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Phone: +1 646 783 7100 | Fax: +1 646 783 7161 | customerservice@law360.com

SEC Staff Offers Road Map For COVID-19 Risk Disclosures

By **Jack Queen**

Law360 (March 26, 2020, 6:44 PM EDT) -- The staff of the U.S. Securities and Exchange Commission has urged public companies to make thorough disclosures about business risks posed by the coronavirus pandemic, offering a sketch of the manifold ways the intensifying crisis could impact firms and shareholders.

The SEC Division of Corporate Finance on Wednesday offered detailed guidance on how companies should assess and communicate COVID-19 risks, encouraging firms to be proactive and revise their filings accordingly. The move accompanied a second extension of filing deadlines by the agency as it continues to adjust its rules to unprecedented times.

Agency staff encouraged timely reporting but recognized that the coronavirus, which has now infected more than 523,000 across the world and upended the global economy, poses widespread risks that are difficult to predict with precision.

“We also recognize that the actual impact will depend on many factors beyond a company’s control and knowledge,” staff wrote. “Nevertheless, the effects COVID-19 has had on a company, what management expects its future impact will be, how management is responding to evolving events, and how it is planning for COVID-19-related uncertainties can be material to investment and voting decisions.”

The SEC put companies on notice that COVID-19 was likely to become a focal point in future disclosures when the agency first extended filing deadlines earlier this month. The new guidance elaborates on this point, laying out scores of questions companies should be asking as they assess the impact of the coronavirus on everything from liquidity to supply chains to access to credit.

Agency staff encouraged companies to think long-term about how the current economic outlook could affect their financial stability, asset values and future consumer demand for their products. But the guidance also encouraged a granular analysis of how things like remote working could impact internal controls and business continuity plans.

Laura Richman, a corporate and securities attorney at Mayer Brown LLP, told Law360 Thursday that firms should heed the new disclosure guidance and start assessing COVID-19 risk from top to bottom.

“Companies know they have to do these things, and they should have disclosure control processes in place," she said. "But they should probably be starting earlier than usual. The quarter hasn't closed yet, but it isn't too early to put pen to paper and look at what the risk factors are going to be."

Richman said companies should start discussing coronavirus risk at every level of their operations, including at business units that aren't typically part of the risk assessment process. The uncertainty unleashed by the pandemic means companies should get moving quickly, Richman said, and the new guidance is a good place to start.

"It's a very good road map to help people start thinking about these risks," she said. "Even if these questions aren't relevant to your particular company, they could help raise issues that are relevant. It's a very helpful guide, and a timely one."

Stock markets have been on a rollercoaster ride since the coronavirus, once largely isolated to China, became a global pandemic that shook the trajectory of the global economy and dramatically altered the way hundreds of millions of people live and work. The SEC has responded by relaxing filing deadlines and offering other forms of targeted relief to public companies, shareholders and investment shops.

SEC Chairman Jay Clayton said at a Thursday meeting of the Financial Stability Oversight Council that the agency's measures have so far helped stabilize markets despite unprecedented volatility.

"Over the past several weeks, our securities exchanges, central clearing facilities and other critical components of our market infrastructure have functioned in an orderly manner as market participants have implemented business continuity plans," Clayton said. 'Moreover, this has been accomplished in the face of record volatility and capital flows."

--Editing by Jack Karp.