

SEC Issues New COVID-19 Disclosure Guidance

WRITTEN BY

[Rob Evans](#)

On June 23, 2020, the SEC's Division of Corporation Finance released [CF Disclosure Guidance: Topic No. 9A](#) supplementing its previous guidance regarding COVID-19 disclosures that we discussed in a [previous post](#). The new guidance identifies additional considerations for disclosures by companies about their operations, liquidity and capital resources as a result of business and market disruptions resulting from COVID-19.

COVID-19 Disclosure Guidance

The SEC is encouraging companies to provide disclosure that allows investors to evaluate the impact of COVID-19 on the company as seen through the eyes of management. The guidance advises companies to be proactive in revising and updating disclosures as circumstances evolve, with the goal being to have regular updates that enable investors to understand how management and the Board of Directors are analyzing the current and projected impact of COVID-19 and related disruptions on the company's operations and financial condition.

The guidance suggests that companies consider whether adjustments they are undertaking to transition to telework, modify supply and distribution chains, and suspend or alter operations to conform to current health and safety concerns could have material effects that could influence investment or voting decisions.

Financing activities in response to COVID-19 could also require additional disclosures. The SEC notes that companies are undertaking various financing activities such as obtaining and utilizing credit facilities; accessing public and private markets; implementing supplier finance programs; and negotiating or modifying customer payment terms. Financing transactions in the midst of COVID-19 have the potential to contain novel terms and structures that may require extensive disclosures to reveal how companies are dealing with short and long-term liquidity and funding risks. The SEC states that it may be particularly important to disclose the extent which financing efforts present new risks or uncertainties to the business.

The SEC wants companies in analyzing their specific facts and circumstances to consider disclosing a broad range of issues, including:

- Material operational challenges
- Overall liquidity and outlook
- Use of revolving lines of credit or capital raising activities
- COVID-19 impacts on traditional funding sources
- Material risk of not meeting covenants in credit or other agreements
- Reductions in capital expenditures

- Clear definitions of metrics used in disclosures to allow proper evaluation
- Ability to timely service debt and other obligations
- Altered terms with customers (e.g. extending payment terms or refund periods)
- Reliance on supplier finance programs
- Impact of material events after the end of the reporting period

Disclosures Related to the CARES Act

The guidance suggests that companies receiving assistance through the CARES Act consider the implications of that assistance on their financial condition, results of operations, liquidity and capital resources, as well as related disclosures and critical accounting estimates and assumptions. The SEC asks companies to consider disclosing:

- The loans' impact on financial condition, liquidity and capital resources
- Impacts of tax relief on short and long-term liquidity
- New material accounting estimates or judgments
- Other material implications of the CARES Act

Ability to Continue as a Going Concern

Going forward, the SEC advises management to consider whether conditions and events, taken as a whole, raise substantial doubt about a company's ability to meet its obligations as they become due within one year after issuing financial statements. Where doubt exists or is alleviated by management's plans, appropriate disclosures should be provided in upcoming financial statements. The SEC asks companies to consider the following in connection with MD&A disclosure:

- Events or conditions giving rise to substantial doubt
- Defaults, labor challenges or work stoppages
- Plans and actions taken to address challenges

Key Takeaway

The consequences of COVID-19 and economic and market disruptions are dramatically affecting public companies. Good disclosure practices are particularly important, and especially difficult, in times of uncertainty and change. Balancing the risk of potential liability with the desire of investors and regulators to have more disclosure requires careful judgment. The SEC's guidance about how to approach disclosures during this extraordinary time could help companies understand the SEC's view. Using detailed disclosure procedures and understanding management's views of the current and expected impact of COVID-19 on the company's future, while approaching new disclosures with care, can help achieve that desired balance.

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 the current market.

RELATED INDUSTRIES + PRACTICES

- Capital Markets