



## LAW ALERT

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**RMF**  
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### SEC COVID-19 Update:

#### Conditional Relief Provided for Filing, Proxy Statements, and Annual Report Deadlines

On March 4, 2020, the Securities and Exchange Commission ("SEC") issued an initial order (the "March 4 Order") granting conditional relief to public companies – those subject to the reporting requirements of Securities Exchange Act of 1934 Section 13(a) or 15(d) (a "Registrant") – and any person required to make any filings with respect to such a Registrant, that are unable to meet a filing deadline due to circumstances related to COVID-19. Pursuant to the March 4 Order, public companies and such other persons seeking relief were granted an additional 45 days to file or furnish disclosure materials that were otherwise due between March 1, 2020 and April 30, 2020, subject to limited exceptions. By subsequent order dated March 25, 2020 (the "March 25 Order"), which supersedes the March 4 Order, the SEC extended the relief period's April 30 date to July 1, 2020. In order to avail itself of the relief provided by the March 25 Order, a Registrant is required to furnish – by the later of March 16, 2020 or the original filing deadline – a report on Form 8-K (or Form 6-K, with respect to foreign private issuers) for each filing that is delayed, that includes the following information:

- (1) A statement that the Registrant is relying on the March 25 Order;
- (2) A brief description of the reasons why the Registrant is unable to timely file the report, schedule, or form, and the estimated date by which the report, schedule, or form is expected to be filed;
- (3) Registrant-specific risk factor(s) explaining the impact, if material, of COVID-19 on the Registrant's business; and
- (4) If the reason the subject report cannot be filed timely relates to the inability of any person, other than the Registrant, to furnish any required opinion, report or certification, the Form 8-K (or Form 6-K) shall include an attached statement signed by such person stating the reason why such person is unable to furnish the required opinion, report, or certification on or before the date the report must be filed.

In addition, any report, schedule or form filed within the 45-day extension from the original deadline shall disclose that the Registrant or such other person is relying on the March 25 Order and state the reasons why it could not file such report, schedule or form on a timely basis.



In the press release announcing the March 25 Order, the SEC clarified that: (a) for purposes of eligibility to use a Registration Statement on Form S-3, a Registrant relying on the March 25 Order will be considered current and timely in its Exchange Act filing requirements if it was current and timely as of March 1, 2020 and it files any report due during the relief period within 45 days of the filing deadline for the report; (b) for purposes of the eligibility requirements for a Registration Statement on Form S-8, and the current public information eligibility requirements of Rule 144(c), a Registrant relying on the March 25 Order will be considered current in its Exchange Act filing requirements if it was current as of the March 1, 2020 and it files any report due during the relief period within 45 days of the filing deadline for the report; and (c) for annual reports and quarterly reports, a Registrant will be permitted to seek extended due dates (beyond the 45-day extension) under Rule 12b-25, if it meets the requirements of such Rule. In addition, the SEC may provide additional relief as circumstances warrant, and with additional conditions which the SEC may deem appropriate.

In addition to the extension of filing deadlines, the March 25 Order provides that a Registrant is exempt from (i) the requirements of the Exchange Act to furnish proxy statements, annual reports, and other soliciting materials (the “Soliciting Materials”), and (ii) the requirements of the Exchange Act to furnish information statements and annual reports (the “Information Materials”), provided that the following conditions are satisfied:

(1) The Registrant’s security holder has a mailing address located in an area where, as a result of COVID-19, the common carrier has suspended delivery service of the type or class customarily used by the Registrant (or other person making the solicitation); and

(2) the Registrant (or other person making a solicitation) has made a good faith effort to furnish the Soliciting Materials to the security holder under applicable rules or, in the case of Information Materials, the Registrant has made a good faith effort to furnish the Information Materials to the security holder in accordance with applicable rules.

Also in the press release announcing the March 25 Orders, the SEC encouraged all companies to consider their activities in light of their disclosure obligations under federal securities laws. When companies decide to disclose material information related to the impact of COVID-19, they should avoid selective disclosure and disseminate information broadly. Depending on the circumstances, companies should also consider whether prior disclosures require updating to the extent that information becomes materially inaccurate. Additionally, when providing forward-looking information to keep investors informed of material developments, companies should take steps to avail themselves of the safe harbor in Section 21E of the Exchange Act for such information.

If you have questions regarding the March 4 Order or the March 25 Order, or any other questions regarding your company’s filings with the SEC, Ruskin Moscou Faltischek, P.C. is here to help. Please contact

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