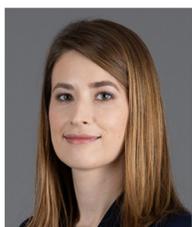




Megan L. Mehalko

(216) 212-4966

mmehalko@beneschlaw.com



Sarah M. Hesse

(312) 212-4966

shesse@beneschlaw.com



Brian D. Mielcusny

(216) 363-6123

bmielcusny@beneschlaw.com



Samantha J. Barbara

(216) 363-6283

sbarbara@beneschlaw.com

COVID-19 Disclosure Case Studies and Additional SEC Guidance for Upcoming Quarterly Disclosure

By Megan Mehalko, Sarah Hesse, Brian Mielcusny and Samantha Barbara

As the United States is grappling with the process of the reopening of the economy while the new surge in cases may result in the re-imposition of business closures and stay-at-home orders, public companies find themselves in a new phase of disclosures around the impact of COVID-19 on their businesses and operations.

For most companies with a December 31 fiscal or quarter end, the burgeoning spread of the COVID-19 virus was not fully felt or understood in the public company reporting that occurred in February and even March. However, as COVID-19 rapidly spread in the United States and the rest of the world—and was declared to be a pandemic by the World Health Organization in March—it impacted nearly all industries and businesses.

As companies reported out their results for the quarter ended March 31, disclosures generally pivoted from risk factors about a virus originating in Wuhan, China with an unknowable impact to disclosures about more detailed risks, real impact on performance, and concerns about liquidity, with the full impact still very much unknown.

While some states began the process of “reopening” as early as April, many states’ shelter-in-place, stay at home, and business closure orders remained in place into May and later. Combined with both the turbulent stock market and the continued increase in case numbers in the United States, companies continued to feel the impact of COVID-19 on their businesses into the quarter ended June 30.

As companies work through their reporting process for the quarter ended June 30 and the following quarters, we expect to see more fully the impact the pandemic had on companies’ operations as well as continued uncertainty. We expect a number of companies to continue to feel the reverberations of the stay-at-home orders and the pandemic’s heightened impact on certain industries. Further, as the United States continues to struggle with increasing numbers of cases, companies face uncertainties around whether there will be a reversal in the economic reopening or otherwise negative economic consequences.

In advance of this upcoming round of disclosure, the Securities and Exchange Commission (“SEC”) has provided additional guidance for companies to consider as they prepare their upcoming quarterly disclosures.

(continued)

Considerations for Reporting for the Quarter Ended June 30 and Beyond

While the COVID-19 pandemic has touched all industries, we took a deeper look at how three industries have been particularly impacted by COVID-19 and how they adapted their disclosures. We have highlighted a few case studies in healthcare, manufacturing, and aerospace (which can be found at the end of this bulletin). In reviewing the disclosures of companies across these industries, we focused on the following: discussion of the impact of COVID-19 on the preceding quarter, forward-looking statements, guidance, risk factors, and whether the company had accessed the public capital markets.

Specific COVID-19 Discussion—As the COVID-19 pandemic continues to be acutely felt in the United States, we expect companies' to continue the practice of specifically discussing the impact of COVID-19 on their business and the results of operations. We have not yet returned to business as usual and we expect reporting to reflect this.

Many of the companies we reviewed disclosed that they expected COVID-19 to have a negative impact on their results in upcoming periods. We expect companies to not only provide a discussion of whether that negative impact was felt in the quarter ended June 30, but also if it's expected to continue in upcoming quarters.

To that end, companies should continue to consider whether there is any forward-looking disclosure that would be important to stockholders and demonstrate how the results of the quarter ended June 30 may not be indicative of future results.

Risk Factors—All companies we reviewed updated their risk factors. Companies should continue to monitor their risk factor disclosure and provide updates to such risk factors as the COVID-19 situation and its effects continue to change and be experienced by companies.

The review of risk factors remains critical for companies as the COVID-19 pandemic continues to evolve. For example, companies should evaluate the risks

involved with any slowing down of re-openings in the United States (or even the re-imposition of business closures or stay at home orders) and other developments—for example, the EU's travel ban on visitors coming from the U.S.

Guidance—Unsurprising, in our case studies, a number of companies suspended or declined to provide guidance for 2020. We noted a few companies, ones that had not yet experienced a significant impact on their businesses as a result of the COVID-19 outbreak, continued their historical practice of providing guidance. Given the continued uncertainty around the impact of COVID-19, we do not expect to see many companies change course from their current practices for this most recent quarter.

Liquidity—Companies' liquidity remains a focus for investors. Companies should continue to disclose efforts taken during the quarter to maintain sufficient liquidity (including financings). The SEC's recently provided guidance (see below) regarding second quarter disclosure is in particular focused on companies' reporting of liquidity.

Other Disclosure Considerations—How companies are addressing their human capital resources continues to be important—for example, how companies are balancing a returning workforce while COVID-19 continues to spread in the United States and efforts taken to ensure employee health and safety (and the impact such measures may have on their operations). In addition to the impact of the pandemic, investors and consumers have also turned their focus to companies' diversity and racial justice efforts. While a number of companies have spoken to such matters through their social media rather than SEC filings, companies should be prepared to answer questions from investors on these matters in connection with their quarterly reporting.

Additional SEC Guidance

On June 23, the Division of Corporation Finance (the "Division") of the SEC issued additional guidance for companies to consider related to COVID-19. The Division noted that it is continuing to monitor

companies' disclosure around COVID-19 and also encouraging "companies to provide disclosures that allow investors to evaluate the current and expected impact of COVID-19 through the eyes of management and to proactively revise and update disclosures as facts and circumstances change."

The Division observed that companies have and continue to take a number of steps and adjustments in response to the COVID-19 pandemic – implementing heightened safety guidelines, transitioning to and from working remotely, undertaking financing activities, among others. The Division emphasized the importance of evaluating whether such actions are material to a voting or investment decision requiring disclosure and provide transparent disclosure around liquidity and risks to business. The Division noted that it had seen these type of disclosures in earnings release and encouraged companies to evaluate whether such information should also be presented in the MD&A.

The CARES Act

The Division highlighted that companies should review whether disclosure around financial assistance (be it loans and/or tax relief) provided under the Coronavirus Aid, Relief, and Economic Security Act (the "CARES Act") is appropriate. The Division noted that companies receiving assistance under the CARES Act should consider the short- and long-term impact of such assistance on their financial condition, results of operations, liquidity, and capital resources, as well as the related disclosures and critical accounting estimates and assumptions.

Going Concern Disclosures

The Division reminded companies that management should be considering whether conditions and events have created substantial doubt about the ability to continue as a going concern and provide appropriate disclosure.

Other Considerations

The Division also provided a list of questions that it urges companies to

consider when preparing their upcoming quarterly disclosures:

- What are the material operational challenges that management and the Board of Directors are monitoring and evaluating? How and to what extent has the company altered its operations, such as implementing health and safety policies for employees, contractors, and customers, to deal with these challenges, including challenges related to employees returning to the workplace? How are the changes impacting or reasonably likely to impact the company's financial condition and short- and long-term liquidity?
- How is the company's overall liquidity position and outlook evolving? To the extent COVID-19 is adversely impacting revenues, consider whether such impacts are material to the company's sources and uses of funds, as well as the materiality of any assumptions the company makes about the magnitude and duration of COVID-19's impact on revenues. Are any decreases in cash flow from operations having a material impact on liquidity position and outlook?
- Has the company accessed revolving lines of credit or raised capital in the public or private markets to address liquidity needs? Are the company's disclosures regarding these actions and any unused liquidity sources providing investors with a complete discussion of the company's financial condition and liquidity?
- Have COVID-19 related impacts affected the company's ability to access the company's traditional funding sources on the same or reasonably similar terms as were available in recent periods? Has the company provided additional collateral, guarantees, or equity to obtain funding? Have there been material changes in the company's cost of capital? How has a change, or a potential change, to the company's credit rating impacted your ability to access funding? Do the financing arrangements of the company contain terms that limit the ability to obtain additional funding? If so, is the uncertainty of additional

funding reasonably likely to result in the company's liquidity decreasing in a way that would result in you being unable to maintain current operations?

- Is the company at material risk of not meeting covenants in its credit and other agreements?

If the company includes metrics, such as cash burn rate or daily cash use, in disclosures, is the company providing a clear definition of the metric and explaining how management uses the metric in managing or monitoring liquidity? Are there estimates or assumptions underlying such metrics the disclosure of which is necessary for the metric not to be misleading?

- Has the company:
 - reduced its capital expenditures and if so, how?
 - reduced or suspended share repurchase programs or dividend payments?
 - ceased any material business operations or disposed of a material asset or line of business?
 - materially reduced or increased human capital resource expenditures?

Are any of the above measures temporary in nature, and if so, how long does the company expect to maintain them? What factors will be considered in deciding to extend or curtail these measures? What is the short- and long-term impact of these reductions on the company's ability to generate revenues and meet existing and future financial obligations?

- Is the company able to timely service debt and other obligations? Has the company taken advantage of available payment deferrals, forbearance periods, or other concessions? What are those concessions and how long will they last? Does the company foresee any liquidity challenges once those accommodations end?
- Has the company altered terms with customers, such as extended payment terms or refund periods, and if so, how have those actions materially affected the financial condition or liquidity

of the company? Did the company provide concessions or modify terms of arrangements as a landlord or lender that will have a material impact? Has the company modified other contractual arrangements in response to COVID-19 in such a way that the revised terms may materially impact the financial condition, liquidity, and capital resources?

- Is the company relying on supplier finance programs, otherwise referred to as supply chain financing, structured trade payables, reverse factoring, or vendor financing, to manage cash flow? Have these arrangements had a material impact on the company's balance sheet, statement of cash flows, or short- and long-term liquidity and if so, how? What are the material terms of the arrangements? Did the company or any of its subsidiaries provide guarantees related to these programs? Do you face a material risk if a party to the arrangement terminates it? What amounts payable at the end of the period relate to these arrangements, and what portion of these amounts has an intermediary already settled for the company?
- Has the company assessed the impact material events that occurred after the end of the reporting period, but before the financial statements were issued, have had or are reasonably likely to have on the company's liquidity and capital resources and considered whether disclosure of subsequent events in the financial statements and known trends or uncertainties in MD&A is required?

If you have any questions regarding the above, please contact a member of Benesch's [Corporate & Securities Practice Group](#).

Megan L. Mehalko at mmehalko@beneschlaw.com or (216) 363-4487.

Sarah M. Hesse at shesse@beneschlaw.com or (312) 212-4966.

Brian D. Mielcusny at bmielcusny@beneschlaw.com or (216) 363-6123.

Samantha J. Barbara at sbarbara@beneschlaw.com or (216) 363-6283.

Case Studies

Healthcare

Case Study #1: Global leader in healthcare supply chain management solutions, retail pharmacy, community oncology and specialty care, and healthcare information technology; partners with life science companies, manufacturers, providers, pharmacies, governments and other healthcare organizations to help provide the right medicines, medical products and healthcare services to the right patients at the right time, safely and cost-effectively. Market cap of approximately \$25 billion.

- **Impact on the Quarter:** The company included an introductory section in its MD&A discussing COVID-19 and the steps it took in response to the outbreak and the impact of the pandemic on its business.

The company did not undergo a significant financial impact as a result of COVID-19 in part, due to the timing of the COVID-19 outbreak in relation to its March 31 fiscal year end. While the company experienced higher volumes in pharmaceutical distributions as a result of the outbreak, this was offset by a decrease in specialty drug volumes and demand challenges for primary care medical-surgical supplies, which was driven, in part, by the deferrals of elective procedures and reduced operations of doctors' offices. Increases in volumes were also offset by costs incurred in addressing the outbreak in the company's operations—such as enhanced cleaning procedures, obtaining personal protection equipment for employees, and expansion of certain employee benefits, among other costs.

The company also disclosed that its balance sheet and ability to maintain financial liquidity remained strong.

- **Forward-Looking Disclosure:** The company noted that COVID-19 impacted business operations and financial results beginning in its fourth quarter of 2020 (that is, the quarter ended March 31, 2020) such that the financial impact of COVID-19 on the overall 2020 results was limited. However, the company states that it faces numerous uncertainties in estimating the direct and indirect effects on future business.
- **Guidance:** The company did issue guidance for its fiscal year 2021, which guidance reflected the impact from the COVID-19 pandemic.
- **Other Actions Taken:** The company created a task force made up of procurement specialists, clinical health systems pharmacists, and supply chain professionals, focused on securing additional product where available, sourcing back-up products, adjusting allocations to ensure equitable distribution and to protect the company's operations across all locations and facilities.

The company historically issues dividends and anticipates that it will be able to pay dividends in the future but noted that all dividends are subject to declaration by its Board of Directors.

- **Risk Factors:** The company disclosed in its Form 10-K for the year ended March 31, 2020 a number of risk factors; the following are risks that were highlighted in connection with COVID-19:
 - Potential significant changes to GAAP due to COVID-19 and disruptions in the global economy;
 - Risk of cyber incidents;
 - Delays or interruptions due to an overuse of the information systems or networks due to a higher than normal remote work structure;
 - Supply arrangements, inventory, manufacturing, and other supply chain logistics may be impacted by government action or events outside the company's control as a result of the widespread public health issues;
 - Impact by economic slowdown or recession;
 - Currency volatility; and
 - External threats stemming from the spread of COVID-19 including, public health issues travel restrictions, product manufacturing delays, and other pandemic affects impacting the supply chain.

The company had not previously updated its risk factors to reflect the risks created by the COVID-19 outbreak.

- **Accessing the Capital Markets:** The company filed an automatic shelf registration statement in March but had not as of the date of this article publicly issued securities.

Healthcare *(continued)***Case Study #2:**

World leading medical technology company that offers products and services in orthopedics, medical and surgical, and neurotechnology and spine that help improve patient and hospital outcomes. The company maintains three business segments focused on the following products: (1) orthopedic products (particularly for hip and knee replacements and surgeries), (2) surgical equipment and related systems (e.g., navigation and communication systems), medical equipment and devices, and (3) neurological and spine implants. Market cap of approximately \$69 billion.

- **Impact on the Quarter:** The company included in its MD&A a section addressing the COVID-19 pandemic and the pandemic's impact on the company's operations.
The company's products were particularly sensitive to a reduction in elective medical procedures. However, certain of its surgical products and its emergency relief beds and personal protective equipment experienced higher demand. On balance, consolidated net sales were significantly negatively impacted by the global response to the COVID-19 pandemic, resulting in lower than previously expected unit volume growth rates across all segments (however, the company did experience a growth in net sales, but it was lower than expected prior to the COVID-19 outbreak).
- **Forward-Looking Disclosure:** The company disclosed that it expects the COVID-19 pandemic will continue to have a significant negative impact on its operations and financial results.
- **Guidance:** The company withdrew the guidance it had provided earlier in the year and paused its practice of providing guidance due to the uncertainty caused by the COVID-19 pandemic and its effects.
- **Other Actions Taken:** The company suspended its share repurchase program for 2020 and 2021 and disclosed in its risk factors that it may be compelled to suspend its dividend issuances.
- **Risk Factors:** The company disclosed in its March 31, 2020 Form 10-Q a number of risk factors; the following are risks that were highlighted in connection with COVID-19:
 - COVID-19 has and is expected to continue to materially adversely affect the company's operations, supply chain, manufacturing, product distribution and other business activities;
 - COVID-19 has resulted in and may continue to result in, significant disruption of global financial markets, reducing the company's ability to access capital which could negatively affect the company's liquidity; and
 - In response to COVID-19, the company has experienced and may continue to experience, a significant and unpredictable need to adjust our operations as market demand for certain products has shifted and continues to shift as may be mandated by governmental authorities.

The company had not previously updated its risk factors to reflect the risks created by the COVID-19 outbreak.
- **Accessing the Capital Markets:** The company had an existing automatic shelf registration statement in place and conducted an offering of over \$2 billion of notes.

Case Study #3:

Company develops, manufactures and sells proprietary biological testing technologies and products with applications throughout the life sciences industries, including diagnostics, pharmaceuticals and research. These industries depend on a broad range of tests, called assays, to perform diagnostic testing and conduct life science research. Market cap of approximately \$1.4 billion.

- **Impact on the Quarter:** The company included a "COVID-19 Considerations" discussion in its MD&A. The company has been successful throughout the COVID-19 pandemic with its revenue up by 10% over the first quarter of 2019. Furthermore, the company experienced an overall 26% increase in revenue related to its respiratory products. There is expected further revenue growth due to the company's shift towards COVID-19 specific products and the current backlog of COVID-19 related orders.
- **Forward-Looking Disclosure:** The company disclosed that the ongoing uncertainty caused by the COVID-19 pandemic, including the uncertainty regarding the duration and impact of the pandemic will continue to have an impact on the company's customers, suppliers, partners and business prospects. The company did highlight areas of focus for the next twelve months – including development and commercialization of COVID-19 related testing, treatment, and vaccines, moving forward on other products, and achieving certain other financial goals, among others.
- **Guidance:** In its earnings release for the quarter, the company noted that it expects that revenue will be at the top end of its previously communicated guidance, but will not provide an updated guidance range at this time due to the uncertainties presented by the COVID-19 pandemic.
- **Other Actions Taken:** The company disclosed that it had been awarded funding for its COVID-19 research and development efforts.
- **Risk Factors:** The company disclosed in its Form 10-K a general risk factor for epidemic diseases, specifically highlighting concerns in connection with COVID-19. In its 10-Q for the quarter ended March 31, 2020, the company included a new risk factor regarding the marketing of its COVID-19 tests and expanded its risk factor regarding epidemic diseases' potential negative impact on its business.
- **Accessing the Capital Markets:** The company issued \$260 million in convertible senior notes in a private placement.

Manufacturing

Case Study #1: Leading global supplier of precision instruments and services, manufacturer of weighing instruments for use in laboratory, industrial, packaging, logistics and food retailing applications. Market cap of approximately \$20 billion.

- **Impact on the Quarter:** In its MD&A, the company included a detailed disclosure touching on several aspects of the COVID-19 pandemic and the general impact of the outbreak on certain aspects of its business, including the following:
 - **Employee Health/Safety:** The company noted that the health and safety of its employees and business partners has been its highest priority during the COVID-19 pandemic, and described several preventative and protective measures implemented during this time, including with respect to social distancing, hygiene, health monitoring personal protective equipment and remote work.
 - **Temporary Cost Containment Measures:** The company described the implementation of various temporary cost containment measures related to workforce management and discretionary spending, noting that these measures relate primarily to reduced work hours, salary freezes, and voluntary senior leadership salary reductions.
 - **Liquidity:** The company noted that it currently maintains adequate liquidity in the form of additional borrowings available under its credit agreement, stating specifically the amount of cash and cash equivalents available as of the end of the quarter.
 - **Overview of Risk Factors:** In the separate MD&A discussion regarding COVID-19, the company highlighted several key risk factors discussed in more detail elsewhere in the filing, specifically highlighting risks relating to the shutdown of businesses, interruption of supply chains and the impact on the spread of the virus among individuals.
 - **Impact on Results of Operations:** The company noted that for the previous quarter, COVID-19 had a negative impact on its business, primarily related to a reduced customer demand in China as well as in other regions. The company noted that it expects reduced global sales volumes due to lower customer demand in future quarters and notes that the longer-term effects on its business will be impacted by the global economy and any recession implications in different regions of the world. The company highlighted that it is extremely difficult to estimate the extent and duration of any COVID-19 implications, the effects on its business and results of operations and financial condition could be material.
- **Forward Looking Disclosure:** The company disclosed that it expects that COVID-19 will negatively affect the global economy and its customers' businesses, which will likely result in delayed or reduced purchases from the company, as well as difficult in meeting payment obligations. The company expects reduced global sales volume due to lower customer demand in future quarters.
- **Guidance:** In its earnings call for the previous quarter, the company announced that it will not provide formal sales and adjusted EPS guidance for the full-year 2020.
- **Other Actions Taken:** The company stopped its share repurchase program, effective as of the end of the second fiscal quarter.
- **Risk Factor(s):** For the quarter ended March 31, 2020, the company included a risk factor relating to the COVID-19 outbreak, which noted that its global operations are susceptible to global events that could have an adverse effect on its business results and financial condition, highlighting specifically, the risk of business shutdowns, the risk of slowing and interruption of supply chains, and that some supply chains become inoperable, the impact on customers and their ability to continue to make purchases or meet payment obligations, and the impact of the spread of the virus among individuals.
- **Accessing Capital Markets:** The company noted that it had sufficient liquidity available under its credit agreement as of the end of the first quarter, and has yet to tap capital markets for additional cash/cash equivalents.

Manufacturing *(continued)*

Case Study #2: Leading manufacturer and distributor in the market of medical equipment used in non-acute settings, and also designs, manufactures and distributes medical devices that assist individuals move, breathe, rest and perform essential hygiene functions. Market cap of approximately \$225 million.

- **Impact on the Quarter:** The company noted that, while the recent COVID-19 outbreak did not have a material adverse effect on its reported results for the first quarter of 2020, it is actively monitoring the impact of the outbreak, which will negatively impact the company's business and results of operations for the second quarter of 2020 and likely beyond. The company noted that the extent to which the company's operations will be impacted depend largely on future developments, which are highly uncertain and cannot be accurately predicted, including new information which may emerge concerning the severity of the pandemic and actions taken by government authorities to contain the outbreak or treat its impact, among other factors.
 - **Continued Operation as an Essential Business:** The company noted that as an "essential business," it has continued to operate nearly all of its facilities, taking into account recommended public health measures to ensure worker and workplace safety. The company noted an increase in demand globally for its respiratory products, beds, and therapeutic support surfaces, which are being deployed in the fight against COVID-19 in expanded medical facilities.
 - **Decline in Demand for Certain Products:** While demand for certain of the company's products has increased, the company noted that it has begun experiencing a global decline in quotes for its mobility and seating products, and expects that a decline in orders for these products will continue.
- **Liquidity/Access to Capital Markets:** The company continues to optimize its balance sheet for the current environment. In the first quarter, the company preemptively drew over \$20 million under its credit facility. Subsequent to the first quarter, the company borrowed an additional amount under its credit facility. These actions were taken to preserve business flexibility and without specific planned uses of capital. In addition, the company realized gross proceeds related to its divestiture of one of its business segments in the first quarter. Those actions, combined with the company's other cash balances, and the anticipated generation of adjusted EBITDA and free cash flow, was currently expected to provide the company sufficient liquidity to manage the business.
- **Risk Factors; Forward Looking Disclosure:** The company noted that the COVID-19 pandemic disrupted the company's operations and could have a material adverse effect on its business. The company stated specifically that the COVID-19 pandemic could disrupt the company's supply chain and materially adverse the company's impact to secure supplies for its facilities and to provide personal protective equipment for employees, which could materially adversely affect the company's operations.
- **Guidance:** The company continues to suspend its full year 2020 earnings guidance.
- **Other Actions Taken:** The company suspended the payment of quarterly cash dividends and on June 1, 2020 announced a private exchange to retire \$33 million of convertible senior notes due 2021 and \$39 million of convertible senior notes due 2022.

Aerospace

Case Study #1:

Manufacturer and provider of various systems, products, and solutions for, among others, the aerospace and defense markets. These products include systems for air and spacecraft, electronics, and technology. The company's largest customer is the United States government. Market cap of approximately \$54 billion.

- **Impact on the Quarter:** The financial impact of COVID-19 was not material for its first quarter and sales increased in its first quarter as compared to the same quarter in the prior year.
In its MD&A, the company included an introductory paragraph specifically discussing COVID-19. The company described actions it had taken to prioritize employee safety (such as implementing working from home where possible and social distancing for in-person operations). The company also noted its status as an essential business under the various state and local shelter-in-place orders instituted.
The company did note that it was experiencing increased costs (and expected to incur further additional costs resulting from the COVID-19 outbreak, including to protect the well-being of its employees) and is working with customers to consider additional cost recoveries.
The company disclosed that its cash and cash equivalents, supplemented by borrowings and/or access to the capital markets (if needed), were expected to be sufficient to fund their operations for at least the next 12 months.
- **Forward-Looking Disclosure:** While the company experienced increased sales during its first quarter versus the same period in the prior year, its 10-Q noted that the company expects a reduction in 2020 revenue and operating margin.
- **Guidance:** The company is still providing guidance, and updated its year outlook in connection with its first quarter earnings release.
- **Other Actions Taken:** The company has not announced a suspension of its practice of issuing dividends or its share repurchase program.
- **Risk Factors:** The company's Form 10-K for the year ended December 31, 2019 did not include a risk factor addressing COVID-19. Its Form 10-Q for the quarter ended March 31, 2020 included risk factor disclosure addressing the risks related to health epidemics, including:
 - Impact on operations due to inability of portions of its workforce to work effectively, work stoppages, government actions, limited supplies, or other effects from COVID-19;
 - Costs incurred to address COVID-19 likely will not be fully recoverable;
 - The effect of a continued spread of the virus on the company's ability to hire, develop, and retain its workforce;
 - Supply chain disruptions;
 - Delays in customer payments (or inability to pay);
 - Extended period of lower cash generation could adversely financial condition and liquidity; and
 - Impact on investment performance caused by market volatility.
- **Accessing the Capital Markets:** The company issued over \$2 billion in notes and put up a new automatic shelf registration statement.

As a reminder, this Advisory is being sent to draw your attention to issues and is not to replace legal counseling.

UNITED STATES TREASURY DEPARTMENT CIRCULAR 230 DISCLOSURE: TO ENSURE COMPLIANCE WITH REQUIREMENTS IMPOSED BY THE IRS, WE INFORM YOU THAT, UNLESS EXPRESSLY STATED OTHERWISE, ANY U.S. FEDERAL TAX ADVICE CONTAINED IN THIS COMMUNICATION (INCLUDING ANY ATTACHMENTS) IS NOT INTENDED OR WRITTEN TO BE USED, AND CANNOT BE USED, FOR THE PURPOSE OF (i) AVOIDING PENALTIES UNDER THE INTERNAL REVENUE CODE, OR (ii) PROMOTING, MARKETING OR RECOMMENDING TO ANOTHER PARTY ANY TRANSACTION OR MATTER ADDRESSED HEREIN.

Aerospace *(continued)*

Case Study #2: Designer, manufacturer and producer of controls and systems for original equipment manufacturers and end users in the aerospace, defense, and industrial markets. OEMs represented over 50% of its customers in FY2019 and the United States government is also a significant customer. Market cap of approximately \$1.5 billion.

- **Impact on the Quarter:** The company disclosed that the COVID-19 pandemic did not have a material impact on its financial statements for the 3 or 6 months ending in March 2020. The company included in its MD&A a specific subsection describing the impact of COVID-19 on its business and discussed a shift in capital deployment strategies as a result of the pandemic (including the suspension of dividend payments and its share repurchase program, as well as minimizing its spending on discretionary items, freezing hiring and salary increases, aligning inventory with expected customer demand and adopting a vendor financing program, among other actions).
The company disclosed that the COVID-19 outbreak began impacting its operations late in the quarter, which was otherwise a strong quarter. Sales in its industrial systems segment saw a decrease in part due to lower sales in China as a result of COVID-19.
The company provided that its available borrowing and cash flow from operations have been sufficient to operate and reinvest in the business and make strategic acquisitions and they have enacted measures in the short to maintain the company's financial health liquidity (see "Other Actions Taken," below).
- **Forward-Looking Disclosure:** The company disclosed that it does not expect any material impairments on its assets as a result of COVID-19. The company provided its viewpoint regarding the industries in which it operates – namely, that it expects the defense and space industries to face modest pressures but that the commercial aircraft business will be impacted, potentially resulting in decreases in sales in 2020 of 10-20% versus the first half of its fiscal year.
- **Other Actions Taken:** The company suspended its historical practice of dividend payments and its share repurchase program.
- **Guidance:** The company suspended providing guidance due to the uncertainties relating to the COVID-19 pandemic.
- **Risk Factors:** The company provided updates to its risk factors to account for the risks presented by COVID-19, in particular, risks related to health epidemics (such as COVID-19).
- **Accessing the Capital Markets:** Not as of the date of this article.

Case Study #3: Designer, developer, manufacturer and distributor of display and computer systems and other equipment used in aircraft. The company's customers include the United States government, airlines, other companies that rely on aircraft, and manufacturers in the aerospace industry. Market cap of approximately \$86 million.

- **Impact on the Quarter:** The company's MD&A included a subsection specifically addressing COVID-19 and its impact on the company. The company had not yet seen a material impact on its business, financial position or liquidity.
The company did disclose that it may face liquidity shortages, weaker customer demand, supply chain disruptions, and or staffing shortages as a result of the pandemic and its effects.
The company disclosed that it believes it has sufficient cash and cash equivalents to fund its operations for at least the next twelve months but noted the uncertainty caused by the COVID-19 pandemic and the potential for the pandemic to hinder it ability to introduce new products.
- **Forward-Looking Disclosure:** The company did not provide specific guidance regarding future periods but that the impact of COVID-19 on the company is uncertain and such impact may be material.
- **Other Actions Taken:** The company disclosed that it had applied for and received a PPP loan, but would be returning the proceeds.
- **Guidance:** The company as a practice does not provide formal guidance.
- **Risk Factors:** The company provided a new risk factor describing how the COVID-19 pandemic had adversely affected and was expected to continue to adversely affect the business. Namely, quarantines and other government restrictions in response to the spread of the outbreak have created a lot of volatility and uncertainty that had begun to impact the business and was expected to continue to do so. The risk factor addressed, among other things, disruption to the company's supply chain, that it would not have the support of a PPP loan, suspensions/delays/cancellations of customer orders, reduced demand for products, and potential increased government requirements and approvals.
- **Accessing the Capital Markets:** Not as of the date of this article.