

Client Alert

COVID-19 Update: SEC Provides Conditional Extensions of Filing Deadlines for Public Companies for Filings Due from March 1 to July 1, 2020

March 31, 2020

In light of the impact of coronavirus disease 2019 (“COVID-19”) on public companies’ operations and, subsequently, on their ability to timely file required reports, on March 25, 2020, the Securities and Exchange Commission (“SEC”) announced that it extended its conditional regulatory relief for publicly traded companies to include disclosure reports that would have otherwise been due between March 1 and July 1, 2020¹ (extending the SEC’s previous exemptive relief, which had originally applied to filings due between March 1 and April 30, 2020²). The SEC’s exemptive relief extends the deadline for reports originally due to be filed during the relief period to the date that is no later than 45 days after the original due date, subject to certain requirements, as summarized below.

As extended, the SEC’s regulatory relief applies to filings including Annual Reports on Form 10-K or Form 20-F and Quarterly Reports on Form 10-Q. For registrants with a December 31 fiscal year end, the SEC’s relief period now includes the filing dates for all registrants’ Quarterly Reports on Form 10-Q for the quarter ending March 31, 2020, in addition to Annual Reports on Form 10-K and Form 20-F for the fiscal year ended December 31, 2019 (to the extent not already filed). The SEC release also noted that it would continue to monitor the current situation and could potentially further extend the time period during which the exemptive relief applies.

Availability of Relief upon Form 8-K or Form 6-K Filing by Original Deadline

Registrants who seek to avail themselves of the SEC relief must file, with respect to each report that they seek to delay, a Form 8-K or Form 6-K by the original deadline of the report. The contents of the Form 8-K or Form 6-K must include:

1. a statement that the registrant is relying on the SEC’s order;
2. a brief description of the reasons why the registrant could not file such report, schedule or form on a timely basis;
3. the estimated date by which the report, schedule, or form is expected to be filed;
4. a company-specific risk factor or factors explaining the impact, if material, of COVID-19 on the registrant’s business; and

¹ See SEC Release No. 34-88465 (March 25, 2020), available at <https://www.sec.gov/rules/exorders/2020/34-88465.pdf>.

² See SEC Release No. 34-88318 (March 4, 2020), available at <https://www.sec.gov/rules/other/2020/34-88318.pdf>.

5. if the reason the subject report cannot be timely filed relates to the inability of any person, other than the registrant, to furnish any required opinion, report or certification, the Form 8-K or Form 6-K must include an exhibit a statement signed by such person stating the specific reasons why such person is unable to furnish the required opinion, report or certification on or before the date such report must be filed.

No Impact on Form S-3, Form F-3 and Form S-8 Eligibility for Utilizing Exemptive Relief

The SEC also re-confirmed that registrants who have relied on the SEC's exemptive relief will remain timely in their filings if (i) they were current and timely as of the first day of the relief period and (ii) they file the report for which they requested the relief within 45 days of the original filing deadline for the report. Therefore, Form S-3, Form F-3 or Form S-8 eligibility will not be negatively impacted.³

Continued Availability of Rule 12b-25 Relief

The SEC release also confirmed that if registrants are not able to meet the extended deadline, they will still be able to request further extensions after the 45-day extension has expired, pursuant to the existing filing deadline extension process that is available under Rule 12b-25 under the Exchange Act.⁴

Rule 12b-25 provides registrants with (1) a 15-day extension for filing annual, semi-annual or transition reports on Forms 10-K, 20-F, 11-K, N-CSR and N-CEN and (2) a five-day extension for quarterly or distribution reports filed on Form 10-Q or Form 10-D, provided that the registrant files a Form 12b-25 no later than one business day after the original filing date has passed. Registrants must include in their Form 12b-25 reasonably detailed disclosure explaining what "unreasonable effort or expense" prevents them from timely filing all or a portion of their report.

Relief Sought Under the SEC Release So Far

To date, several hundred registrants have already filed Form 8-Ks or Form 6-Ks on the basis of the SEC's release, primarily to request extensions for filings of Annual Reports on Form 10-K or Form 20-F for the fiscal year ended December 31, 2019, as well as amendments to Current Reports on Form 8-K or Quarterly Reports on Form 10-Q for the quarter ended January 31, 2020. In requests for relief filed thus far, registrants have mainly cited disruptions in communications with auditors, disruptions in internal communications and business operations and the inability to obtain records and other necessary information due to travel restrictions and office closures. Most registrants to date who had not previously disclosed COVID-19 related risks have included risk factors in their Form 8-Ks or Form 6-Ks requesting the exemptive relief outlining the impact of COVID-19 on their operations.

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³ See "SEC Extends Conditional Exemptions From Reporting and Proxy Delivery Requirements for Public Companies, Funds, and Investment Advisers Affected By Coronavirus Disease 2019 (COVID-19)" (March 25, 2020), available at <https://www.sec.gov/news/press-release/2020-73>.

⁴ *Id.*

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