

## SEC Provides Guidance on COVID-19 Reporting Relief

May 11, 2020

Last week, the Securities and Exchange Commission (SEC) published guidance to the COVID-19 Order (Order) it issued in March in which it granted relief to certain filing deadlines for companies that were affected by COVID-19 (link to the Order [here](#)) and as a result were unable to make timely filings of their periodic reports, schedules or forms. The new guidance also addresses the effects on extended filing deadlines on the use of Form S-3 for the offer and sale of securities.

In order to use the extended filing requirements under the Order, a company must state and disclose on Form 8-K (or Form 6-K if applicable):

- that it is relying on the Order;
- a brief description of the reasons for being unable to file the report on a timely basis;
- the estimated date by which the company estimates that it will be able to file the report; and
- a “company-specific risk factor” or factors explaining the impact, if material, of COVID-19 on the registrant’s business.

If the reason that the report, schedule or form cannot be filed timely relates to the inability of any person, other than the registrant, to furnish any required opinion, report or certification, the registrant must also attach, as an exhibit to the Form 8-K or 6-K, a statement signed by such person stating the specific reasons why such person is unable to furnish the required opinion, report or schedule on or before the original due date of the report that is not being timely filed.

*Continued Offerings Under an Existing Effective Registration Statement.* A company may continue to use an already effective registration statement when it has not filed timely a required periodic report pursuant to the Order as long as the company continues to comply with Section 10 of the Securities Act (Section 10(a)(3) of the Securities Act requires that a prospectus used more than nine months after the effective date of a registration statement contain information no more than 16 months prior to such use, so far as the information is known or can be furnished by the company without unreasonable effort or expense). Companies will want to analyze carefully what information is available and whether there is sufficient information about the impact of COVID-19 on the company’s performance.

*Continued S-3 Eligibility.* A company may continue to use Form S-3 even if it has not timely filed its required Exchange Act reports so long as it is in compliance with the Order for such reports. This does not alter the requirement that the company must have timely filed all other

reports required under Sections 13, 14 or 15(d) of the Exchange Act in the preceding twelve months and must otherwise meet the eligibility requirements of Form S-3. The same rules apply to filing a new Form S-3, so long as the company has complied with the Order with respect to the delayed report or reports. If, thereafter, the company does not file the report in the time provided by the Order, it will no longer be considered timely and current.

If you have any questions, please contact any of the following or your usual CFMB contact.

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