

SEC Supplements COVID-19 Disclosure Guidance Ahead of Second Quarter Reports

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by Cam C. Hoang

The Securities and Exchange Commission continues to encourage public companies to provide disclosures that allow investors to evaluate the current and expected impact of COVID-19 through the eyes of management and to proactively revise and update disclosures as facts and circumstances change.

Ahead of public company reports of their second quarter results, the SEC's Division of Corporation Finance has released a supplement to CF Disclosure Guidance Topic No. 9 (summarized here). The supplement presents a series of additional questions that companies should consider for how the COVID-19 pandemic has affected their businesses, financial condition and results of operations.

Public companies are asked to consider whether there are material operational and financial adjustments which should be disclosed in quarterly report on Form 10-Q, under the Management's Discussion and Analysis of Financial Condition and Results of Operations (the "MD&A"). Questions presented by the SEC staff include:

- What are the material operational challenges that management and the Board of Directors are monitoring and evaluating?
- How is your overall liquidity position and outlook evolving?
- Have you reduced your capital expenditures and if so, how? Have you reduced or suspended share repurchase programs or dividend payments?
- Have you modified contractual arrangements (eg, with customers, landlords or suppliers) in response to COVID-19 in such a way that the revised terms may materially impact your financial condition, liquidity, and capital resources?
- Have you assessed the impact material events that occurred after the end of the reporting period, but before the financial statements were issued, have had or are reasonably likely to have on your liquidity and capital resources and considered whether disclosure of subsequent events in the financial statements and known trends or uncertainties in MD&A is required?

In the supplement, the SEC staff encourages public companies receiving federal

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- Cam C. Hoang

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assistance through the CARES Act, including loans and tax relief, to consider the short- and long-term impact of that assistance on their financial condition, results of operations, liquidity, and capital resources, as well as the related disclosures and critical accounting estimates and assumptions.

The SEC staff reminds public companies that at each annual and interim reporting period, US generally accepted accounting principles ("GAAP") requires management to evaluate whether there are conditions or events that raise substantial doubt about the company's ability to continue as a going concern within one year after the date that the financial statements are issued. Where there is substantial doubt, or the substantial doubt is alleviated by management's plans, management should provide the appropriate respective disclosures in the financial statements and consider MD&A disclosure. In drafting these disclosures, we would encourage public companies to review Accounting Standards Codification 205-40-50-13.