

COVID-19 NEWS OF INTEREST

# SEC Encourages COVID-19 Disclosures in Upcoming Quarterly Communications

April 14, 2020

**AUTHOR**

**Jeffrey S. Hochman**

With quarterly earnings press releases, investor calls and reports approaching for most public companies, SEC Chairman Jay Clayton and William Hinman, Director of the Division of Corporation Finance, recently issued a statement stressing the importance of disclosure of COVID-19-related matters.<sup>1</sup> Notably, given the unprecedented issues posed by the COVID-19 pandemic, the statement goes well beyond the normal SEC focus on the need to provide material information for investors, as required under federal securities laws, to emphasize the benefits of detailed, company-specific disclosures to the company and the economy more broadly.

The SEC, through a variety of public statements and releases, has reminded issuers of their disclosure and other obligations in connection with the ongoing COVID-19 pandemic.<sup>2</sup> Chairman Clayton and Director Hinman, in this recent statement, start with this traditional approach, encouraging companies to convey meaningful information that allows investors “to see the key operational and financial considerations and challenges the company faces through the eyes of management.”

The SEC statement recognizes both the critical need for tailored COVID-19-related disclosures and the challenges in providing appropriate information, particularly in these uncertain and rapidly changing times. Under these circumstances, historical information regarding a company’s results and operations may be considerably less relevant; investors and

<sup>1</sup> See The Importance of Disclosure – For Investors, Markets and Our Fight Against COVID-19 (April 8, 2020), available [here](#).

<sup>2</sup> See, for example, SEC Division of Corporation Finance, CF Disclosure Guidance: Topic No. 9, Coronavirus (COVID-19) (March 25, 2020), available [here](#), and our related client memorandum, available [here](#). The guidance includes a litany of COVID-19-related questions that should be considered when reviewing and updating disclosures.

---

## SEC Encourages COVID-19 Disclosures in Upcoming Quarterly Communications

others are more focused on the company's current situation and, more importantly, forward-looking information regarding the ongoing impact of the COVID-19 crisis on the company.

Accordingly, company disclosures should describe: (1) where the company stands today, both operationally and financially, (2) how the company's COVID-19 response is progressing and (3) how its operations and financial condition may change due to COVID-19. To the extent material, each company should discuss:

- its current liquidity position, projected financial needs and expected availability of resources to meet those needs;
- any financial assistance it has or expects to receive under the federal CARES Act or other COVID-19-related federal and state programs, including, if material, the nature, amounts and effects of such assistance; and
- the impact that COVID-19 is having or may have on its operations, including as a result of its efforts to protect its employees' health and well-being and customer safety, even beyond the direct income statement and balance sheet effects.

To further encourage companies to provide forward-looking COVID-19-related disclosures, the SEC reminds issuers of the safe harbors under the Securities Act and the Securities Exchange Act for forward-looking statements.<sup>3</sup> The statement notes that, given the uncertainty in our current business environment, the SEC will not second-guess good-faith attempts to provide appropriately framed forward-looking information.

According to the SEC, in addition to benefitting investors, robust, forward-looking information regarding the impact of COVID-19 will also benefit the company. The more confidence investors (and the markets more generally) have that a company has a well-thought-out and executable strategy for addressing the effects of COVID-19, the more willing they may be to invest in and provide financing to the company. Similarly, customers and suppliers may be more willing to continue to do business with a company that is transparent in its strategy and plans.

Stepping beyond its traditional investor-focused role, the SEC believes that the broad dissemination of company-specific plans for addressing the effects of COVID-19 will substantially contribute to our collective efforts to fight and recover from COVID-19. As a company credibly conveys its plan to restart or expand its business, it encourages both its suppliers and customers, up and down the supply chain, to similarly increase their activities, and makes them less likely to furlough or lay off their own employees. More broadly, "when a company articulates its strategy publicly, it gives investors and the public a heightened level of confidence," which, in turn, "reduces risk aversion and facilitates action," strengthening our ability to recover, as rapidly as possible, from the devastating economic impact of COVID-19.

---

<sup>3</sup> Item 1A of Form 10-Q requires disclosure of material changes from the risk factors previously disclosed in the registrant's Form 10-K. Companies should consider the need to add or expand their current risk factors in light of the more severe impacts of COVID-19, tailored to their specific situation.

---

## SEC Encourages COVID-19 Disclosures in Upcoming Quarterly Communications

Willkie has multidisciplinary teams working with clients to address COVID-19-related matters, including, for example, contractual analysis, litigation, restructuring, financing, employee benefits, SEC and other corporate-related matters. Please click [here](#) to access our publications addressing issues raised by COVID-19. For advice regarding COVID-19, please do not hesitate to reach out to your primary Willkie contacts.

If you have any questions regarding this client alert, please contact the following attorney or the Willkie attorney with whom you regularly work.

---

**Jeffrey S. Hochman**

212 728 8592

[jhochman@willkie.com](mailto:jhochman@willkie.com)

Copyright © 2020 Willkie Farr & Gallagher LLP.

This alert is provided by Willkie Farr & Gallagher LLP and its affiliates for educational and informational purposes only and is not intended and should not be construed as legal advice. This alert may be considered advertising under applicable state laws.

Willkie Farr & Gallagher LLP is an international law firm with offices in New York, Washington, Houston, Palo Alto, San Francisco, Chicago, Paris, London, Frankfurt, Brussels, Milan and Rome. The firm is headquartered at 787 Seventh Avenue, New York, NY 10019-6099. Our telephone number is (212) 728-8000, and our fax number is (212) 728-8111. Our website is located at [www.willkie.com](http://www.willkie.com).