

Alert

SEC Reporting Companies Granted Further Extension of Filing Relief Due to COVID-19

March 27, 2020

On March 25, 2020, the U.S. Securities and Exchange Commission issued a new exemptive order¹ extending the temporary relief for reporting requirements under certain provisions of the Securities Exchange Act of 1934, as amended (“Exchange Act”) and the rules thereunder for public companies and other filers, subject to certain conditions. The new order supersedes a similar exemptive order issued by the SEC on March 4, 2020.²

The March 4, 2020 order provided that certain filings³ whose original deadline fell between March 1 and April 30, 2020 were allowed to be filed up to 45 days after they would otherwise be due if the filer is unable to meet the deadline due to COVID-19. The new order extends the April 30, 2020 date through July 1, 2020.

The exemption is available to registrants subject to the reporting requirements of Exchange Act Section 13(a) or 15(d). The exemption is also available to any person required to make any filings with respect to such a registrant, including pursuant to Section 13G. However, it should be noted that the orders do not offer relief for Schedule 13D filings, amendments to Schedule 13D filings or Section 16 filings (Form 3 and Form 4).⁴

The SEC confirmed in its press release announcing the order that, so long as a registrant properly complies with the conditions for using the extension, the SEC will consider such registrant current and timely in its Exchange Act filing requirements for purposes of Form S-3, Form F-3 and Form S-8 eligibility and the current public information eligibility requirements of Rule 144(c). Although not specifically addressed in the SEC’s press release, we would expect that former shell companies will also be deemed to remain current under Rule 144(i).

¹ Order Under Section 36 of the Securities Exchange Act of 1934 Granting Exemptions From Specified Provisions of the Exchange Act and Certain Rules Thereunder, Release No. 34-88465 (March 25, 2020), available [here](#).

² Order Under Section 36 of the Securities Exchange Act of 1934 Granting Exemptions From Specified Provisions of the Exchange Act and Certain Rules Thereunder, Release No. 34-88465 (March 25, 2020), available [here](#).

³ The order applies to the filing or furnishing of materials pursuant to Exchange Act Sections 13(a), 13(f), 13(g), 14(a), 14(c), 14(f), 15(d) and Regulations 13A, 13D-G (except for those provisions mandating the filing of Schedule 13D or amendments to Schedule 13D), 14A, 14C and 15D, and Exchange Act Rules 13f-1, and 14f-1, as applicable.

⁴ For further information on filings by investors, please see *SRZ Alerts: “Schedule 13/Section 16 — Coronavirus Update for Private Fund Managers — Limited SEC Filing Relief for Schedule 13G Filers and Unchanged Schedule 13D and Section 16 Obligations,”* available [here](#), and *“Schedule 13G — Coronavirus Update for Private Fund Managers — SEC Extends Limited Filing Relief for Schedule 13G Filers,”* available [here](#).

In order to take advantage of such exemption, a registrant must furnish to the SEC a Form 8-K or, if for foreign private issuers, a Form 6-K no later than the original filing deadline of the report.⁵ The Form 8-K must:

1. State that the registrant is relying on the order;
2. Provide a brief description as to why they could not meet the original deadline;
3. Provide an estimated date on which the report or filing is to be filed;
4. If applicable, provide a company specific risk factor or factors explaining the impact, if material, of COVID-19 on its business; and
5. If the filing delay is due to any person other than the registrant, such as an auditor, provide as an exhibit a statement signed by such person stating the specific reasons for the delay.

Registrants relying on these orders have generally used Item 8.01 — Other Events to announce the delay.

Registrants considering relying on these orders should also consider whether there are any other deadlines for filing reports that may apply. In particular, registrants should consider whether there are any reporting covenants in any debt agreements that may impose a separate deadline.

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⁵ The registrant must furnish a Form 8-K or Form 6-K for each filing that is delayed, but need not to file a Form 12b-25 so long as the report, schedule, or form is filed within the time period prescribed by the order. Once the registrant files the actual report, it must again state that it is relying on the order and state the reasons why it could not file such report, schedule or form on a timely basis.