

COVID-19 Financial Reporting Implications

March 20, 2020

Highlights

- ✓ Virtual Shareholder Meetings Permitted
- ✓ Extra Time Provided for Some Filings
- ✓ Comment Periods Extended

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SEC Provides Guidance on COVID-19

The SEC has taken several actions in response to COVID-19 (Coronavirus), with efforts “centered, first and foremost, on the health and safety of its employees and all Americans. The SEC has indicated that it is also are focused on, among other things:

- Maintaining the continuity of SEC operations;
- Monitoring market functions and system risks;
- Providing prompt, targeted regulatory relief and guidance to issuers, exchanges and other registrants impacted by COVID-19, including in connection with the execution of their business continuity plans (BCPs); and
- Maintaining the SEC’s enforcement and investor protection efforts, particularly with regard to the protection of agency critical market systems and the most vulnerable investors.

The SEC indicated that it has transitioned to a full telework posture with limited exceptions, noting that as “with any large-scale operational shift, we expect adjustments in certain functions, including with respect to information technology, may be necessary or advisable.” The SEC encourages market participants to continue to engage with it and will provide operational updates as necessary.

Below is a summary of guidance issued by the SEC and or its staff in response to COVID-19.

Shareholder Engagement and Virtual Annual Meetings

The SEC issued guidance from its staff to assist public companies, investment companies, shareholders, and other market participants affected by COVID-19 with their upcoming annual shareholder meetings. The guidance is designed to facilitate the ability of companies to hold these important meetings, including through the use of technology, and engage with shareholders while complying with the federal securities laws.

The SEC indicated that many “public companies and investment companies are required to hold annual meetings of security holders, with the federal securities laws requiring the delivery of proxy materials to the voting shareholders. The spread of COVID-19 has affected the ability to hold these in-person meetings due to health, transportation, and other logistical issues. In light of these difficulties, the staff guidance provides regulatory flexibility to companies seeking to change the date and location of the meetings and use new technology.



gies, such as “virtual” shareholder meetings that avoid the need for in-person shareholder attendance, while at the same time ensuring that shareholders and other market participants are informed of any changes.”

The guidance provides that affected parties can announce in filings made with the SEC the changes in the meeting date or location or the use of “virtual” meetings without incurring the cost of additional physical mailing of proxy materials. The guidance also encourages companies to provide shareholder proponents with alternative means, such as by telephone, to present their proposals at the annual meetings in light of the difficulties that shareholder proponents face due to COVID-19.

“The SEC has issued an order that... provides publicly traded companies with an additional 45 days to file certain disclosure reports.”

The SEC will continue to closely monitor the impact of COVID-19 on investors and the capital markets. Companies, shareholders, and other market participants are encouraged to contact the SEC staff with any questions and concerns.

This guidance is available from the SEC at: <https://www.sec.gov/ocr/staff-guidance-conducting-annual-meetings-light-covid-19-concerns?auHash=zrsDVFen7QmUL6Xou7EIHYov4Y6lfrRTjW3KPSVukQs>

Joint Statement on the Effects of COVID-19 on Financial Reporting

The SEC has published a statement on the agencies continued dialogue with audit firm representatives on audit quality in China and other emerging markets. The statement:

- Urges issuers to work with their audit committees and auditors to ensure that their financial reporting, auditing and review processes meet the applicable requirements in light of their obligations and the unforeseen circumstances.
- Emphasizes the need to consider potential disclosure of subsequent events in the notes to the financial statements in accordance with guidance included in Accounting Standards Codification 855, *Subsequent Events*.

- Articulates the SEC’s general policy to grant appropriate relief from filing deadlines in situations where, in light of circumstances beyond the control of the issuer, filings cannot be completed on time with the appropriate level of review and attention.

The statement indicates that the SEC expects to hold further meetings with other U.S. audit firms that, through use of their own networks or otherwise, audit U.S.-listed companies with significant operations in emerging markets, including China.

The statement also discusses guidance on financial reporting considerations related to the Coronavirus. The SEC indicated it has had recent dialogue with the senior leaders of the largest U.S. audit firms and discussed the “potential exposure of companies to the effects of the coronavirus and the impact that exposure could have on financial disclosures and audit quality, including, for example, audit firm access to information and company personnel. This remains a dynamic situation where the effects on any particular company may be difficult to assess or predict, because actual effects may depend on factors beyond the control and knowledge of issuers.”

This statement is available from the SEC at: <https://www.sec.gov/news/public-statement/statement-audit-quality-china-2020-02-19>

Conditional Regulatory Relief

The SEC announced that it is providing conditional regulatory relief for certain publicly traded company filing obligations under the federal securities laws. The impacts of the COVID-19, or coronavirus, “may present challenges for certain companies that are required to provide information to trading markets, shareholders, and the SEC. These companies may include U.S. companies located in the affected areas, as well as companies with operations in those regions.”

To address potential compliance issues, the SEC has issued an order that, subject to certain conditions, provides publicly traded companies with an additional 45 days to file certain disclosure reports that would otherwise have been due between March 1, 2020 and April 30, 2020. Among other conditions, companies must convey through a current report a summary of why the relief is needed in their particular circumstances. The SEC may extend the time period for the relief, with any additional conditions it deems appropriate, or provide additional relief as circumstances warrant. Companies and their representatives are encouraged to contact SEC staff with questions or matters of particular concern.

The announcement of this relief is available from the SEC at: <https://www.sec.gov/news/press-release/2020-53>

Trading and Exchange Announcements

The SEC has created a cross-divisional working group to prepare for COVID-19's impact on US trading markets. As provided by the SEC, key areas of ongoing focus and monitoring include:

- **Issuers, Corporate Disclosures and Accounting Issues:** The SEC is monitoring and providing guidance with respect to corporate filings and disclosures (e.g., changes in trends and outlook, the addition or modification of risk factors and discussion of supply chain and distribution matters) of U.S. issuers, as well as foreign companies that are listed in the United States, including engaging with issuers and other market participants who may need assistance or conditional relief in complying with their reporting obligations. The SEC is also having ongoing contact with several public accounting firms and their affiliates concerning their global operations, as well as industry and general trends and dynamics.
- **Trading, Markets and Securities Infrastructure:** The SEC is monitoring the functioning, integrity and resiliency of securities markets with a focus on operations, systems integrity and BCPs of U.S. securities and derivatives clearinghouses, exchanges, other market utilities and key market participants.

- **Large Financial Firm Monitoring:** The SEC is monitoring and communicating with the largest U.S. broker-dealers to keep abreast of their activities and operations, including BCP matters and capital and liquidity.
- **Asset Management Industry:** The SEC is monitoring and outreach to the asset management industry (including mutual funds, money market funds, exchange traded funds (ETFs), private equity funds and investment advisers), particularly funds and advisers with material exposures in markets and asset classes that have been most affected by recent events.
- **Securities Market Macro Trends, Dynamics and Potential Impacts:** The SEC continues to monitor and analyze real and potential effects of COVID-19 on the functioning of U.S. and global securities markets.

Extension of Comment Period on Certain Proposed Guidance

The SEC has taken action to delay comment period end dates for pending proposals. These proposals include:

- Amendments to Rule 2-01, Qualifications of Accountants;
- Amending the "Accredited Investor" Definition; and
- Disclosure of Payments by Resource Extraction Issuers.

For each of the pending items, the SEC will not take final action before April 24, 2020, in order to allow commenters additional time if needed.