

Update on SEC Filing Extensions Amid COVID-19

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The U.S. Securities and Exchange Commission (the "SEC") has offered various guidance on filing extensions and further delivery relief as public companies, funds, and investment advisors continue to adjust to the sweeping effects of the COVID-19 pandemic. Below is a summary of the SEC's latest guidance as it pertains to: (1) filing extensions and delivery relief for public companies, and (2) filing extensions and delivery relief for investment fund companies and advisers.

Filing Extensions and Delivery Relief for Public Companies

On March 4, 2020, the SEC announced filing extensions and delivery relief for public companies in response to the COVID-19 pandemic. On March 25, 2020, the SEC amended the earlier order and extended the window for relief through a second three-month reporting period. Public companies that are unable to meet filing deadlines due to COVID-19 will be given a 45-day extension beyond the original due date. On June 26, 2020, the SEC announced there will be no further extension of this relief.

The SEC's filing relief continues to be conditioned upon the company submitting a Form 8-K (or, if applicable, a Form 6-K) for each filing that is delayed and detailing the following:

- A statement the company is relying on the filing extension order;
- A brief explanation of why the company could not file the report, schedule, or form in time;
- An estimated filing date for the report, schedule, or form;
- A company-specific risk factor describing COVID-19's impact on the company's business; and
- If the report cannot be filed in a timely manner due to an individual other than the company, a signed statement by said individual detailing why the individual is unable to provide the required document prior to the filing date.

Furthermore, the SEC has exempted public companies from the requirements to deliver annual reports, proxy statements, and information statements to security holders. To qualify for this exemption, the companies must be able to show the following conditions: (1) the security holder has a mailing address in an area where delivery service has been suspended due to COVID-19, and (2) the company has made a good faith effort to deliver the soliciting or information materials to the security holder in accordance with the applicable rules.

Filing Extensions and Delivery Relief for Investment Fund Companies and Investment Advisers

On March 13, 2020, the SEC announced filing extensions and delivery relief for certain investment funds and advisers in response to the COVID-19 pandemic. On March 25, 2020, the SEC amended the earlier order and exempted investment fund companies and business development companies from voting requirements and extended deadlines for investment funds and advisers to meet certain filing and delivery requirements. On June 19, 2020, the SEC again amended the earlier orders and extended the voting requirements exemption for investment fund companies and business developments companies. On June 26, 2020, the SEC announced there will be no further extension for investment funds and advisers to meet certain filing and delivery requirements.

The SEC has exempted investment fund companies, business development companies, and any investment adviser of such companies from the in-person board meeting voting requirement. To qualify for this exemption, the companies must be able to show the following conditions: (1) a statement detailing why reliance on the order is necessary due to COVID-19, (2) an alternative means of communication was or will be used where directors can hear each other simultaneously, and (3) the board of directors and a majority of the directors ratified said action pursuant to the order exemption. This relief will extend through at least December 31, 2020.

Under the new order, an investment adviser does not need to include an explanation of why it is unable to meet a filing deadline or delivery requirement, nor does it need to provide an estimated filing date or delivery completion.

The removal of the aforementioned requirements is conditioned on the following:

- The relief is limited to filing or delivery requirements for which the original due date is between March 13 and June 30;
- The adviser is unable to meet filing or delivery deadlines due to COVID-19;
- If the adviser is relying on the filing extension order to file Form ADV, it promptly notifies the SEC via email at IARDLive@sec.gov and discloses on its public website that it is relying on the extension order;
- If the adviser is relying on the filing extension order to file Form PF, it promptly notifies the SEC via email at FormPF@sec.gov that it is relying on the extension order; and
- The adviser files Form ADV or PF, as applicable, and fulfills the delivery requirements no later than 45 days after the original due date.

Conclusion

The SEC has continued to provide regulatory relief to public companies whose operations may be affected by COVID-19. In addition, it also issued its current views regarding disclosure considerations and other securities law matters related to COVID-19. For a summary of those disclosure considerations, see our recent Client Advisory "[Recap of SEC Disclosure Requirements in Response to COVID-19](#)."

Clients should continue to watch for future SEC news and guidance related to the above filing extensions and other disclosure considerations.

This Kelley Drye client advisory was written with the assistance of summer associate Iqra Mushtaq.