) from initiating securities transactions until investors have been appropriately informed about the risk.
- *Compliance with covenants in material agreements.* Notwithstanding the Order, companies should review the terms of any contractual obligations relating to filings (such as those commonly found in indentures and loan agreements), since the precise contractual language applicable to those obligations, and not the Order, will govern whether late filing and/or delivery will be excused.

The ultimate impact of COVID-19 on the capital markets and company disclosures remains uncertain, and companies should keep a watchful eye for future guidance from the SEC and other regulators as developments unfold.

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