

March 30, 2020

SEC Division of Corporate Finance Issues COVID-19 Disclosure Guidance

On March 25, 2020, the SEC Division of Corporate Finance issued Disclosure Guidance Topic No. 9 providing guidance regarding disclosure and securities law obligations that companies should consider with respect to COVID-19 and related business and market disruptions. The guidance recognizes that it may be difficult to predict the precise effects that COVID-19 will have, but reminds companies of their obligations to disclose “the effects COVID-19 has had on a company, what management expects its future impact will be, how management is responding to evolving events, and how it is planning for COVID-19-related uncertainties can be material to investment and voting decision.” Appropriate disclosure may be through a Form 8-K filing or in a company’s quarterly filings, including updates to disclosures relating to the business, risk factors, legal proceedings, disclosure controls and procedures, internal controls over financial reporting, and the financial statements.

Assessing and Disclosing the Evolving Impacts of COVID-19

The staff provides an illustrative list of the types of questions a company may consider in determining whether disclosure is appropriate:

- Has COVID-19 had an effect on your current operating results or financial condition? Do you expect future periods to have a similar or different effect?
- How has COVID-19 impacted your capital and financial resources, including your overall liquidity position and outlook?
- How do you expect COVID-19 to affect assets on your balance sheet and your ability to timely account for those assets?
- Do you expect any material impairments, increases in allowances for credit losses, restructuring charges,

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other expenses, or changes in accounting judgments?

- How has COVID-19, including remote working, affected your operations, including internal controls over financial reporting?
- Have you experienced challenges in implementing business continuity plans or do you foresee requiring material expenditures to do so?
- How do you expect COVID-19 to affect the demand for your products or services?
- What are and will be the impacts to your supply and distribution channels?
- Are stay in place, travel restrictions or border closures impacting your operations?

The staff then reminds companies to tailor the disclosure to the company's particular facts and circumstances and to ensure that the discussion reflects the internal discussion among management and the company's board.

Need to Refrain from Trading Prior to Dissemination of Material Non-Public Information

The staff reminds companies and their related persons to avoid selective disclosure of material non-public information related to the impacts of COVID-19 and to refrain from trading in the company's securities until the information is disclosed publicly.

Reporting Earnings and Financial Results

The staff reminds companies that because assessment of the impacts of COVID-19 is likely to make it more difficult to file timely information, companies should act now to ensure they have engaged proper experts and advisers. The staff also reminds companies of the regulations surrounding disclosure of non-GAAP financial measures. In particular, if management determines to adjust GAAP numbers as a result of COVID-19, the company should clearly explain its justifications for doing so.

Conclusion

As with all guidance from the Division of Corporate Finance, this guidance reflects the views of staff and has no legal force or effect. The staff guidance may be updated as the situation evolves. Finally, the staff emphasizes that health and safety take priority over reporting obligations and should not be compromised to meet reporting requirements.

Michael Best's Securities & Capital Markets team has experts who advise investment advisers and public companies on compliance with the SEC regulations. Please do not hesitate to contact a member of the Securities & Capital Markets team for additional information on this guidance

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