

SEC Releases Guidance Regarding COVID-19 Disclosure Considerations

On June 23, 2020, the Securities and Exchange Commission's (SEC) Division of Corporation Finance (Division) issued guidance, [CF Disclosure Guidance: Topic No. 9A](#), focused on disclosure considerations regarding operations, liquidity, and capital resources in light of the COVID-19 pandemic. The guidance supplements previous guidance issued by the Division, [CF Disclosure Guidance Topic No. 9](#), on March 25, 2020. The guidance echoes the need for companies to provide investors with the information necessary "to understand how management and the Board of Directors are analyzing the current and expected impact of COVID-19 on the company's operations and financial condition, including liquidity and capital resources." The guidance reminds companies "to proactively revise and update disclosures as facts and circumstances change."

Under the guidance, the Division notes that in response to the effects of COVID-19, companies are making potentially significant operational changes to their business processes, including transitioning to and from remote working arrangements, supply chain and distribution adjustments, and engaging in novel and complex financing activities. The Division reminds companies that they must carefully consider whether these adjustments and activities are material to investors and therefore require appropriate disclosures. Companies must also provide "robust and transparent disclosures" around liquidity and capital resources and any new risks posed as a result of COVID-19. The Division highlights the fact that while companies may be disclosing such matters in earnings releases, companies are also encouraged to evaluate whether similar disclosures should be included in Management's Discussion and Analysis in their filings.

The Division provides a list of questions that companies are encouraged to ask as they consider their disclosure obligations, including questions around material operational challenges faced, assessment of overall liquidity, accessing lines of credit or raising capital, reduction of capital expenditures and alterations to supply chain or customer contracts.

The Division also provides guidance and specific questions to consider to the extent a company has received financial assistance under the Coronavirus Aid, Relief, Economic Security Act (CARES Act), as well as guidance and specific questions with respect to a company's ability to continue as a going concern.

On the same day, the SEC's Office of Chief Accountant (OCA) issued a statement highlighting the critical role of financial reporting in the current environment. The [statement](#) reminds companies of the OCA's prior [statement](#) on April 3, 2020, regarding the importance of providing investors with "high-quality, decision-useful" financial information.

As companies prepare for second quarter financial reporting, they are reminded to disclose to investors any "significant judgments and estimates" made in connection with financial reporting responsibilities. Likewise, companies faced with operational changes, uncertainties and associated risks due to COVID-19 are encouraged to adapt internal accounting controls and procedures to avoid material inaccuracies in financial statements.

As with the Division, the OCA advises companies to disclose any "substantial doubt" of a company's ability to continue as a going concern. Specifically, if management has a substantial doubt that obligations maturing within one year of each reporting period, including interim periods, cannot be met, management should make appropriate disclosures and provide its strategy to alleviate such substantial doubt. Under these circumstances, investors should be informed of any "information about the principal conditions giving rise to the substantial doubt" and "management's evaluation of the significance of those conditions relative to the entity's ability to meet its obligations." Companies are also reminded that in instances where management's plan does not



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alleviate substantial doubt, additional disclosure is required.

Finally, the OCA emphasizes the instrumental role that audit committees of the board of directors have in the financial reporting system through their supervision of the internal and external audit process.

Although neither the guidance nor the statement is a rule or regulation, they provide important reminders to companies of the views of the Division and the OCA on the need to provide adequate disclosure and high-quality financial information in the current environment. Accordingly, we urge you to consider the guidance and statement as well as the prior guidance and statement during your preparations for the second quarter filings and financial statements.

To discuss any questions you may have regarding this Alert, or how it may apply to your particular circumstances, please contact a member of Cozen O'Connor's Corporate Governance & Securities Practice.