

SEC ISSUES NEW COVID-19 GUIDANCE: HEALTH-RELATED OR PERSONAL TRANSPORTATION BENEFITS MAY BE PERQS

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The SEC Division of Corporate Finance yesterday issued new Regulation S-K guidance, [CD&I 219.05](#), to help public companies determine whether benefits provided to executive officers because of COVID-19 should be disclosed as perquisites or personal benefits for purposes of executive compensation proxy disclosures. Consistent with Release 33-8732A, the guidance confirms that an item provided because of the COVID-19 pandemic is not a perquisite or personal benefit if it is "integrally and directly related to the performance of the executive's duties," which depends on the particular facts.

The CD&I states: "In some cases, an item considered a perquisite or personal benefit when provided in the past may not be considered as such when provided as a result of COVID-19. For example, enhanced technology needed to make the NEO's home his or her primary workplace upon imposition of local stay-at-home orders would generally not be a perquisite or personal benefit because of the integral and direct relationship to the performance of the executive's duties. On the other hand, items such as new health-related or personal transportation benefits provided to address new risks arising because of COVID-19, if they are not integrally and directly related to the performance of the executive's duties, may be perquisites or personal benefits even if the company would not have provided the benefit but for the COVID-19 pandemic, unless they are generally available to all employees."

Perqs have been, and will continue to be, an area of SEC focus. We urge companies to carefully give thought to new benefits provided to executives during the COVID-19 pandemic and to clearly document why the companies believe such benefits are or are not perqs for purposes of executive compensation proxy disclosures.

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