

SEC Staff Issues Clarifying Interpretations Regarding Recent Filing Deadline Extensions Related to COVID-19

I. Background

On March 25, 2020, the Securities and Exchange Commission (the “SEC”) issued Order No. 34-88465 (the “Order”), which extended the deadlines for certain filings by reporting companies where the companies’ inability to timely file is due to circumstances related to the continuing COVID-19 pandemic.¹ We previously summarized the Order in our March 30, 2020 memorandum, available [here](#). On March 31, 2020, the staff of the SEC’s Division of Corporation Finance published two compliance and disclosure interpretations (“C&DIs”) regarding the Order and its relationship to Rule 12b-25 under the Securities Exchange Act of 1934, as amended.²

II. New Compliance and Disclosure Interpretations

The new C&DIs clarify two separate points regarding the interplay between the Order and Rule 12b-25, both of which apply to Form 10-K and 10-Q filings:

- **First**, C&DI 135.12 states that, if a company believes that it will be unable to file its Form 10-K or 10-Q on a timely basis due to the COVID-19 crisis and is not sure whether it will be able to file within the Rule 12b-25 timeframes, it should furnish the Form 8-K or 6-K, as applicable, required by the Order by the later of either: March 16, 2020 or the original due date of the report, in order to avail itself of the 45 day period provided for in the Order. A company may not rely on the Order if it has only filed a Form 12b-25 by such time because it will not have met the conditions specified in the Order.
- **Second**, C&DI 135.13 clarifies that, even if a company has previously filed a Form 12b-25 it cannot subsequently rely on the time extensions under the Order unless it has already furnished the required Form 8-K or Form 6-K in a timely manner as provided in the Order. If the company properly furnishes a Form 8-K or 6-K in accordance with the Order and still cannot file the report on or before the extended deadline, it can subsequently rely on Rule 12b-25 and file a Form 12b-25.

* * *

If you have any questions about the issues addressed in this memorandum or if you would like a copy of any of the materials mentioned, please do not hesitate to call or email authors Bradley J. Bondi at 202.862.8910 or bbondi@cahill.com; Geoffrey E. Liebmann at 212.701.3313 or gliebmann@cahill.com; Kimberly Petillo-Décosard at 212.701.3265 or kpetillo-decosard@cahill.com; or Emma O’Hara at 212.701.3150 or eohara@cahill.com; or email publications@cahill.com.

¹ Order Under Section 36 of the Securities Exchange Act of 1934 Modifying Exemptions from the Reporting and Proxy Delivery Requirements for Public Companies, available at <https://www.sec.gov/rules/exorders/2020/34-88465.pdf>.

² Question 135.12 and Question 135.13, available at <https://www.sec.gov/divisions/corpfin/guidance/exchangeactrules-interps.htm>. A proper Form 12b-25 filing provides companies with an additional 15 days to file a Form 10-K and an additional five days to file a Form 10-Q where the reasons for the delay cannot “be eliminated without unreasonable effort or expense.”