



Securities Law ADVISORY ■

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SEC Reminds Companies to Keep Their Disclosures Looking Forward

On April 8, 2020, the Securities and Exchange Commission's chairman, Jay Clayton, and William Hinman, director of the Division of Corporation Finance, [issued a public statement](#) reminding companies about their obligation to their public disclosures, especially as companies prepare earnings releases and quarterly filings that will show the early effects of and responses to the coronavirus (COVID-19) pandemic.

The statement makes the following observations about company disclosures:

- Upcoming public disclosures should reflect the affairs and outlook of the pandemic response to address investor interest and concern in the company's operational and financial situation, and how the company's COVID-19 mitigation efforts are progressing.
- It is important to provide detailed information on operations and resource needs, which may be difficult while the response to COVID-19 is in its initial stages and subject to change; companies should indicate any difficulties in providing such information as necessary.
- High-quality and transparent disclosure will provide important information to investors and will enhance communication among the private and public sectors in the response to COVID-19.
- Companies should avail themselves of the safe harbors when they make any statements about the COVID-19 pandemic.

Respond to Investors' Interest in First Quarter Disclosures – Where Does the Company Stand Today, and Provide Forward-Looking Information

Clayton and Hinman reminded companies that the upcoming earnings releases and associated calls will likely be different from the routine quarterly disclosures that companies are used to. They acknowledged that the information in the disclosures, particularly the financial statements, is largely historical in nature and often used to gage a company's value, financial condition, and future performance potential. However, the historical information in upcoming disclosures will be less relevant in providing the information investors currently want to know.

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Investors are more interested in knowing where a company stands today, they said, and how the company has adjusted and continues to adjust its operational and financial affairs to address COVID-19. They acknowledged that producing financial and operational reports that contain forward-looking information and address investor concerns may be difficult, but encouraged earning disclosures and reports that are timely, accurate, and robust.

Provide Detailed Current Operations and Financial Information

Clayton and Hinman urged companies to provide as much information as is practicable about their current status and plans for addressing COVID-19. Such information should include detailed discussions of current liquidity positions and expected financial resource needs.

Despite the forward-looking nature of the information that is required to address investors' concerns, and the difficulty in producing that information, Clayton and Hinman believe it is necessary. For example, the health and welfare strategies that have been and continue to be implemented are factors that are beyond companies' control. Companies must make disclosures based on some assumptions. Even so, Clayton and Hinman urged companies to avoid generic or boilerplate disclosures and make all reasonable efforts to disclose meaningful information. The information should provide investors with insight into financial and operational considerations and challenges the company faces through the eyes of management. To this end, companies were encouraged to consider the broad framework of some suggested strategies, how following these strategies may affect operations, and whether that analysis would be material to investors.

Inform Investors if They Receive Financial Assistance

In addition, some companies and institutions may receive financial assistance under the Coronavirus Aid, Relief, and Economic Security (CARES) Act or other similar COVID-19-related federal and state programs. To the extent that any financial assistance has or will materially impact companies and institutions, they should disclose the nature, amount, and effects of such assistance. Similarly, information on the impact of actions and policies that are designed to protect the health of workers and customers will also be important. Both the financial information and plans on the health of workers will be helpful to markets and investors in assessing company responses to dealing with COVID-19.

Quality Disclosure Will Benefit Investors and the Fight Against COVID-19

Providing forward-looking information will benefit investors, benefit the company, and allow for a coordinated response to COVID-19. They see the benefit to investors and companies simply: the more investors understand management's assessment and plans for the pandemic and its effects, the more informed decisions investors will be able to make. They believe additional information will inspire confidence in a company's COVID-19 response, and this will make market participants more willing to provide credit and financing for the company.

Clayton and Hinman also believe that by disseminating forward-looking information, companies will give the market and the greater public a heightened sense of confidence and understanding in how companies are responding. In turn, that confidence and understanding will reduce risk aversion and facilitate action.

Forward-Looking Statements and Available Safe Harbors

Clayton and Hinman reminded companies to protect material, nonpublic information and hold that information closely until it is disclosed, at which point it should be broadly disseminated. This is similar to guidance issued in the Division of Corporation Finance's [Disclosure Guidance: Topic No. 9](#). Companies were also encouraged to avail themselves of the safe harbors for disclosures that will be made in upcoming releases and reports. Clayton and Hinman acknowledged that actual financial and operational results may be substantially different from the reasonable estimates underlying the forward-looking information. Nonetheless, they stated that they did not expect to second-guess good-faith attempts to provide appropriately framed forward-looking information.

Alston & Bird has formed a multidisciplinary [task force](#) to advise clients on the business and legal implications of the coronavirus (COVID-19). You can [view all our work](#) on the coronavirus across industries and [subscribe](#) to our future webinars and advisories.

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