

CLIENT ALERT

SEC Issues Public Statement Regarding the Impact of COVID-19 on Earnings Guidance

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With first calendar quarter earnings set to be released by issuers in the coming weeks, Securities and Exchange Commission (SEC) Chairman Jay Clayton and the SEC's Director of the Division of Corporation Finance, William Hinman, issued a [public statement](#) on April 8, 2020, encouraging issuers to provide meaningful forward-looking disclosures regarding the impact of COVID-19 in their upcoming earnings releases and on calls with analysts and investors. This follows on the heels of the March 25, 2020 release of [Disclosure Guidance Topic No. 9](#) by the Division of Corporation Finance, which provides its current views regarding disclosure and other securities law obligations that issuers should consider with respect to the COVID-19 pandemic and related business and market disruptions.

The impact of COVID-19 will not be easy to appraise and quantify for many issuers, but may nonetheless be material to an investor's decision making. Furthermore, in the view of the Chairman and Director, the broad dissemination and exchange of company-specific plans for addressing the effects of COVID-19 under various scenarios will substantially contribute to the nation's collective effort to fight and recover from COVID-19.

The statement of the Chairman and Director encourages issuers to provide as much COVID-19-related forward-looking information as practicable regarding their (1) current operating status and future operating plans under COVID-19 mitigation conditions, (2) current liquidity positions and expected financial resource needs, and (3) actions and changes to company policy that are likely to impact operations. Additionally, to the extent an issuer has or anticipates receiving COVID-19-related federal or state financial assistance, such issuer should consider how the assistance may be reasonably likely to have a material effect on its financial condition or results of operations, and should provide disclosure of the nature, amounts and effects of such assistance.

The statement of the Chairman and Director acknowledges the difficulty in providing detailed forward-looking information regarding financial condition or results of operations, which may ultimately differ substantially from what would now appear to be a reasonable estimate at this stage of the COVID-19 pandemic. The statement says that the SEC does not expect to second guess an issuer's good faith attempts to provide investors and other market participants appropriately framed forward-looking information. Nonetheless, we strongly encourage all issuers to have their forward-looking disclosures reviewed and analyzed by experienced securities counsel prior to public dissemination in order to ensure that whatever material an issuer proposes to disclose, or not disclose, is appropriate, adequate and complies with applicable securities laws.

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