SEC

Coronavirus: SEC provides conditional regulatory relief

Due to the effects of the coronavirus on U.S.-listed companies located, or with operations, in affected areas, the SEC has provided conditional regulatory relief to address compliance issues with respect to certain federal securities laws. The SEC’s March 4, 2020 order provides, subject to certain conditions, publicly traded companies an additional 45 days to file certain disclosure reports, such as Exchange Act annual and quarterly reports, that would have been due between March 1 and April 30, 2020. Among other conditions, companies must furnish a Form 8-K by the later of March 16 or the original reporting deadline to convey, among other matters, why the relief is needed in their particular circumstances. Taking advantage of the additional time will not have a negative impact on a company’s eligibility to use Form S-3 nor on a company’s ability to meet the Form S-8 eligibility requirements.

The SEC also reminded companies to provide investors with insights regarding their assessment of, and plans for addressing, material risks to their business resulting from the coronavirus. And, in light of their disclosure obligations, companies are advised to take steps to prevent their directors, officers and other corporate insiders from initiating securities transactions until investors have been appropriately informed about such risks. When companies disclose material information related to the effects of the coronavirus, they are reminded to avoid selective disclosures and to disseminate such information broadly. A company may need to update previous disclosures to the extent that the information becomes materially inaccurate.

Companies requiring additional or different assistance in their efforts to comply with the requirements of the federal securities laws are encouraged to contact SEC staff. The staff will determine whether to provide additional guidance and relief as appropriate for affected parties.

Amended rules simplify certain registered debt offering disclosures

The SEC recently released Release 33-10762, Financial Disclosures about Guarantors and Issuers of Guaranteed Securities and Affiliates Whose Securities Collateralize a Registrant’s Securities. This final rule simplifies certain Regulation S-X financial disclosure requirements applicable to registered debt offerings in:

- Rule 3-10, Financial statements of guarantors and issuers of guaranteed securities registered or being registered. The amendments to Rule 3-10:
- Continue to permit the omission of separate financial statements of subsidiary issuers and guarantors when certain conditions are met, but replace the condition that a subsidiary issuer or guarantor be 100% owned by the parent company with a condition that it be consolidated in the parent company’s financial statements.

- Replace currently required condensed consolidating financial information with certain proposed financial and non-financial disclosures. The financial disclosure requirements (a) consist of summarized financial information of the issuers and guarantors, which may be presented on a combined basis, and (b) reduce the number of periods presented. The non-financial disclosure requirements expand the qualitative disclosures about the guarantees, issuers, guarantors and other matters that are material to holders of the guaranteed security.

- Require the financial and non-financial disclosures for as long as an issuer or guarantor has an Exchange Act reporting obligation with respect to the guaranteed securities, rather than for as long as the guaranteed securities are outstanding.

- Rule 3-16, Financial statements of affiliates whose securities collateralize an issue registered or being registered. The amendments to Rule 3-16:
  - Replace the existing requirement to provide separate financial statements for each affiliate whose securities are pledged as collateral with financial and non-financial disclosures about the affiliate(s) and the collateral arrangement as a supplement to the consolidated financial statements of the registrant that issues the collateralized security.
  - Replace the requirement to provide disclosure only when the pledged securities meet or exceed a numerical threshold relative to the securities registered or being registered with a requirement to provide the amended financial and non-financial disclosures in all cases, unless they are immaterial.

The amended financial and non-financial disclosures in both Rules 3-10 and 3-16 are permitted to be provided outside the audited annual and unaudited interim consolidated financial statements in all filings. Such disclosure requirements will be relocated to new Article 13 in Regulation S-X.

The amendments will be effective on January 4, 2021, but voluntary compliance is permitted in advance.

PUBLIC SECTOR

Proposed enhancements to framework for notes to financial statements

The Governmental Accounting Standards Board (GASB) issues Concepts Statements to provide a conceptual framework of interrelated objectives and fundamental concepts that can be used as a basis to establish future consistent financial reporting standards. Recently, the GASB issued an Exposure Draft, Communication Methods in General Purpose External Financial Reports That Contain Basic Financial Statements: Notes to Financial Statements - an amendment of GASB Concepts Statement No. 3, to elaborate on the types of information that should be disclosed in notes and the types of information that are not appropriate for note disclosures. In particular, the proposal distinguishes information as essential to users if the information is characterized by the presence of evidence that:

- The information is being utilized in users’ analyses for making decisions or assessing accountability; or

- If the information became available, users would modify their analyses for making decisions or assessing accountability to incorporate that information.
The concepts included in the proposed Concepts Statement would establish that information disclosed in notes to financial statements, at a minimum, should correspond to the reporting units presented in the financial statements. The concepts proposed also would establish that an evaluation of the expected benefits and perceived costs associated with disclosing information in notes to financial statements should be conducted separately and in addition to the evaluation of the overall expected benefits and perceived costs.

The Exposure Draft is available for comment until April 17, 2020.