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SEC Will Adjust 8-K Receipt Dates Based on EDGAR Technical Difficulties

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by Cam C. Hoang

The SEC posted a notice yesterday addressing EDGAR technical difficulties which may impact filers' ability to make timely submissions. For those issuers who, due to technical difficulties, are unable to furnish or file earnings information on Form 8-K within 48 hours before the earnings conference call, the staff will adjust the receipt date of such Form 8-K so that it will be deemed furnished or filed at the time the issuer first attempted to submit such report. Earnings information is furnished or filed in accordance with Item 2.02 of Form 8-K. This adjustment enables issuers to qualify for an exemption under Item 2.02, as long as they meet the other enumerated conditions. If they qualify for the exemption, issuers do not need to disclose any further information based on oral communication from the subsequent earnings conference call (such as a transcript of the call), even if additional material nonpublic information about the completed earnings period is disclosed on the call.

This is welcome relief for issuers who would otherwise need to furnish or file transcripts or other materials from the earnings conference call, as well as post these materials on their websites, in order to comply with the requirements of Item 2.02 and Regulation FD.

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