

## SEC Provides Relief For Some Reporting Requirements

### 2020 SEC Filings Update

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The impact of COVID-19 may present challenges for companies who are required to provide information to trading markets, shareholders, and the Securities and Exchange Commission (the “SEC” or “Commission”). To help provide conditional regulatory relief, on March 25, 2020 the SEC issued an [order](#) that, subject to certain conditions, provides publicly traded companies with an additional 45 days to file certain Exchange Act reports that would otherwise be due between March 1, 2020 and July 1, 2020 (the “Relief”). This time period may be further extended by the Commission.

#### 1. Which filers are covered?

All reporting companies and any person required to make any SEC filings with respect to a reporting company under the Exchange Act. These filers include:

- Large accelerated filers
- Accelerated filers
- Non-accelerated filers
- Foreign private issuers
- Emerging growth companies
- Smaller reporting companies
- Schedule 13G filers
- Schedule 13 F filers
- Reporting companies and persons filing proxy statements, annual reports, and other soliciting materials under Sections 14(a) and (c) of the Exchange Act, Regulations 14A and 14C, and Rule 14f-1.

This chart shows an example of the changes to deadlines for certain SEC filings for each category of reporting company

<b>Filer Category</b>	<b>Filings</b>	<b>Original 2020 Deadline</b>	<b>COVID-19 Relief 2020 Deadline</b>
Large Accelerated Filer	Form 10-K	March 2	April 16
Accelerated Filer	Form 10-K	March 16	April 30
Non-accelerated Filer	Form 10-K	March 30	May 14
All US Filers	Proxy Statement or Form 10-K/A	April 29	June 15
Foreign Private Issuer	Form 20-F	April 30	June 15
Large Accelerated Filer	Form 10-Q	May 10	June 24
Accelerated Filer	Form 10-Q	May 10	June 24
Non-accelerated Filer	Form 10-Q	May 15	July 1
All US Filers	Form 13F	May 15	July 1

## **2. Which filers are not covered?**

The SEC has not extended the filing deadlines for the following filers:

- Schedule 13D filers
- Section 16 filers including those filing Form 3, Form 4, and Form 5.

## **3. What reports and materials are covered?**

Reports and materials required to be filed or furnished with the Commission under Exchange Act Sections 13(a), 13(f), 13(g), 14(a), 14(c), 14(f), 15(d), Regulations 13A, 13D-G, 14A, 14C, 15D and Rules 13f-1 and 14f-1 are all covered under the Relief. These include filings such as:

- Form 10-K
- Form 10-Q
- Form 20-F
- Form DEF 14A and related proxy soliciting materials
- Schedule 13G.

## **4. What are the conditions to receive Relief?**

- The reporting company or person required to make a filing is unable to meet the original filings deadline due to conditions related to COVID-19.
- The reporting company relying on the Relief furnishes to the Commission a Form 8-K (or Form 6-K if it is a foreign private issuer) by the later of March 16 or the original filing deadline. The Form 8-K or 6-K must include:
  - a statement that it is relying on the SEC's order;

- a brief description of the reasons why it could not file the required report, schedule or form on a timely basis;
  - the estimated date it expects to file the report, schedule, or form;
  - if appropriate, a risk factor explaining, any material impact of COVID-19 on its business; and
  - if the reason the company's report cannot be timely filed is because of the inability of any person (other than the registrant) to furnish a required opinion, report, or certificate, the company must attached as an exhibit a statement signed by that person, stating why they are unable to furnish the required opinion, report, or certificate before the original deadline.
- The reporting company or person required to make any filings files with the Commission any report, schedule, or form required to be filed no later than 45 days after the original due date.
  - In the report, schedule or form, the reporting company or person required to make a filing must disclose that it is relying on the SEC's order and state the reasons why it could not file such report, schedule or form on a timely basis.

## **5. Do companies still need to file Form 13b-25?**

Companies usually must file Form 13b-25 if they are going to submit their filing late. However, if a company is relying on the Relief, then as long as the company filed its report, schedule or form within the 45-day time period, they do not need to file Form 13b-25. If the company is unable to meet the extended due date, it may still file and rely on Rule 13b-25.

It is important to note, when relying on the order, a company cannot simply file Form 13b-25, it must also meet the conditions listed above under Section 4. Additionally, if the company has already filed Form 13b-25 their filing deadline will not automatically be extended, the company must furnish a Form 8-K or 6-K by March 16, 2020 or the original filing deadline.

## **6. Relief for those seeking to furnish proxy statements, information statements and soliciting materials:**

The SEC also provides relief for reporting companies or other persons making solicitations by exempting them from the requirements of the Exchange Act and the rules thereunder to furnish proxy statements, annual reports, and other soliciting materials to certain security holders if the below conditions are satisfied:

- The company's security holder has a mailing address located in an area where, as a result of COVID-19, the common carrier has suspended delivery service of the type or class customarily used by the company or other person making the solicitation; and
- The company or other person making a solicitation has made a good faith effort to furnish the soliciting materials to the security holder, or information materials to the security holder in accordance with the applicable rules.

## **7. Additional Securities Act and Exchange Act obligation changes:**

### Form S-3

For purposes of eligibility to use Form S-3 (and for well-known seasoned issuer status, which is based in part on Form S-3 eligibility), a company relying on the exemptive order will be considered current and timely in its Exchange Act filings requirements if:

- it was current and timely as of the first day of the relief period; and
- it files any report due during the relief period within 45 days of the filing deadline for the report.

### Form S-8 and Rule 144(c)

For purposes of Form S-8 eligibility requirements and the current public information eligibility requirements of Securities Act Rule 144(c), a reporting company relying on the SEC's order will be considered current in its Exchange Act filing requirements if:

- it was current as of the first day of the relief period; and
- it files any report due during the relief period within 45 days of the filing deadline for the report.

### Form ID Filers

In order to gain access to EDGAR to make filings, Rule 10 of Regulation S-T requires applicants to complete the application online and confirm the authenticity of the Form ID filing by uploading a notarized document manually signed by the applicant. Due to COVID-19 and the inability for applicants to secure a notarization to authenticate their Form ID, the SEC has added a temporary paragraph (c) to Regulation S-T. Under the temporary Rule 10(c), from March 26, 2020 through July 1, 2020, SEC staff are allowed to issue EDGAR access codes to filers without the required notarization to manually sign provided the filer:

- indicates on the face of the manually signed document that they could not obtain the required notarization due to circumstances relating to COVID-19; and if requested by the SEC
- provide additional documents on a supplemental basis to support their application.

Upon issuance of the filers EDGAR access codes, the filer has 90 days to submit a copy of the notarized, manually signed document via EDGAR. Failure to submit the notarized copy may result in the SEC staff inactivating the filer's access codes.

### Regulation Crowdfunding and Regulation A Issuers

The SEC has also provided Regulation Crowdfunding and Regulation A issuers an additional 45 days to file certain reports and forms that are otherwise due between March 26, 2020 and May 31, 2020 if:

- the issuer is not able to meet a filing deadline due to circumstances related to COVID-19
- the issuer promptly discloses on its website, or intermediary's platform for Regulation Crowdfunding issuers, or provides direct notification to its investors that it is relying on the temporary final rules

- the issuer files the report or form with the SEC no later than 45 days after the original due date
- the issuer discloses that it is relying on the temporary final rule and states the reasons why, in good faith, it could not file such report or form on a timely basis in such report or form.

This relief provided by the SEC does not apply to Form C or Form C/A for Regulation Crowdfunding and does not apply to a Form 1-A that has not been qualified for Regulation A.

Nasdaq Rule 5250(c)

Nasdaq Rule 5250(c) requires that companies timely file all required periodic financial reports with the SEC. As a result of the SEC's action to extend filing deadlines, Nasdaq released an [Issuer Report](#) stating that Nasdaq-listed companies impacted by COVID-19 that satisfy the conditions in the SEC's order are eligible for a 45 day extension to file and will not be deficient under Nasdaq Rule 5250(c) for failing to file Exchange Act reports by the existing deadlines and will not receive a deficiency letter from Nasdaq. This relief has also been extended to delivery of annual and quarterly reports and proxy materials to shareholders in affected areas under Nasdaq Listing Rules 5250(d) and 5620(b).

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