

Hot Topic: Coronavirus

SEC extends regulatory relief for companies impacted by coronavirus

March 5, 2020 (Updated April 1, 2020¹)



KPMG reports on the SEC's multiple measures that extend filing deadlines for companies affected by coronavirus

Background

The impacts of the novel coronavirus (COVID-19) may present challenges for companies that are required to provide information to trading markets, shareholders and the SEC. The SEC has provided extended relief to companies that are impacted by this outbreak.

For registered investment companies, the Division of Investment Management staff has issued a statement and a no-action letter regarding certain in-person board voting requirements under the Investment Company Act of 1940. The SEC has also issued orders that provide additional time for holding in-person board meetings and certain filing and delivery requirements.

Our [Hot Topic](#) issued on March 27, 2020 reports on considerations provided by the Division of Corporation Finance in Disclosure Guidance Topic No. 9², which provides the staff's current views on disclosure items that companies should consider when evaluating the impact of the coronavirus. Topics included in this guidance should be considered for inclusion in submissions furnished or filed with the SEC to claim reliance on the Order.

Regulatory relief^{**}

The following is a summary of the regulatory relief granted by the SEC.³

Periods of relief

SEC registrants subject to the Securities Act of 1933 and the Exchange Act of 1934 – filing deadlines falling between March 1 and July 1. The SEC will continue to consider whether additional relief is necessary as developments unfold.

¹ New guidance or significant updates are indicated with **

² [CF Disclosure Guidance: Topic No. 9](#), March 25, 2020

³ SEC Orders granting relief to companies affected by coronavirus, [March 25, 2020](#) and [March 26, 2020](#)

Extended filing deadlines	<p>Extends filing deadlines for required filings under the Exchange Act to 45 days after the original due date.</p> <p>To be eligible for the extended filing deadline, a company must meet the following conditions:</p> <ul style="list-style-type: none"> — the filing deadline cannot be met due to circumstances related to COVID-19; — in a Form 8-K (or Form 6-K) furnished or filed no later than the company’s original filing deadline, the company discloses that it is relying on the SEC Order and provides other required information; — completes its filing requirements within 45 days of the original filing deadline; and — discloses in the subsequent filing that it relied on the Order and the reasons for not being able to file timely.
What filings are covered?	<ul style="list-style-type: none"> — all Exchange Act periodic and current reports such as Forms 10-K, 10-Q, 11-K, 8-K, 20-F, 40-F, 6-K; and — all proxy and information statements.
What filings are not covered?	<ul style="list-style-type: none"> — Schedule 13Ds and amendments; — tender offer filings under Regulation 14D; — Section 16 filings; and — any Securities Act filing.
Proxy and information statements	<p>Exempts a company from the delivery requirements for proxy and information statements to security holders when they have mailing addresses located in an area where the common carrier has suspended delivery due to COVID-19, and the company makes a good faith effort to furnish the soliciting materials to the security holder.</p>

The SEC provided additional information in its press release.⁴

- Eligibility for Forms S-3 and S-8, as well as well-known seasoned issuer status, will be preserved if the company was current as of the first day of the relief periods. The company will be considered current if it files the required report by the extended due date.
- A company that receives an extension on filing Exchange Act reports by relying on the SEC Order may be permitted to file an extension under rule 12b-25 if it is unable to file on or before the extended due date. However, a Form 12b-25 is not required to be filed to rely upon the extensions permitted by the Order.
- In addition to items covered in the CF Disclosure Guidance Topic 9, disclosure considerations for all companies include:
 - risks related to the coronavirus that would be material to investors, the timing of becoming aware of those risks, and the avoidance of trading on that information before it is made public;
 - when disclosing material information related to impacts of the coronavirus, avoid selective disclosures and make information widely available; and

⁴ [SEC Extends Conditional Exemptions From Reporting and Proxy Delivery Requirements for Public Companies, Funds and Investment Advisers Affected by Coronavirus Disease 2019](#), March 25, 2020

- when providing forward-looking information in an effort to keep investors informed about material developments, including known trends or uncertainties regarding the coronavirus, companies may use the safe harbor in section 21E of the Exchange Act for this information.

Companies should also remember to address each of the five disclosure requirements in the Order, as applicable, in their Form 8-K or 6-K filing. A new Form 8-K or 6-K must be furnished or filed for each filing that is delayed.

The following are period-end dates encompassed within the extended filing deadlines, based on filer status.

Filer type	Annual periods ending on or before	Quarterly periods ending on or before
Large accelerated filer	May 2, 2020	May 22, 2020
Accelerated filer	April 17, 2020	May 22, 2020
Non-accelerated filer	April 2, 2020	May 17, 2020
Form 20-F filer	March 1, 2020	N/A

On March 31, 2020, the SEC updated its Compliance and Disclosure Interpretations (C&DIs)⁵ to include considerations related to filing a Form 12b-25 or furnishing a Form 8-K or 6-K when affected by COVID-19. C&DI 135.12 clarifies that if a Form 12b-25 is filed by the original filing deadline, a company will not have met the conditions to rely on the relief Order. However, a company that furnishes a Form 8-K or 6-K notifying the SEC that it will be relying on the Order may file a Form 12b-25 if it is unable to meet the 45-day extended filing deadline provided under the Order as explained in C&DI 135.13.



Registered investment companies

In a no-action letter issued to the Independent Directors Council on February 28, 2019, Division staff stated it would not recommend enforcement action if fund boards do not adhere to certain in-person voting requirements under the Investment Company Act in the event of unforeseen or emergency circumstances affecting some or all of the directors.⁶

On March 4, 2020, Division staff issued a statement⁷ to extend the no-action letter to cover:

- all approvals and renewals (including material changes) of contracts, plans or arrangements under section 15(c) or rules 12b-1 or 15a-4(b)(2); and
- the selection of a new independent public accountant pursuant to section 32(a).

On March 13, 2020, the SEC issued an Order⁸ to provide relief from certain requirements under the Investment Company Act. On March 25, 2020, the SEC issued an Order⁹ to extend the exemptions. The following is a summary of the relief granted by the SEC:

⁵ Questions [135.12](#) and [135.13](#) released on March 31, 2020

⁶ [Letter](#) from the Division Staff to the Independent Directors Council, February 28, 2019

⁷ Division of Investment Management [Staff Statement](#) of Fund Board Meetings and Unforeseen or Emergency Circumstances Related to COVID-19, March 4, 2020

⁸ Investment Company Act [Release No. 33817](#) (March 13, 2020)

⁹ Investment Company Act [Release No. 33824](#) (March 25, 2020)

- relief from sections and rules requiring certain agreements, plans or arrangements be approved by the company's board of directors by an in-person vote due to circumstances related to the current or potential effects of Coronavirus. Relief is provided for the period from March 13, 2020 to August 15, 2020;
- temporary exemption to file Form N-CEN or Form N-PORT. Relief is limited to filings for which the original due date is on or after March 13, 2020 but on or prior to June 30, 2020;
- temporary exemption to transmit annual and semi-annual reports to investors or unitholders. Relief is limited transmittal obligations, for which the original due date is on or after March 13, 2020 but on or prior to June 30, 2020; and
- exemption for filing Form N-23C-2 with the SEC. Relief is provided for the period from March 13, 2020 to August 15, 2020.

On March 23, 2020, the SEC also announced temporary relief¹⁰ from the Investment Company Act for registered investment funds affected by market events. Relief is provided until June 30, 2020. The following is a summary of the temporary relief provided:

- relief permitting registered open-end funds and insurance company separate accounts to borrow money from certain affiliates;
- relief permitting additional flexibility under existing interfund lending arrangements and extending the ability to use interfund lending arrangements to funds that do not currently have exemptive relief; and
- relief permitting registered open-end funds to enter into lending arrangements or borrowings that deviate from fundamental policies, subject to prior board approval.



Investment Advisers Act

On March 13, 2020, the SEC issued an Order¹¹ granting exemptions for certain filing requirements of the Investment Advisers Act of 1940. On March 25, 2020, the SEC issued an Order¹² to extend the exemption for the following.

- Registered investment advisers to file Form ADV, and for exempt reporting advisors to file Form ADV Part 1A. Relief is provided for filing requirements where the original due date is on or after March 13, 2020 but on or prior to June 30, 2020.
- Registered investment advisers to deliver amended brochures, brochure supplements or summary of material changes to clients where the disclosures are not able to be timely delivered. Relief is provided for delivery requirements where the original due date is on or after March 13, 2020 but on or prior to June 30, 2020.
- Private fund advisers to file Form PF. Relief is provided for filing requirements where the original due date is on or after March 13, 2020 but on or prior to June 30, 2020.

¹⁰ [SEC Provides Temporary Additional Flexibility to Registered Investment Companies Affected by Coronavirus](#), March 23, 2020

¹¹ Investment Advisers Act [Release No. 5463](#) (March 13, 2020)

¹² Investment Advisers Act [Release No. 5469](#) (March 25, 2020)



Regulation A and Regulation Crowdfunding**

On March 26, 2020, the SEC adopted a temporary final rule¹³ to extend the filing deadlines for specified reports and forms that companies must file in compliance with Regulation A and Regulation Crowdfunding. The relief provides affected companies 45 days to file certain disclosure reports that would have been due between March 26 and May 31, 2020 subject to the following conditions:

- companies must promptly disclose to their investors their reliance on the temporary final rules; and
- when companies file the required report or form, they must disclose that they are relying on the temporary final rules and state the reasons why, in good faith, they could not file such report or form on a timely basis.



Municipal advisors**

On March 26, 2020, the SEC issued a temporary conditional exemptive order¹⁴ that provides municipal advisors with an additional 45 days to file annual updates to Form MA that would have been due between March 26 and June 30, 2020. The municipal advisor must be unable to meet the filing deadline for its annual update to Form MA due to circumstances related to the effects of COVID-19 and provide a brief description of the reasons why it could not timely file.



Evolving information

The potential global and economic impacts of the coronavirus continue to evolve rapidly, and companies should monitor the situation. Companies are encouraged to maintain close communications with their board of directors, external auditors, legal counsel and other service providers as the circumstances progress. Stay informed at read.kpmg.us/coronavirus

¹³ [SEC Provides Additional Temporary Regulatory Relief and Assistance to Market Participants Affected by COVID-19, March 26, 2020](#)

¹⁴ [ibid](#)

Contact us

Timothy Brown

Partner

+1 212 954 8856

tdbrown@kpmg.com

Erin McCloskey

Managing Director

+1 212 872 5718

emccloskey@kpmg.com



kpmg.com/socialmedia

The information contained herein is of a general nature and is not intended to address the circumstances of any particular individual or entity. Although we endeavor to provide accurate and timely information, there can be no guarantee that such information is accurate as of the date it is received or that it will continue to be accurate in the future. No one should act upon such information without appropriate professional advice after a thorough examination of the particular situation.

© 2020 KPMG LLP, a Delaware limited liability partnership and the U.S. member firm of the KPMG network of independent member firms affiliated with KPMG International Cooperative ("KPMG International"), a Swiss entity. All rights reserved. NDPPS 764949

The KPMG name and logo are registered trademarks or trademarks of KPMG International.

Hot Topic: Coronavirus | 6
SEC extends regulatory relief for companies impacted
by coronavirus