

Practice Update

SEC Provides Exemptive Relief to Registrants Affected by COVID-19

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By [Christina C. Russo](#), [Esther L. Moreno](#), and [Tara A. Jackson](#)

The Securities and Exchange Commission (the “Commission”) has announced that the Commission issued an exemptive order providing publicly traded companies with an additional 45 days to file certain disclosure reports that would otherwise have been due between March 1 and April 30, 2020.

A registrant may rely on the order by satisfying the following conditions:

- The registrant or any person required to make any filings with respect to such a registrant is unable to meet a filing deadline due to circumstances related to COVID-19;
- A registrant furnishes to the Commission a Form 8-K or, if eligible, a Form 6-K, **by the later of March 16 or the original filing deadline of the report stating:**
 - the registrant is relying on the order;
 - a brief description of the reasons why the registrant could not file such report, schedule or form on a timely basis;
 - the estimated date by which the report, schedule, or form is expected to be filed;
 - if appropriate, a risk factor explaining, if material, the impact of COVID-19 on its business; and

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- if the reason the subject report cannot be filed timely 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 shall have attached as 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.
- The registrant or any person required to make any filings with respect to such a registrant files with the Commission any report, schedule, or form required to be filed **no later than 45 days after the original due date**; and
- In any report, schedule or form filed by the applicable deadline pursuant to the item above, the registrant or any person required to make any filings with respect to such a registrant must disclose that it is relying on this Order and state the reasons why it could not file such report, schedule or form on a timely basis.

An important point to note is that a registrant relying on the order will not need to file a Notification of Late Filing on a Form 12b-25, so long as the filing is made no later than 45 days after the original due date. The Commission has specified that a late filing that is made in compliance with the order will be considered “timely” for purposes of determining eligibility to use Form S-3 and Form S-8. If, however, a registrant is still unable to meet the extended deadline, the registrant may still file a Notification of Late Filing on a Form 12b-25.

In addition, the order also grants an exemption from the requirements to furnish proxy statements, annual reports and other soliciting materials and information statements to security holders when mail delivery is not possible if (i) the registrant’s security holder has a mailing address located in an area where, as a result of COVID-19, the common carrier has suspended delivery service of the type or

class customarily used by the registrant or other person making the solicitation and (ii) the registrant or other person making a solicitation has made a good faith effort to furnish the soliciting materials or information materials to the security holder in accordance with the applicable rules.

Finally, the order states that any registrant or other person in need of additional assistance related to deadlines, delivery obligations or their public filings, should contact the Division of Corporation Finance at (202) 551-3500 or at https://tts.sec.gov/cgi-bin/corp_fin_interpretive.

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