

# Disclosure Amidst the COVID-19 Pandemic

## INTRODUCTION

On April 8, 2020, the SEC issued a public statement titled "*The Importance of Disclosure – For Investors, Markets and Our Fight Against COVID-19*," highlighting the SEC's observations and requests ahead of companies' earnings releases and related investor calls following quarter-end.\* While this public statement was focused on publicly-held for profit corporations, often times municipal markets will follow the example of the equities markets in terms of disclosure. The SEC's public statement highlights how important they perceive timely and robust COVID-19 disclosure to be, going so far as to indicate that companies making forward-looking disclosures in good faith would be able to avail themselves of safe harbors if those disclosures turn out to be inaccurate. This summary provides an overview of the SEC's public statement, as well as guidance with respect to making appropriate disclosures.

## OVERVIEW OF THE SEC'S PUBLIC STATEMENT

- In the past, quarter-end-related reports and investor calls have provided market participants with extensive – yet primarily historical – information concerning companies' operational and financial conditions. This information has been used to, among other things, gauge value and estimate future performance of the disclosing companies.
- In the midst of the COVID-19 pandemic, however, such historical information will likely prove less useful. In light of investors' desire to

learn where companies currently stand and how they are dealing with the effects of the COVID-19 health crisis, the SEC has encouraged companies to issue earnings and related disclosures that are "as timely, accurate and robust as practicable under the circumstances."

- The SEC explained that companies' disclosures should reflect their current state of affairs and outlook, and in particular should respond to investor interest in the below three items:
  - Where companies stand today, operationally and financially;
  - How companies' COVID-19 responses, including efforts to protect the health and well-being of their workforces and customers, are progressing; and
  - How companies' operations and financial conditions may change as efforts to fight COVID-19 progress.
- While acknowledging that companies' ability to provide detailed information regarding future operating conditions and resources may be challenging, the SEC emphasized the importance of providing such detailed disclosures, and stressed that such disclosures will likely benefit investors and companies alike, as well as enhance widespread communication and coordination.
- Likely in an attempt to persuade companies to heed its guidance, the SEC encouraged companies to avail themselves of safe-harbors for forward-looking statements, and promised that it would not second-guess companies attempting to make such statements in good faith.

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### WHAT YOU CAN DO

- In response to the SEC's public statement, companies should ensure that their disclosures include as much information as practicable, including detailed discussions regarding:
  - Current liquidity positions and expected financial resource needs;
  - The impact of COVID-19 on operations, including as a result of efforts and policies to protect worker health and well-being, as well as customer safety; and
  - The details of any financial assistance received under various state and/or federal programs (e.g., the CARES Act) that has materially affected, or is reasonably likely to have a material future effect upon, your financial condition or results of operations. If necessary, such disclosure should include the nature, amounts, and effects of any such assistance.
- In contrast to the above, companies should avoid merely including generic or boilerplate disclosures that do not meaningfully inform market participants of their status, operational strategies and risk. Instead, the SEC has urged companies to disclose information that allows investors to see the "key operational and financial considerations and challenges [that companies] face through the eyes of management."

### RECOMMENDATIONS

Although these discussions are targeted at publicly-traded companies, we believe that these points are considered best practice for all companies in order to maintain market integrity and protect investors.

In our discussions with investors and commercial lending institutions, they have had some common questions that communities may consider addressing in any COVID-19 disclosure. While each of our clients have different disclosure practices, we would recommend, that, in addition to all other required disclosures, our clients consider posting disclosures regarding the following:

- the presence or absence of COVID-19 cases in your community;
- current occupancy levels and whether admissions have been halted in one or more levels of care;
- status of Personal Protective Equipment stock;
- measures taken to prepare for the social distancing aspects of COVID-19;
- preparedness in terms of treatment of known or suspected COVID-19 cases;
- status of staffing, use of agency staffing, hazard pay or benefits for workers, testing of employees, hiring of additional staff or reductions in force;
- status of any construction or expansion projects under development or in the fill stage;
- status of marketing and waitlist retention efforts;
- comprehensive financial and operational reports, as timely, accurate and detailed as possible; and
- anything else that an investor or lender may deem material.

# Priorities

Sensible, essential financial wisdom.

APRIL 23, 2020

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### HOW HJ SIMS CAN HELP

HJ Sims is here to assist our clients in the pursuit of consistent and complete disclosure, as applicable, for your particular circumstances. To the extent possible, HJ Sims will gladly provide input in the presentation of these disclosures, along with your legal counsel, if desired. HJ Sims is also available to help assist in scheduling and moderating continuing disclosure conference calls.

*This summary has been created based on information available to date, and the information provided herein may change in accordance with additional government and/or regulatory interpretation and guidance. For additional information about this public statement, please visit <https://www.sec.gov/news/public-statement/statement-clayton-hinman>.*

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# Priorities

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APRIL 23, 2020

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