

SEC Filing Deadlines for Canadian Issuers

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by Daniel M. Miller

During the current coronavirus crisis, the SEC has issued an Order providing filing extensions that apply to Canadian issuers. The following is a summary of the SEC's new filing requirements.

Form 40-F

For Canadian issuers eligible to file their SEC annual report on Form 40-F under the Canada-U.S. Multi-jurisdictional Disclosure System ("MJDS"), Form 40-F continues to be required to be filed on the date on which the included Canadian documents (in most cases, the Annual Information Form) is filed in Canada. We understand that the Canadian Securities Administrators have temporarily provided a blanket 45-day filing extension for Canadian filings, including the Annual Information Form. Therefore, as a practical matter, Form 40-F filers have also automatically received a 45-day filing extension for the filing of the Form 40-F. We have confirmed with the SEC that such 45-day filing extension is available to Form 40-F filers notwithstanding that it could result in a Form 40-F being filed later than the filing deadline for an Annual Report on Form 20-F (four months after the applicable year end). We have also confirmed with the SEC that MJDS filers taking advantage of such filing deadline extension are not required to comply with the SEC's conditional filing relief described below.

Other SEC Filings

For non-MJDS filers, the SEC has issued an Order that provides a conditional 45-day filing extension for SEC filings due prior to July 1, 2020. In order to be eligible to utilize the provided relief, the person making the filing must meet the following conditions:

- (a) the filer must be unable to meet a filing deadline due to circumstances related to COVID-19 (i.e. it is not a blanket exemption);
- (b) any person relying upon the SEC's Order must furnish a Form 6-K or Form 8-K to the SEC by the original filing deadline of the applicable report, stating:

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- a. it is relying on this Order;
- b. a brief description of the reasons why it could not file such report, schedule or form on a timely basis;
- c. the estimated date by which the report, schedule, or form is expected to be filed;
- d. a company specific risk factor or factors explaining the impact, if material, of COVID-19 on its business; and
- e. if the reason the subject report cannot be filed timely relates to the inability of any person, other than the registrant, to furnish any required opinion, report or certification, the report must include as an exhibit a statement signed by such person stating the specific reasons why such person is unable to furnish the required opinion, report or certification on or before the date such report must be filed.

Therefore, Canadian issuers that file on Form 20-F or Form 10-K might be ineligible to fully benefit from the 45-day filing extension provided by the Canadian Securities Administrators.

Form 6-K

Reports on Form 6-K continue to be due “promptly” following the filing or required public disclosure of the included information in Canada.