



Defining Issues[®]

SEC provides regulatory relief for hurricane victims

October 3, 2017

KPMG reports on the SEC’s recent order¹ and interim final temporary rule² that extends filing deadlines for companies affected by recent hurricanes.

Applicability

Those affected by Hurricane Harvey, Hurricane Irma or Hurricane Maria, including publicly traded companies, investment companies and professional advisors.

Key facts and impacts

The SEC gave emergency regulatory relief to companies affected by recent hurricanes that resulted in loss of property, power, transportation

and mail delivery. In the aftermath of the hurricanes, public companies and others may not be able to meet their filing deadlines.

The period of relief and due dates for required filings are listed in the table below.

If a company requires additional assistance, it is encouraged to contact the SEC staff for individual relief or interpretive guidance that will be evaluated on a case-by-case basis.

	Hurricane Harvey	Hurricane Irma	Hurricane Maria
Filings under the Securities Exchange Act of 1934 (Exchange Act)			
Period of relief	August 25 – October 6	September 6 – October 18	September 20 – November 1
Due date for filings is on or before	October 10	October 19	November 2
Filings under Regulation Crowdfunding and Regulation A			
Period of relief	August 25 – October 26	September 6 – November 7	September 20 – November 21
Due date for filings is on or before	October 27	November 8	November 22

¹ [SEC Order Granting Exemptions Related to Hurricane Harvey](#), September 28, 2017

² SEC Interim Final Temporary Rule, [Regulation Crowdfunding and Regulation A Relief and Assistance for Victims of Hurricane Harvey, Hurricane Irma, and Hurricane Maria](#), September 28, 2017

Regulatory relief

The regulatory relief granted by the SEC:

- extends the filing deadlines for required filings under the Exchange Act, Regulation Crowdfunding and Regulation A;
 - exempts a company from the delivery requirements for proxy and information statements to security holders with a zip code in a location where mail service has been suspended;
 - exempts a company from the Investment Company Act's requirements to provide annual and semi-annual reports for the period from August 25, 2017 to November 1, 2017 if:
 - the investor's mailing address has a zip code where delivery of mail has been suspended; or
 - the company promptly transmits the reports to affected investors (i) if requested by the investor or (ii) at the earlier of November 2, 2017 or the resumption of mail service;
 - temporarily exempts transfer agents from the requirements of (1) Sections 17A of the Exchange Act and Rules 17Ad-1 through 17Ad-20 and (2) Section 17(f) of the Exchange Act and Rules 17f-1 and 17f-2 for processing securities transfers, safekeeping of investor and issuer funds and securities, and maintaining records of investor ownership from August 25, 2017 to November 2, 2017; and
 - extends the deadline for registered municipal advisors to file their annual updates to Form MA that are required by Section 15B of the Exchange Act and Rule 15Ba1-5(a)(1).
- Eligibility for Forms S-3 and S-8, as well as well-known seasoned issuer status, will be preserved if the company was current as of the first day of the relief period, and the company will be considered current if it files the required report by the extended due date.
 - A company that receives an extension on filing Exchange Act reports by relying on the SEC order may be permitted to file an extension under Rule 12b-25 if it is unable to file on or before the due date.
 - Delivery requirements for (1) open-end investment companies and registered unit investments trusts for summary or statutory prospectus and (2) registered investment advisors to provide written disclosure statements will be met for the period August 25, 2017 to November 1, 2017 if delivery occurs (a) if requested by the investor or (b) by the earlier of (i) November 2, 2017 or (ii) because mail service resumed.
 - Registered investments advisors that file Form ADV are given relief if the form is filed by these dates:
 - Hurricane Harvey – October 10, 2017;
 - Hurricane Irma – October 19, 2017; and
 - Hurricane Maria – November 2, 2017.

Extended filing deadlines

To be eligible for the extended filing deadlines under the Exchange Act, Regulation Crowdfunding and Regulation A, a company must meet the following conditions:

- the filing deadline cannot be met due to one of the hurricanes;
- the company files with the SEC during the period of relief; and
- the company discloses that it is relying on the SEC order and states the reasons why, in good faith, it could not file on a timely basis.

Additional information

The SEC provided additional information in its press release.³

Example

A large accelerated filer was affected by Hurricane Harvey and is unable to file its Form 10-K because it lost certain accounting records. The company has a fiscal year-end of July 31, 2017 and a filing deadline of September 29, 2017.

- The company files a report with the SEC to say that it will be relying on the SEC order and discloses why it could not file the 10-K on a timely basis.
- As a result of filing a report with the SEC, the 10-K is due on or before October 10, 2017.

³ [SEC Provides Regulatory Relief and Assistance for Hurricane Victims](#), September 28, 2017

Example

- If the company is unable to file the required report on or before the due date, it will be permitted to rely on Rule 12b-25 for a 15-calendar day extension.
- If the company requires additional assistance, it is encouraged to contact SEC staff for individual relief or interpretive guidance that will be evaluated on a case-by-case basis.

KPMG observation

Natural disasters can have a wide effect on accounting and financing reporting matters and may require significant judgment. A company should consider a disaster's effect on:

- impairment of long-lived assets;
- impairment of intangible assets and goodwill;
- insurance recoveries;
- recoverability of deferred taxes;
- receivables, loans and other financial instruments; and
- subsequent events.

A company should also consider financial reporting matters such as:

- the appropriateness of disclosures;
- debt covenant compliance; and
- the ability to continue as a going concern.

In addition, a company should consider the effect on internal control over financial reporting and the auditor's ability to perform an integrated audit.

Auditor independence

The SEC acknowledged that the hurricanes and their aftermath may require extraordinary effort to reconstruct accounting records that were damaged or lost. The SEC order permits an audit firm to assist its audit client to reconstruct accounting records because the auditor has extensive knowledge of the client's financial system and records.

However, this relief limits services to reconstruction of previously existing accounting records that were lost or destroyed, and must end as soon as the client's lost or destroyed records are reconstructed, its financial systems are fully operational and it can effect an orderly and efficient transition to management or another service provider.

Services provided by the auditor must be pre-approved by the client's audit committee.

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