



# Defining Issues<sup>®</sup>

## SEC provides regulatory relief for hurricane victims

October 18, 2018

KPMG reports on the SEC’s recent orders<sup>1</sup> and interim final temporary rules<sup>2</sup> that extend filing deadlines for companies affected by Hurricanes Florence or Michael.

We originally issued this *Defining Issues* on September 21, 2018. It has been updated to include the SEC’s guidance on Hurricane Michael.

### Applicability

Those affected by Hurricanes Florence or Michael, including publicly traded companies, investment companies and professional advisors.

### Key facts and impacts

The SEC gave emergency regulatory relief to companies affected by Hurricanes Florence and Michael and their aftermath. The hurricanes

resulted in loss of property, power, transportation and mail delivery that could prevent public companies and others from meeting their filing deadlines.

The periods of relief and due dates for required filings under the Exchange Act, Investment Company Act, Regulation Crowdfunding and Regulation A are listed in the table.

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 Florence	Hurricane Michael
<b>Periods of relief</b>	September 14 – October 26	October 10 – November 21
<b>Filing due date is on or before</b>	October 29	November 23

### Regulatory relief

The regulatory relief granted by the SEC:

- extends the filing deadlines for required filings under the Exchange Act, Investment Company 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;

<sup>1</sup> SEC Orders Granting Relief to Victims of [Hurricane Florence](#) and [Hurricane Michael](#), September 19, 2018, and October 16, 2018, respectively

<sup>2</sup> SEC Interim Final Temporary Rules, [Regulation Crowdfunding and Regulation A Relief and Assistance for Victims of Hurricane Florence](#), September 19, 2018; and [Regulation Crowdfunding and Regulation A Relief and Assistance for Victims of Hurricane Michael](#), October 16, 2018

- exempts a company from the Investment Company Act’s requirements to provide annual and semi-annual reports for the periods of relief 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 the due date 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 for the periods of relief; and
- extends the deadlines 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).

### Additional information

The SEC provided additional information in its press releases.<sup>3</sup>

- 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 periods. The company will be considered current if it files the required report by the due date.
- A company that receives an extension on filing Exchange Act reports by relying on the SEC orders 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’ written disclosure statements will be met for the periods of relief if delivery occurs (a) if requested by the investor or (b) by the earlier of (i) the due date or (ii) because mail service resumed.
- Registered investments advisors that file Form ADV are given relief if the form is filed by the due date.
- the filing deadline cannot be met due to Hurricanes Florence or Michael and their aftermath;
- the company’s filing deadline with the SEC falls within the periods of relief; and
- the company discloses that it is relying on the SEC orders or interim final temporary rule and states the reasons why, in good faith, it could not file on a timely basis.

### Extended filing deadlines

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

#### Example

A large accelerated filer was affected by Hurricane Florence 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, 2018 and a filing deadline of October 1, 2018.

- The company files a report with the SEC to say that it will be relying on the SEC orders 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 29, 2018.
- 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.
- 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.

<sup>3</sup> SEC Provides Regulatory Relief and Assistance for Hurricane Victims, [September 19, 2018](#) and [October 16, 2018](#)

©2018 KPMG LLP, a Delaware limited liability partnership and the U.S. member firm of the KPMG network of independent member firms affiliated with KPMG International Cooperative (“KPMG International”), a Swiss entity. All rights reserved.

## KPMG observation

Natural disasters can have a wide effect on accounting and financial 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 orders permit 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. The relief 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.

## Contributing authors

Timothy Brown; Erin McCloskey

## KPMG's Financial Reporting View

[kpmg.com/us/frv](http://kpmg.com/us/frv)

## [kpmg.com/socialmedia](http://kpmg.com/socialmedia)



The descriptive and summary statements in this newsletter are not intended to be a substitute for the potential requirements of the standard or any other potential or applicable requirements of the accounting literature or SEC regulations. Companies applying U.S. GAAP or filing with the SEC should apply the texts of the relevant laws, regulations, and accounting requirements, consider their particular circumstances, and consult their accounting and legal advisors. Defining Issues® is a registered trademark of KPMG LLP.

The KPMG name and logo are registered trademarks or trademarks of KPMG International.