

April 9, 2020

PERSPECTIVES FROM ONE MONTH INTO THE COVID-19 U.S. OUTBREAK: PUBLIC COMPANY DISCLOSURE CONSIDERATIONS

To Our Clients and Friends:

I. Purpose of This Client Alert

The COVID-19 outbreak is creating a great deal of uncertainty in the global economy and in our daily lives. Companies worldwide are facing unique legal and operational challenges related to the outbreak and the downturn in the economy. In the midst of this constantly evolving landscape, U.S. publicly traded companies must continue to consider how the situation impacts their disclosure.

One month into the outbreak in the United States, Gibson Dunn has been tracking disclosure among public companies as practices develop. This client alert provides observations and guidance for companies preparing disclosure in areas that are influenced by the COVID-19 outbreak. (This client alert does not address disclosures in proxy statements or shareholder meetings, which present their own set of issues.)

This client alert is intended to serve only as a starting point for appropriate analysis, and each company's disclosure should be tailored to its particular circumstances. Given the rapidly changing landscape, disclosure should be assessed and, if necessary, revised shortly before it is made. We encourage you to reach out to Gibson Dunn's Securities Regulation and Corporate Governance and Capital Markets teams to discuss specific questions as they arise.

Significant areas of disclosure that public companies should continuously consider during the course of the COVID-19 outbreak include the following:

- SEC Guidance and Questions to Ask
- Earnings Guidance
- Disclosure in Periodic Reports
- Non-GAAP Supplemental Measures
- Forward-Looking Statement Disclaimers
- Regulation FD and Insider Trading Laws
- Capital Markets Disclosure
- Form 8-K Triggers

With this framework in mind, the following are some of the key takeaways from this client alert:

- Language used when issuing, updating, or withdrawing earnings guidance should be carefully drafted with an eye toward the dynamic nature of the COVID-19 outbreak.
- Consider the direct and indirect impact of the COVID-19 outbreak when drafting MD&A, including the discussion of historical results and information about known trends and uncertainties.
- When drafting risk factors, think comprehensively and creatively about potential risks of the COVID-19 outbreak and its direct and indirect impacts on the company.
- Ensure that financial statement disclosures, including subsequent event notes, appropriately reflect material impacts of the COVID-19 outbreak on financials.
- Be mindful of the disclosure requirements and prohibitions associated with non-GAAP financial measures.
- Disclosure of forward-looking information should be accompanied by a disclaimer with meaningful language tailored to the circumstances and the disclosure.
- Information relating to the impact of the COVID-19 outbreak may be material nonpublic information, so care should be taken to comply with Regulation FD and insider trading policies with respect to such information.
- Ensure that documents related to capital markets activities do not contain any material omissions by filing any material information not yet disclosed before the offering commences.
- Be mindful of Form 8-K triggers, including Item 2.02, which is triggered not only by planned earnings releases, but also by any disclosure of material information regarding results of a completed quarterly or annual fiscal period, and Item 5.02 in connection with changes in an executive officer's duties.

II. SEC Guidance and Questions to Ask

In a press release on March 4, 2020, SEC Chairman Jay Clayton stated, “We...remind all companies to provide investors with insight regarding their assessment of, and plans for addressing, material risks to their business and operations resulting from the coronavirus to the fullest extent practicable to keep investors and markets informed of material developments. How companies plan and respond to the events as they unfold can be material to an investment decision, and I urge companies to work with their audit committees and auditors to ensure that their financial reporting, auditing and review processes are as robust as practicable in light of the circumstances in meeting the applicable requirements.”^[1] On March 25th, Chairman Clayton reiterated a point made in the public statement on March 4th: “We encourage public companies to provide current and forward-looking information to their investors.”^[2]

Also on March 25th, the staff of the SEC's Division of Corporation Finance (the “Division”) issued Disclosure Guidance Topic No. 9,^[3] providing the staff's current views regarding disclosure and other securities law obligations that companies should consider with respect to the COVID-19 outbreak and related business and market implications. The Division recognizes that assessing the evolving effects of

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COVID-19 and related risks is a facts and circumstances analysis. Disclosure about these risks and effects should be specific to a company's situation. The Disclosure Guidance encourages timely reporting while recognizing that it may be difficult to assess or predict with precision the broad effects of the COVID-19 outbreak on industries or individual companies.

The Disclosure Guidance sets forth a **non-exhaustive list of questions** companies should consider about how COVID-19 has impacted and will continue to impact the company's present and future operations. These questions include:

- How has COVID-19 impacted the company's financial condition and results of operations?
- How has COVID-19 impacted the company's capital and financial resources, including its overall liquidity position and outlook?
- How the company expects COVID-19 to affect its balance sheet assets and its ability to timely account for those assets?
- Whether the company anticipates any material impairments (e.g., with respect to goodwill, intangible assets, long-lived assets, right of use assets and investment securities), increases in allowances for credit losses, restructuring charges, other expenses, or changes in accounting judgments that have had or are reasonably likely to have a material impact on the company's financial statements?
- Whether COVID-19-related circumstances such as remote work arrangements adversely affected the company's ability to maintain operations, including financial reporting systems, internal control over financial reporting and disclosure controls and procedures?
- Whether the company has experienced challenges in implementing its business continuity plans or whether it foresees requiring material expenditures or material resource constraints to do so?
- Whether COVID-19 is expected to materially affect demand for the company's products and services?
- Whether COVID-19 is anticipated to have a material adverse impact on the company's supply chain or the methods used to distribute its products or services?
- Whether the company's operations will be materially impacted by any constraints or other impacts on the company's human capital resources and productivity?
- Whether travel restrictions and border closures are expected to have a material impact on the company's ability to operate and achieve its business goals?

The Division encourages companies to provide disclosure that is tailored and provides material information about the impact of COVID-19 to investors that allows investors to evaluate the current and expected impact of COVID-19 through the eyes of management and that companies proactively revise and update disclosures as facts and circumstances change.

The Disclosure Guidance also provides the following instructions:

- *Refrain from engaging in securities transactions.* Where a company has become aware of a risk related to the coronavirus that would be material to its investors, it should refrain from engaging in securities transactions with the public and discourage directors and officers (and other corporate insiders who are aware of these matters) from initiating such transactions until investors have been appropriately informed about the risk. To the extent the registrant or insiders are engaged in transactions, or circumstances otherwise warrant it, the registrant should consider what disclosures are required in order to inform the public of its financial condition.
- *Avoid selective disclosures.* When companies do disclose material information related to the impacts of the coronavirus, they are reminded to take the necessary steps to avoid selective disclosures and to disseminate such information broadly. Depending on a company's particular circumstances, it should consider whether it may need to revisit, refresh, or update previous disclosure to the extent that the information becomes materially inaccurate.
- *Use the Forward-Looking Statement Safe Harbor.* Companies providing forward-looking information in an effort to keep investors informed about material developments, including known trends or uncertainties regarding the coronavirus, can take steps to avail themselves of the safe harbor in Section 21E of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), for such information.

As companies begin filing periodic reports and earnings releases for the first quarter of 2020, on April 8th, Chairman Clayton and William Hinman, the Director of the Division of Corporation Finance, issued a joint statement.^[4] The statement asked that companies provide "as much information as is practicable" regarding their current operating status and future operating plans as they attempt to combat the effects of the COVID-19 outbreak. Specifically, the statement referenced as items of particular interest efforts to protect the health and safety of workers and customers and whether a company is receiving financial assistance under the CARES Act.

In addition to guidance on disclosure and compliance, the SEC has issued two orders that provide relief to companies that are unable to meet a filing deadline due to circumstances related to the COVID-19 outbreak from SEC filing deadlines for certain filings.^[5] More detail is provided in our client alert available at this [link](#). Companies should be mindful of the due dates for their filings and plan accordingly given that personnel and advisors are working remotely in most states.^[6] The SEC will continue monitoring the current situation and may, if necessary, extend the time period during which the relief applies.

Companies and advisors should closely monitor SEC developments by subscribing to its announcements at www.sec.gov.

III. Earnings Guidance

Many companies provide guidance regarding future earnings or operational results as part of their regular disclosure practices. In many cases, the instability brought on by the COVID-19 outbreak has made it difficult, if not impossible, to forecast future results. Whether publicly issued guidance should be updated or withdrawn in light of recent developments is a very company-specific determination. Questions

companies should ask themselves include, but are not limited to: Did the company explicitly say its guidance excluded any impact of the coronavirus? Did the company state assumptions about the coronavirus impact that are no longer reasonable given new developments? Did the company commit to providing updates (e.g., by stating “we are monitoring the situation and will keep you updated”)? Is the company meeting with investors or analysts where questions about the impact of the outbreak may be discussed such that updating the guidance through a Reg. FD-compliant method might make sense?

In withdrawing previously issued guidance or issuing an earnings release that does not include guidance, companies should also consider the following questions, among others: Should the company make a statement that it is not, at this time, prepared to issue new guidance? Will the market expect the company to preview when new guidance is expected to be issued? Should the company make an affirmative public statement that it is suspending guidance?

In the event that a company issues guidance in a time of such uncertainty, the company should augment its disclaimers regarding the guidance to incorporate COVID-19-related factors. The company should make clear that the information and assumptions underlying guidance are based on information available at the time, and information and assumptions underlying the guidance could change or emerge as the situation evolves. The company should also consider the following questions, among others: Are there key assumptions about the outbreak that underlie the guidance? Has the company made clear the tentative nature of such assumptions? Would it be prudent to shorten the period of time covered by guidance, citing the lack of visibility into future conditions?

Of course, if a company does not have an established practice of issuing periodic guidance, it is under no legal obligation to commence the practice.

IV. Disclosures in Periodic Reports

Companies must consider the implications of the COVID-19 outbreak when preparing disclosure for their upcoming periodic reports. Key sections that will likely be affected include Management’s Discussion and Analysis of Results of Operations (“MD&A”), Risk Factors and Financial Statements.

A. MD&A

In annual reports on Form 10-K, Item 303(a) of Regulation S-K requires a company to, among other things, discuss its “financial condition, changes in financial condition and results of operations” and to “identify any known trends or any known demands, commitments, events or uncertainties that will result in, or that are reasonably likely to result in the registrant’s liquidity increasing or decreasing in any material way.” In quarterly reports on Form 10-Q, Item 303(b) requires MD&A to “include a discussion of material changes in those items” required to be discussed under Item 303(a). The SEC has made clear that MD&A must include information that, in management’s view, is necessary to understand the financial condition, changes in financial condition, and results of operations of the company. The discussion and disclosures made by a company in the MD&A are intended to provide a narrative explanation of the company’s financial statements, to enhance the overall financial disclosure and to provide information about the company’s earnings and cash flow. MD&A provides an opportunity for the investor to see the company through the eyes of management.

In the discussion of historical results in MD&A, companies should, if material, discuss how the COVID-19 outbreak or actions taken by governments, companies and individuals in response to the outbreak impacted their results of operations for the most recently completed fiscal period, including their impact on revenue and operating expenses, and how they compare to the comparable prior period's results. Even if results of operations have not yet been materially impacted by the COVID-19 outbreak, disclosure may be appropriate if the outbreak or related events and conditions are reasonably likely to have such a material effect on revenues or income from continuing operations. Additionally, in light of the SEC guidance on liquidity disclosures, companies should carefully evaluate whether it is necessary to revise their liquidity and capital resources section to reflect the historical and expected impact to the COVID-19 outbreak. This might include the impact on budgets, access to capital and cost of financing. Further, if there has been an impact on liquidity based on additional company action between the end of the fiscal period and the filing date (*e.g.*, covenant compliance issues or material borrowings), companies should consider providing this update.

The MD&A disclosure relating to known trends and uncertainties that are reasonably likely to have a material impact on results can be particularly difficult during periods of economic distress and uncertainty. Those challenges are compounded by the increased scrutiny of periodic filings that often occurs during periods of economic difficulty and by the heightened after-the-fact examination that the public disclosure might receive from the SEC or in private litigation. The COVID-19 outbreak has made it difficult for many companies to clearly identify trends and outlook for the company's business, as there are too many unknown variables. In light of this challenge, companies should consider whether it is appropriate to include statements regarding the fluidity of the current market situation and the uncertainty with respect to the impact that the COVID-19 outbreak may have or is expected to have on future results. Companies should also discuss the macro factors that drive the company's results so as to identify the variables for the investor. For example, a company might describe the potential impact of the outbreak on the industry, supply and demand trends or the global or local economy in which the company operates.

In addition to the topics discussed above, the COVID-19 outbreak will likely affect MD&A disclosure in other ways. While each company's situation will be different, some questions companies should be asking regarding their MD&A disclosure include, but are not limited to: Do the operational disruptions caused by the outbreak indicate a change in circumstances that might trigger asset impairment? Does the company need to revisit its accounting estimates, such as the amount of variable consideration it expects to be entitled to? What effect might the outbreak have on the company's hedging relationships, compensation agreements, leases and income taxes?

B. Risk Factors

Item 105 of Regulation S-K requires companies to provide "a discussion of the most significant factors that make an investment in the registrant or offering speculative or risky." In addition, a Form 10-Q is required to set forth any material changes from risk factors as previously disclosed in the last Form 10-K. Events and conditions relating to the COVID-19 outbreak and actions taken in response to the outbreak, to the extent they become one of these significant factors, should be considered for discussion under Risk Factors in upcoming periodic reports, including Form 10-Q.

Currently, the risk disclosures relating to the COVID-19 outbreak fall predominately into three baskets: (1) risks relating to the outbreak that directly impact a company; (2) risks relating to the outbreak that impact a company's suppliers or customers; and (3) ancillary risks, including a decline in the capital markets, a recession, a decline in employee relations or performance, governmental regulations, an inability to complete transactions, and litigation.

The SEC has reiterated that risk factors should not use hypotheticals to address events that are actually impacting the company's operations.

In drafting disclosure, the company should consider what events or circumstances relating to the COVID-19 outbreak present significant risk to the company—whether currently or potentially in the future. Companies should be specific in providing examples of risks that have already manifested themselves. Even if a company's results of operations or liquidity is being affected by the COVID-19 outbreak, there are likely to remain risks, uncertainties, and consequences that have not yet had a material impact, manifested themselves, or even been identified. Given the fast-paced developments and the uncertainty as to the long-term impacts of the outbreak, companies should err on the side of caution in disclosing potential risks. For example, companies should consider (i) not focusing on only one or two specific impacts caused by the COVID-19 outbreak, as there are likely many other impacts that may become material, (ii) noting that the unpredictable and unprecedented nature of the current situation makes it impractical to identify all potential risks and estimate the ultimate adverse impact on the business, and (iii) adding a broad statement that all risk factors disclosed in the Form 10-K may be amplified by the COVID-19 outbreak and its unpredictable nature.

Additionally, risk factor discussion of the impact of the COVID-19 outbreak should include language that makes clear that the risk factor disclosure speaks only as of the filing date and is subject to change without notice as the company cannot predict all risks relating to this quickly evolving set of events.

C. Financial Statements and Internal Controls

Financial statements are required to be disclosed in accordance with Regulation S-X. The COVID-19 outbreak and the global instability associated with its spread will affect the operations of a multitude of companies, which in turn will affect company financial performance and condition and disclosures in the financial statements. The Office of the Chief Accountant (the "OCA") issued a statement on April 3, 2020 regarding the importance of financial reporting. The OCA recognized that many of the judgments and estimates that companies will need to make are "challenging in an environment of uncertainty."^[7] With that being said, the OCA still urged "all participants in the financial reporting system to continue to work together to provide investors with the high-quality financial information they need to make decisions amidst uncertainty."

As a general matter, the COVID-19 outbreak can be expected to affect the balance sheets of numerous companies in the form of changes to debt, goodwill, and impairments. In addition, for some companies, a reporting period will end before the material impact of the COVID-19 outbreak on the company is clearly discernable. These companies may be required to reflect the impact of the outbreak as a subsequent event in the notes to the financial statements. Companies should seek input from their

auditors in identifying and evaluating company-specific issues relevant to their financial statement disclosures that are brought on by the crisis. Audit committees also should engage in active dialogue on this topic with the auditors and management.

Companies that are aiming to file their annual reports on Form 10-K should also consider how the COVID-19 outbreak may affect their year-end testing for management's conclusion on the effectiveness of internal control over financial reporting and where required, the auditor's evaluation of the company's internal control. In addition, to the extent any changes in internal control over financial reporting have been made to address company-specific issues in light of these unprecedented conditions, a company should consider whether any disclosure of a material change to internal control is needed in a periodic report under Item 308(c) of Regulation S-K.

V. Non-GAAP Financial Measures

Given the unusual nature of the COVID-19 outbreak, particularly in the United States, companies may consider presenting non-GAAP financial measures for historical periods impacted by the outbreak that reflect adjustments from the required GAAP measures. In doing so, the disclosure should be clear and the rationale for the presentation explained. Management may articulate the position that these adjustments are critical in order for investors to be able to compare the performance of the business period over period. For example, a company might quantify the impact of identified COVID-19-related events on both its GAAP net income and its non-GAAP Adjusted EBITDA (as historically presented).

In doing so, companies should be mindful of the rules relating to non-GAAP supplemental measures under Regulation G and Item 10(e) of Regulation S-K. In its recent guidance,^[8] the SEC Division of Corporate Finance reminded companies that “we do not believe it is appropriate for a company to present non-GAAP financial measures or metrics for the sole purpose of presenting a more favorable view of the company.” For example, companies should note Item 10(e)(ii)(B) of Regulation S-K, which forbids companies from adjusting a non-GAAP measure to eliminate or smooth items identified as nonrecurring, infrequent or unusual when that item is reasonably likely to recur within two years. Given the uncertainty around the duration of the outbreak or its effects, a careful assessment should be made as to whether adjustments are appropriate. Additionally, companies should be mindful of Non-GAAP Financial Measures CD&I 100.02, which states that non-GAAP measures can be misleading if presented inconsistently between periods, and CD&I 100.03, which states that non-GAAP measures can be misleading if they exclude charges, but do not exclude any gains. In addition, to the extent a company discloses any key performance metrics and changes have been made to such metrics to exclude items related to the crises or address such items in a different manner, the company should be clear to call out such changes and provide updated comparable prior period information to the extent practicable.

VI. Forward-Looking Statement Disclaimer

When making forward-looking statements, whether in Risk Factors, MD&A or as guidance, companies should avail themselves of the safe harbor in Section 21E of the Exchange Act. As a result of lessons learned from securities litigation, companies know to include in the forward-looking statement disclaimer specific factors that could cause actual results to differ from those indicated in forward-

looking statements. The ongoing pandemic will also affect how companies discuss topics, such as plans and expectations for operations, budgets, growth, financing, working capital and more. As such, companies should consider mentioning the impact of pandemics (including the COVID-19 outbreak) in the forward-looking statement disclaimers.

In its recent statement regarding the need for robust, forward-looking disclosure, the SEC acknowledged the challenges presented to companies in crafting forward-looking statements in times of such uncertainty, especially as any efforts taken to combat the effects of the COVID-19 outbreak will be in their infancy.^[9] Even with that in mind, however, the statement still urged companies to provide as much information as practicable about their current status and their plans for addressing the effects of the COVID-19 outbreak. The SEC encouraged companies to make use of the safe harbor referenced in the preceding paragraph, and took further steps to assure companies that it “would not expect to second guess good faith attempts to provide investors and other market participants appropriately framed forward-looking information.”

VII. Considerations under Regulation FD and Insider Trading Laws

Management and company counsel should continuously assess whether developments relating to the COVID-19 outbreak constitute material information for the company. Compliance officers may need to close windows or deny preclearance of trading in the company’s securities under the company’s insider trading policy in light of new developments or changes in the company’s plans or outlook as a result of the impact of the outbreak. Companies should also evaluate their ability to implement new stock buyback programs or continue buyback programs outside of a previously established 10b5-1 plan. In addition, when making disclosures regarding the impact of the COVID-19 outbreak, management must avoid making selective disclosures that could violate Regulation FD, including during meetings with analysts who are revising models. Given that trading activity and selective disclosures will be judged with the benefit of hindsight and the situation is evolving quickly, companies should implement additional protective controls relating to trading and the content of management meetings with covered persons under Regulation FD.

The SEC has recently taken steps to remind companies of their obligations under Regulation FD. On March 23, 2020, the Co-Directors of the SEC’s Division of Enforcement issued a statement on the COVID-19 outbreak and market integrity,^[10] emphasizing many of these points:

We wish to emphasize the importance of maintaining market integrity and following corporate controls and procedures. For example, in these dynamic circumstances, corporate insiders are regularly learning new material nonpublic information that may hold an even greater value than under normal circumstances. This may particularly be the case if earnings reports or required SEC disclosure filings are delayed due to COVID-19. Given these unique circumstances, a greater number of people may have access to material nonpublic information than in less challenging times. Those with such access – including, for example, directors, officers, employees, and consultants and other outside professionals – should be mindful of their obligations to keep this information confidential and to comply with the prohibitions on illegal securities trading. Trading in a company’s securities on the basis of inside information may violate the antifraud provisions of the federal securities laws.

We similarly urge public companies to be mindful of their established disclosure controls and procedures, insider trading prohibitions, codes of ethics, and Regulation FD and selective disclosure prohibitions to ensure to the greatest extent possible that they protect against the improper dissemination and use of material nonpublic information.

The SEC also reminded companies about compliance with Regulation FD in guidance recently issued by the Division of Corporation Finance.^[11]

VIII. Capital Markets Disclosure

As companies continue to access the capital markets, it is important to understand that a securities offering will accelerate considerations regarding updates to disclosure in light of the COVID-19 outbreak. As always, it is imperative that offering disclosure packages not contain any material omissions. When preparing the prospectus or offering memorandum, the issuer and underwriters should review any existing disclosures made before the offering and supplement or amend them as necessary. An issuer should consider whether it is necessary to file an Item 8.01 Form 8-K with amendments or supplements to the MD&A and Risk Factors included in the most recent periodic reports, which Form 8-K is then incorporated into the offering document. Companies may also consider adding disclosure to the “Recent Developments” section in the prospectus, which may refer the reader to the Form 8-K for information about developments related to the COVID-19 outbreak that the investor should consider before making an investment in the securities offered. For private placements, a supplemental Item 7.01 or 8.01 Form 8-K may be necessary to make FD-compliant disclosure of updated information provided in connection with the exempt offering.

In addition to public disclosures, issuers should be prepared to respond to novel diligence questions from underwriters and investors centered around the COVID-19 outbreak.

IX. Form 8-K

A. Results of a Completed Period - Item 2.02 of Form 8-K

Item 2.02 of Form 8-K applies to more than a company’s earnings release, and instead is triggered by any public disclosure of material nonpublic information regarding a company’s results of operations or financial condition for a completed quarterly or annual fiscal period. Thus, any disclosures regarding material effects of the COVID-19 outbreak that relate to a completed fiscal period could trigger a required Item 2.02 Form 8-K. This disclosure might be made in connection with an interim update via press release or presentation or information disclosed in connection with a securities offering, as discussed above.

B. Credit Drawdowns - Item 2.03 of Form 8-K

Instruction 3(ii) to Item 2.03 of Form 8-K requires disclosure of a material drawdown of an existing credit agreement. SEC rules do not specify when a drawdown triggers an Item 2.03 Form 8-K. The factors that affect the materiality analysis in regards to a drawdown can include the reasoning behind the drawdown (*e.g.*, if there are concerns about the company’s liquidity due to a significant decrease in

collection of accounts receivable), the size of the drawdown relative to the company's balance sheet, and whether the drawdown significantly increases the company's long-term debt. Companies should conduct both a quantitative and qualitative analysis of a drawdown when considering its materiality. In order to provide assurances to the market, if a drawdown triggers an Item 2.03 Form 8-K, companies should consider briefly disclosing the reasoning for the drawdown. For example, the explanation of the rationale for the drawdown by certain companies might include maintaining flexibility in the context of the COVID-19 outbreak or placing cash on the balance sheet if the company anticipates it will not be able to access the capital markets as planned.

C. Additional Considerations for Disclosure on Form 8-K

As the impacts of the COVID-19 outbreak continue to broaden, companies should also consider the requirements under other items of Form 8-K. Item 2.04 requires companies to disclose events that trigger an increase or acceleration of a direct financial obligation or off-balance sheet arrangement. Item 2.05 requires disclosure of costs associated with a definitive exit or disposal plan. Item 2.06 requires disclosure when a company determines that there exists any material impairment in regard to its assets. Item 5.02(b) requires disclosure of a departure, even if temporary, of certain executive officers.[12]

[1] SEC Provides Conditional regulatory Relief and Assistance for Companies Affected by the Coronavirus Disease 2019 (COVID-19), *available at* <https://www.sec.gov/news/press-release/2020-53>.

[2] SEC Extends Conditional Exemptions from Reporting and Proxy Delivery Requirements for Public Companies, Funds and Investment Advisers Affected by the Coronavirus Disease 2019 (COVID-19), *available at* <https://www.sec.gov/news/press-release/2020-73>.

[3] *See* CF Disclosure Guidance: Topic No. 9, *available at* <https://www.sec.gov/corpfin/coronavirus-covid-19>.

[4] *See* The Importance of Disclosure – For Investors, Markets and Our Fight Against COVID-19, *available at* <https://www.sec.gov/news/public-statement/statement-clayton-hinman>.

[5] *See* Order Under Section 36 of the Securities Exchange Act of 1934 Granting Exemptions from Specified Provisions of the Exchange Act and Certain Rules Thereunder, Exchange Act Release No. 34-88318 (March 4, 2020), *available at* <https://www.sec.gov/rules/other/2020/34-88318.pdf>; Order Under Section 36 of the Securities Exchange Act of 1934 Modifying Exemptions from the Reporting and Proxy Delivery Requirements for Public Companies, Exchange Act Release No. 34-88465 (March 25, 2020), *available at* <https://www.sec.gov/rules/exorders/2020/34-88465.pdf>.

[6] The Gibson Dunn website has a calendar outlining SEC filing dates for companies with a fiscal year ending December 31, 2019, *available at* <https://www.gibsondunn.com/wp-content/uploads/2019/08/SEC-Filing-Deadline-Calendar-2020.pdf>.

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[7] See Statement on the Importance of High-Quality Financial Reporting in Light of the Significant Impacts of COVID-19, *available at* <https://www.sec.gov/news/public-statement/statement-teotia-financial-reporting-covid-19-2020-04-03>.

[8] See Footnote 3, *supra*.

[9] See Footnote 4.

[10] See Statement from Stephanie Avakian and Steven Peikin, Co-Directors of the SEC's Division of Enforcement, Regarding Market Integrity, *available at* <https://www.sec.gov/news/public-statement/statement-enforcement-co-directors-market-integrity>.

[11] See Footnote 3, *supra*.

[12] For more information, please refer to our client alert available at [this link](#).



The following Gibson Dunn lawyers prepared this client alert:

Authors: *Hillary Holmes, Michael Titera, James Moloney, Michael Scanlon, Lori Zyskowski, William Bald and David Korvin.*

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