

## **U.S. SEC: “THIS QUARTER, EARNINGS STATEMENTS AND CALLS WILL NOT BE ROUTINE”**

Apr 10, 2020

Companies face unprecedented challenges as they grapple with earnings releases and analyst and investor calls, all while trying to understand the impact COVID-19 has had on their businesses in less than one month. While many companies had strong first quarters before the nation’s full-mitigation response to COVID-19, it is likely that many experienced a very different end to the quarter and start of the next. It is also likely that as a result, some companies will miss previous earnings projections.

The SEC and the exchanges (NYSE and Nasdaq) are clearly making an effort to help companies during this period of uncertainty. SEC Chairman Jay Clayton has been very vocal in encouraging public companies to provide prompt earnings information as well as information about past and future efforts to address the effects of COVID-19, regardless of whether they are in a position to file reports on time.

Most recently, Chairman Clayton was joined by William Hinman, the Director of the Division of Corporation Finance, in a joint statement detailing their observations and requests “[i]n an effort to facilitate robust disclosure and engagement.” The NYSE then sent emails to its listed companies directing attention to the joint statement. Here are some key takeaways:

- This quarter, earnings statements and calls will not be routine. SEC staff encourages disclosure to be as timely, accurate and robust as practicable under the circumstances.
- Companies are urged to provide as much information as practicable about their current operating status and future operating plans under COVID-19 mitigation conditions. Detailed discussions of current liquidity positions and expected financial resource needs are encouraged. Company actions to protect worker health and well-being and customer safety may also be material to investors. The nature, amount and effects of CARES Act or other federal or state aid should be disclosed, if material.
- Despite the temptation to resort to generic/boilerplate disclosures, companies and their advisers are strongly encouraged to make all reasonable efforts to convey meaningful

information, tailored to key operational and financial considerations and challenges the company faces through the eyes of management.

- Companies are encouraged to avail themselves of safe-harbors for forward-looking statements. The SEC acknowledged that in many cases future financial and operational results may differ substantially from what would now appear to be reasonable estimates. “Given the uncertainty in our current business environment, we would not expect to second guess good faith attempts to provide investors and other market participants appropriately framed forward-looking information.”

That said, it remains critically important that companies document their decisions and reasoning, so that they can provide evidence in the future that their judgments were made in good faith and were as sound as possible under current circumstances. Contemporaneous evidence of thoughtful disclosures and reasonable financial reporting will enable a company to defend its decisions in the future, regardless of the ultimate impact of COVID-19 on its business.

The Office of the Chief Accountant has offered to assist market participants with challenging financial disclosure issues, noting in its April 3 release that, “OCA has consistently not objected to well-reasoned judgments that entities have made, and we will continue to apply this perspective.” Office of Chief Accountant, [Statement on the Importance of High-Quality Financial Reporting in Light of the Significant Impacts of COVID-19](#) (April 3, 2020).

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