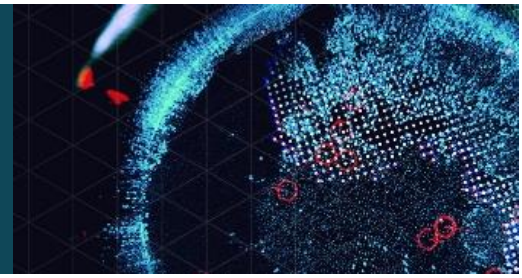
Coronavirus/COVID-19

Managing COVID-19: Q1 Reporting Considerations for Public Companies



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This alert discusses key considerations for U.S. public companies and foreign private issuers that are reporting on the first earnings cycle since the emergence of COVID-19 as a global pandemic.

1 Guidance and Earnings Announcements

- ☐ Absent special circumstances, such as a securities transaction or an event that requires disclosure on a Form 8-K, the federal securities laws do not require companies to provide real-time updates regarding the impact of COVID-19. However, companies that have provided earnings guidance should consider whether changes in their business and expectations about future trends make it appropriate to withdraw or update prior guidance, either as part of their first quarter earnings announcement or beforehand.

- ☐ Consider disclosures regarding liquidity, such as recent or planned draw-downs of revolving credit facilities, and other potential sources of liquidity. These disclosures are likely to include a discussion of material risks that may limit the ability to access funding sources in the future. Stay mindful of not undertaking a duty to update as part of these communications.

- ☐ Prior to releasing earnings, companies may consider pre-announcing estimated or preliminary financial results. A pre-announcement may, among other things, help to manage investor expectations and provide more flexibility to engage in stock buybacks. However, pre-announcements must provide enough information, including with respect to material risks presented by COVID-19, to ensure that the company and its insiders no longer possess material non-public information when they trade in company securities.

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2 Management's Discussion and Analysis

- ☐ Consider including in the MD&A section of upcoming quarterly reports management's perspective regarding the material effects of COVID-19 on the company's business, including the effect of measures adopted by the company and public authorities to reduce the spread of the virus and resulting effects on the company's supply chain, employee base and operations. We recommend that this discussion focus on the company's business and industry and specifically address how operations, financial performance and liquidity have been affected by these factors.

- ☐ MD&A also must address known trends and uncertainties that are reasonably likely to have a material impact on a company's financial condition or operating performance. Accordingly, we recommend disclosing the impact of COVID-19 for the period between the end of the first quarter and the filing of the report, as well as expectations regarding the impact of COVID-19 and its consequences going forward. In making these forward-looking disclosures, we suggest reviewing and, if necessary, updating the disclaimer you use to help ensure the availability of the safe harbor for forward-looking statements.

- ☐ It may also be helpful to address expected longer-term effects on a company's operations, such as whether decreases in cash flows will require reduced levels of capital expenditures or research and development, or whether the company is or expects to experience major changes to its supply chain or workforce as a result of COVID-19.

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3 Risk Factors

- ☐ Companies should re-evaluate previously disclosed risk factors, including those related to COVID-19, and provide updates in their first quarter Form 10-Q if risk factors have materially changed since they were previously disclosed.
- ☐ Risk factor disclosure needs to be calibrated to the specific risks that COVID-19 and its effects pose to a company's business and the harm that realization of the specific risks could cause.
- ☐ If a company has been materially affected by COVID-19, that fact should be disclosed when discussing the risk, rather than disclosing the risk as a hypothetical circumstance that may occur in the future.

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4 Disclosure Controls and Procedures

- ☐ Disclosure controls and procedures should be evaluated and updated as needed, particularly to ensure material information regarding the impact of COVID-19 is being provided to senior management to allow for timely and accurate disclosure determinations. Given the dynamic nature of COVID-19, disclosure committees may need to meet more frequently as part of the quarterly reporting process.
- ☐ Consider whether it would be helpful to involve employees who are managing the COVID-19 response in preparing disclosures. In light of the fact that many companies have employees working remotely, it may be necessary to take additional steps to ensure that all employees relevant to the disclosure process can communicate effectively during the quarterly reporting process.
- ☐ It may be necessary to make changes to your Sarbanes-Oxley certification process as needed if key employees are functioning remotely or are incapacitated.

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5 Financial Statements and Internal Controls

- ☐ The SEC has emphasized that companies should 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.
- ☐ Evaluate whether any disruptions caused by the COVID-19 pandemic would give rise to a contingency for which disclosure should be provided under ASC 450.
- ☐ Evaluate internal control over financial reporting to determine whether additions or modifications are needed as a result of the COVID-19 pandemic, including as a result of having a remote workforce.

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