

[Latham & Watkins Capital Markets Practice](#)

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FAQs: SEC Filing Deadline Relief for COVID-19

On March 25, 2020, the Securities and Exchange Commission (SEC) issued an order (the March 25 Order) that [extended](#) its prior [order](#) granting relief from SEC key filing deadlines.

The March 25 Order now covers filings due on or before July 1, 2020, and supersedes the prior order.

In addition, the SEC announced [interpretive positions](#) that the Staff will take regarding certain Securities Act and Exchange Act obligations.

1. What filings are covered?

All Exchange Act periodic and current reports (e.g., Forms 10-K, 10-Q, 8-K, 20-F, 40-F, and 6-K) and all proxy and information statements.

2. What filings are not covered?

- Schedule 13Ds and amendments
- Tender offer filings under Regulation 14D
- Section 16 filings
- Any Securities Act filing

3. What is the time period covered?

Filings due on or before July 1, 2020.

4. How long can I delay my filing?

Filings must be made not later than 45 days from the original due date.

5. What conditions must be satisfied to delay a required filing?

If an issuer (or other person) is unable to meet a filing deadline due to circumstances related to the COVID-19 outbreak, it must:

- Provide a Form 8-K or Form 6-K report by the original filing deadline of the report that discloses:

- That it is relying on the March 25 Order
- A brief description of why it could not file the report on a timely basis
- The estimated date by which the report is expected to be filed
- If appropriate, risk factors explaining any material impact of COVID-19 on its business
- If the reason the report cannot be filed relates to the inability of a third party (e.g., an independent audit firm) to furnish an opinion or report, the Form 8-K or 6-K must include as an exhibit a statement from the third party why they are unable to furnish the opinion or report
- Disclose, when it ultimately makes the required filing, that it relied on the March 25 Order and the reasons it could not make the original filing when due.

6. Is one Form 8-K/6-K enough to cover all my late filings?

No. A new Form 8-K/6-K must be made for each late filing.

7. Does an issuer need to file a Form 12b-25 Notification of Late Filing?

No, so long as the delayed filing is made within the required 45-day time period.

8. Can I still file a Form 12b-25 if I cannot make the 45-day extended deadline?

Yes. A company can rely on Rule 12b-25 to obtain a further extension if it is unable to file the delayed report by the 45-day deadline.

9. What about the reverse? If I file a Form 12b-25 based on the original deadline, can I use the relief to add 45 days to the Rule 12b-25 extension period?

No. The SEC Staff has informed us that, unlike the answer to FAQ 8, a company that initially relies on Rule 12b-25 cannot use the 45-day relief to obtain a further extension if it is unable to file within the Rule 12b-25 extension period.

10. Form S-3/F-3 and WKSI status require, among other things, a company to be current and timely in certain Exchange Act filings. Will I lose Form S-3/F-3 eligibility or WKSI status if I rely on the March 25 Order?

No, if you (a) had met the required Exchange Act filing obligations as of March 1, 2020 and (b) file any Exchange Act report due during the period March 1-July 1, 2020 within the 45-day extended filing deadline for that report.

11. Form S-8 and Rule 144(c) similarly require a company to be current in certain Exchange Act filings. Will I lose Form S-8 eligibility or be deemed not to be meet Rule 144(c) if I rely on the March 25 Order?

Same answer as FAQ 10.

12. What if mail delivery of proxy/soliciting materials is not possible?

An issuer (or other person) does not need to furnish proxy statements, annual reports and other soliciting materials, or information statements and annual reports, to any security holder if both:

- That security holder has a mailing address located in an area where, as a result of COVID-19, the common carrier has suspended the delivery service customarily used to make the solicitation.
- The issuer (or other person) has made a good-faith effort to furnish the materials to the security holder in accordance with the SEC's rules relating to furnishing and delivery.

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