

## [Securities Regulation Daily Wrap Up, SEC NEWS AND SPEECHES— SEC extends COVID-19 exemptions, CorpFin issues views on disclosure considerations, \(Mar. 25, 2020\)](#)

Securities Regulation Daily Wrap Up

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The SEC extended recent filing period exemptions, and the Division of Corporation Finance issued Topic No. 9 on disclosure considerations and other matters related to the COVID-19 outbreak.

The SEC has extended earlier exemptive orders providing relief from reporting and proxy delivery requirements for those affected by the COVID-19 outbreak. Earlier conditional reporting relief from the reporting and proxy delivery requirements for public companies has been expanded by one month. Relief with respect to holding in-person board meetings and meeting certain filing and delivery requirements under the Investment Company and Investment Advisers Acts has also been extended by one month. Finally, the Division of Corporation Finance has issued guidance setting forth its views on disclosure obligations during the current disruption.

The [press release](#) announcing the extensions notes that the agency will continue to monitor developments and could further extend the time periods and/or issue additional relief.

**Topic No. 9.** The Division of Corporation Finance issued Disclosure Guidance [Topic No. 9: Coronavirus \(COVID-19\)](#), providing the Division's views on disclosure and other securities law obligations that companies should consider with respect to the coronavirus outbreak and related business and market disruptions. In sum, the guidance encourages timely reporting while recognizing that it may be difficult to assess or predict with precision the broad effects of COVID-19 on industries or individual companies. Health and safety, the Division stresses, should not be compromised to meet reporting requirements.

According to the guidance, assessing the risks and effects of COVID-19 will be a facts and circumstances analysis, and disclosures should be specific to a company's situation. The guidance includes a number of questions that companies should consider, including: how COVID-19 has impacted financial conditions and results of operations; the effect of COVID-19 on capital and financial resources and assets on balance sheets; and, travel restrictions and constraints on human capital resources. The Division encourages disclosure that is tailored to provide material information and to allow investors to evaluate the expected impact through the eyes of management.

The guidance also addresses the reporting of earnings and financial results. Here, the Division encourages companies to proactively address financial reporting matters earlier than usual. This is due to potential difficulties associated with companies and their auditors completing the required work in the face of COVID-19. Turning to the presentation of non-GAAP financial measures adjusting for or explaining the impact of COVID-19, the guidance says that it would be appropriate to highlight why management finds the measure or metric useful and how it helps investors assess the impact of COVID-19 on the company's financial position and results of operations. And, if a company is considering presenting metrics related to COVID-19, or changing the method by which it calculates a metric as a result of COVID-19, the guidance offers a reminder of the principles explained in recent Commission [guidance on metrics](#).

The guidance also emphasizes the necessity of refraining from trading prior to disseminating material non-public information. The company and its executives who are aware material risks related to COVID-19 should refrain from trading in the company's securities until such information is disclosed to the public, the guidance says.

**Public companies.** The SEC has extended an [exemptive order](#) providing public companies with a 45-day extension to file certain disclosure reports that would otherwise have been due between March 1 and July 1,

2020. Among other conditions, for each delayed report, companies must still convey through a current report (on Form 8-K or Form 6-K) a summary of why the relief is needed in their particular circumstances. Relief for companies whose ability to deliver proxy and information statements has been affected also remains in place. This order supersedes the original order (Release [No. 34-88318](#)), which covered March 1, 2020 to April 30, 2020.

**Investment Funds and advisers.** The Commission has also extended the relief giving certain investment funds and investment advisers additional time with respect to holding in-person board meetings and meeting certain filing and delivery requirements. The [order](#) providing exemptions from the Investment Company Act offers the same relief as the [previous order](#), but extends the period for which the relief is available by one month and updates the associated notice requirements. To that end, the relief for in-person board meetings and for filing Form N-23C-2 is limited to the period from and including March 13, 2020 to August 15, 2020. The relief for Forms N-CEN and N-PORT filing requirements and from annual and semi-annual report transmittal deadlines is limited to filing or transmittal obligations, as applicable, for which the original due date is on or after March 13, 2020 but on or prior to June 30, 2020. Regarding the exemptions for Forms N-CEN, N-PORT and the transmission of annual and semi-annual reports, the Commission has removed the original order's conditions that a fund relying on the relief describe why it is relying on the Order and estimate a date by which the required report would be filed.

The Commission continues to take the position that it would not provide a basis for an enforcement action if a registered fund does not deliver to investors the current prospectus where timely delivery is not possible because of circumstances related to COVID-19.

Finally, the Commission [extended](#) previously-issued exemptions from certain requirements of the Advisers Act limited to filing or delivery obligations, as applicable, for which the original due date is on or after March 13, 2020 but on or prior to June 30, 2020. The [original order](#) covered until April 30, 2020.

The relief applies to:

- registered investment advisers and exempt reporting advisers affected by the coronavirus outbreak to file an amendment to Form ADV or file reports on Form ADV part 1A, respectively;
- registered investment advisers affected by the coronavirus outbreak from requirements to deliver amended brochures, brochure supplements or summary of material changes to clients where the disclosures are not able to be timely delivered because of circumstances related to coronavirus; and
- private fund advisers affected by the coronavirus outbreak from Form PF filing requirements.

Filing or delivery must still be made as soon as practicable but no later than 45 days after the original due date.

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