

Fast & Furious: A Summary of Actions Affecting Issuers Related to the Coronavirus

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In the last 45 days, the SEC has taken action in the following eight areas in an response to the lockdown caused by the coronavirus pandemic. The following briefly summarizes those actions:

1. **Extended Filing Deadlines:** On [March 4](#) and [March 25](#), the SEC issued orders that provides a 45-day extension for periodic reports (i.e., 10-Ks and 10-Qs) and proxy delivery requirements that become due on or before July 1, 2020, which also provides relief from eligibility requirements to use Form S-3 and Form S-8 registration statements. [Click here](#) for a more detailed summary of these orders. On April 6, the SEC issued [CD&I 104.18](#) to clarify when the filing of Form 10-K Part III information could be incorporated by reference within the 120-day deadline that falls within this relief period.
2. **Shareholder Meetings:** On March 13, the SEC issued guidance on how to change from an in-person meeting to a virtual-only annual meeting after an issuer has already filed and mailed its definitive proxy statement. For more details on virtual or delayed meetings, [click here](#). On April 7, the SEC updated [this guidance](#) to expand it to special meetings of shareholders and to permit the use of the “notice-only” delivery option under Rule 14a-16 for issuers that encounter delays in printing and mailing of proxy materials and are unable to meet the requirement to send notice of the electronic availability of the proxy materials at least 40 calendar days before the meeting.
3. **Manual Signatures in Filings:** On March 24, the Division of Corporation Finance [announced](#) that it would not recommend an enforcement action with respect to Rule 302(b) if a signatory is unable to provide the filer with the manual signature as required due to the coronavirus if certain conditions are met. For more details on this guidance, please [click here](#).
4. **Disclosure Guidance:** On March 25, the Division of Corporation Finance issued [CF Disclosure Topic No. 9](#) with disclosure guidance related to insider trading, selective disclosure, forward-looking information and the possible need to update information that has become materially inaccurate due to the coronavirus as well as guidance on Non-GAAP financial measures when GAAP information is not available due to the evolving impact of the coronavirus on that measure. Please [click here](#) for more details on this guidance.
5. **Form ID, Regulation A and Regulation Crowdfunding:** On March 26, the SEC adopted a [temporary final Rule](#) to permit applicants for EDGAR access to upload a signed copy of Form ID (completed online) without the required notarization if due to difficulties related to the coronavirus. The SEC also adopted temporary final rules to extend filing deadlines to May 31, 2020 under Regulation A and Regulation Crowdfunding, under certain conditions.
6. **Relief Aid and Earnings Releases:** In interviews on April 7 and a [joint statement](#) on April 8 with William Hinman, the Director of the Division of Corporation Finance, Chairman Jay Clayton urged companies that may receive federal rescue money related to the coronavirus to disclose their

plans as appropriate. When issuing earnings releases and conducting analyst/investor calls, he expects companies to provide as much information as is practicable regarding their current financial and operating status, as well as their future operating and financial planning. He reminded companies that they can utilize the safe harbor for forward-looking statements, and they should not expect to be second guessed for their good faith attempts to address the uncertainties caused by the coronavirus.

7. **Business Development Companies (BDCs):** On April 8, [the SEC announced](#) temporary, conditional exemptive relief for BDCs to enable them to make additional investments in small and medium-sized businesses, subject to certain investor protection conditions such as independent evaluation of the terms of the issuance and approval by a majority of a BDC's independent board members. The SEC also adopted rule amendments related to BDCs and other closed-end funds to allow the use of security offering rules that are available to operating companies. The amendments are designed to streamline the registration, offering and investor communications with the use of short-form registration statements, which can sell securities "off the shelf," automatic effectiveness of certain filings and the use of "free-writing prospectuses" among other features.
8. **Rule 144 Paper Filings:** On April 10, the Division of Corporation Finance [issued a staff statement](#) for relief to those who submit a Form 144 for the period from and including April 10, 2020 to June 30, 2020. The staff will not recommend an enforcement action to the SEC if a Form 144 to be filed in paper under Rules 101(b)(4) or 101(c)(6) of Regulation S-T is submitted via email in lieu of mailing or delivering the paper form as a PDF attachment to PaperForms144@SEC.gov, subject to certain conditions.

For questions regarding filing and signature requirements or any of the recent guidance, please contact your GableGotwals attorney or a member of our [Corporate & Securities team](#).



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