

Impact under Nasdaq Rules of SEC Relief to Companies Affected by Coronavirus

On March 4, 2020, the Securities and Exchange Commission [announced](#) that it is providing conditional regulatory relief from certain filing obligations under the federal securities laws to public companies impacted by the coronavirus disease (COVID-19). By issuing this relief, the Commission has recognized that the recent COVID-19 outbreak may create challenges for some companies in meeting their obligations to make Exchange Act filings in a timely manner. These companies may include U.S. companies located in affected areas, as well as companies with operations in those regions.

To implement the relief, the Commission issued an [Order](#) that, subject to certain conditions, provides publicly traded companies with an additional 45 days to file Exchange Act reports that would otherwise have been due between March 1 and April 30, 2020. In order to rely on the relief, companies must file a Form 8-K or Form 6-K (for foreign private issuers) by the later of March 16, 2020 or the original report deadline that includes: (i) a statement that it is relying on the Order; (ii) a brief summary of why it could not file in a timely manner; (iii) the estimated date by which the report is expected to be filed; (iv) if appropriate and material, a risk factor explaining the effect of COVID-19; and (v) if relevant, a signed statement and explanation by a person unable to provide a required opinion, report or certification.

Nasdaq Rule 5250(c) requires that companies timely file all required periodic financial reports with the Commission. As a result of the Commission's action, Nasdaq-listed companies impacted by the COVID-19 outbreak that satisfy the conditions in the Commission's Order and are eligible for the 45 day extension to file will not be deficient under Nasdaq Rule 5250(c) for failing to file Exchange Act reports by the existing deadlines and will not receive a deficiency letter from Nasdaq.

Additionally, the Order exempts companies from any requirement, including under Regulation 14A, to file or furnish proxy statements, annual reports, and other solicitation materials to shareholders with a mailing address where common carrier service has been suspended due to COVID-19, provided the registrant has made a good faith effort to deliver such materials.

Nasdaq Rule 5250(d)(1) requires Nasdaq-listed companies to make their annual reports available to shareholders. While a company generally can satisfy this requirement by posting the annual report on or through the company's website, companies also can satisfy this requirement by mailing the report to shareholders or by satisfying the requirements for furnishing an annual report contained in Rule 14a-16 under the Exchange Act. Nasdaq-listed companies are also subject to the requirement in Rules 5250(d)(2) and (3) to make their quarterly and interim reports available to shareholders. Finally, Nasdaq Rule 5620(b) requires that a company solicit proxies and provide proxy statements for all meetings of shareholders. A company that satisfies the conditions and requirements in the Commission's Order is exempt from Regulation 14A (including Rule 14a-16) with respect to shareholders in affected areas and therefore will satisfy Nasdaq Listing Rules 5250(d) and 5620(b).

Nasdaq recognizes that the COVID-19 outbreak also may create challenges and difficulties for some companies in satisfying other Nasdaq Listing Rules. Companies so impacted, or that have any questions regarding the application of the Commission's Order to the Nasdaq Listing Rules, may contact their Listing Analyst or the Nasdaq Listing Qualifications Department at +301-978-8008 or continuedlisting@nasdaq.com.