

# SEC Issues Guidance on Deadline for Part III Information Omitted From Form 10-K

## WRITTEN BY

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The SEC issued new guidance yesterday supplementing its previously-announced COVID-19 order that gives relief from Exchange Act filing deadlines (see our blog post about the COVID-19 order [here](#)). The guidance details how the order applies to companies that omitted from their annual report on Form 10-K the information required under Part III of Form 10-K. It is a common practice to omit that information and provide instead that it will be incorporated into the Form 10-K from the company's proxy statement, provided that the proxy statement is filed within 120 days of the company's fiscal year end. Part III information includes disclosure about directors and executive officers, executive compensation, corporate governance, stock ownership, related party transactions, audit fees and similar matters.

The SEC's new guidance (in CD&Is – Exchange Act Forms Question 104.18, available [here](#)) confirms that the SEC's COVID-19 order also applies to Part III information. Specifically, to take advantage of the relief:

- A company that timely filed its annual report without relying on the COVID-19 order should furnish a current report on Form 8-K by the 120 day deadline, or April 29, 2020 for calendar year companies. The Form 8-K should meet the requirements of the COVID-19 order by disclosing that the company is relying on the order; describing the reasons why the company could not file the information on a timely basis; estimating the date on which the information will be filed; outlining a company-specific risk factor; and providing any third-party statements required under the order. The company will then need to provide the Part III information, either in a Form 10-K/A or in a definitive proxy statement, within 45 days after the 120-day deadline.
- A non-calendar year company using the COVID-19 order to extend its Form 10-K deadline may use a single Form 8-K filed by the original deadline of the annual report. That Form 8-K should indicate that the company will incorporate Part III information by reference and disclose an estimated date by which the Part III information will be filed. The Part III information will then need to be filed no later than 45 days after the 120-day deadline. The original Form 10-K filing deadline has already passed for calendar year companies.
- Many companies already furnished a Form 8-K to extend their original Form 10-K filing deadline but were silent on Part III information. Those companies may either (a) file the Part III information in their Form 10-K or proxy statement within 45 days after the original deadline, or (b) furnish a second Form 8-K by the 120-day deadline that includes the disclosures required by the COVID-19 order, and file the Part III information no later than 45 days after that 120-day deadline.

Your regular Locke Lord contact and any of the authors can discuss these matters with you. Please visit our [COVID-19 Resource Center](#) often for up-to-date information to help you stay informed of the legal issues related to COVID-19.

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