

SEC Shut-Down: Impact on Capital Markets Transactions and Public Companies

10 Law Firm Consensus Report as of 12:00 Noon EDT, April 8, 2011

Assuming the current budget impasse cannot be resolved, the U.S. federal government will shut down as of 12:01 am EDT Saturday April 9, 2011. The Securities and Exchange Commission (SEC) announced yesterday that its operations will be sharply curtailed in the event of a shut-down.

The following questions and answers reflect the current understanding of the undersigned law firms, as well as the information so far made public by the SEC.

Q: Where should I look for the latest official SEC information on the shut-down?

Click here: http://www.sec.gov/about/2011_fed_shutdown.htm. The SEC guidance issued on April 7 states that “the Commission will have only an extremely limited number of staff members available to respond to emergency situations involving the safety of human life or the protection of property, including law enforcement.”

Q: Will EDGAR accept filings?

Yes, the SEC has stated EDGAR will remain fully functional.

Q: Will SEC Staff members be available to resolve EDGAR filing issues?

Yes, but on a more limited basis than normal.

Q: Will it be possible to obtain answers from SEC Staff members to interpretive questions?

No.

Q: Will it be possible to obtain no-action relief from the Division of Corporation Finance?

No.

Q: Will SEC examiners be available to process filings?

No.

Q: Will SEC Staff members be available to confirm the absence of stop orders?

No.

Q: Will automatically effective Securities Act registration statements and automatically effective post-effective amendments go effective when filed?

Yes.

Q: Will other Securities Act registration statements and post-effective amendments be declared effective or accelerated?

No.

Q: Will it be possible to pay filing fees during the shut-down?

Yes, including on a “pay-as-you-go” basis for automatic shelf registration statements.

Q: Should all Exchange Act filings be made by their due date?

Yes, including filings such as proxy statements and Forms 10-K, 10-Q, 8-K, 3 and 4.

Q: Will the shut-down change what constitutes a “business day” for purposes of the Securities Act, Exchange Act or the SEC’s rules under those statutes?

No, except for purposes of certain rule-making by self-regulatory organizations (covered here: <http://www.sec.gov/rules/final/2011/34-64251.pdf>).

This means, for example, that the references to “business day” in Rule 13e-3, Rule 13e-4, Regulation 14D, Regulation 14E (including the 20 business day requirement of Rule 14e-1) and Regulation M will not be affected by a shut-down.

None of the firms subscribing to this report intends thereby to give legal advice to any person. The firms recommend that counsel be consulted with respect to matters addressed in this report.

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Cleary Gottlieb Steen & Hamilton LLP
Cravath, Swaine & Moore LLP
Davis Polk & Wardwell LLP
Latham & Watkins LLP
Mayer Brown LLP
Shearman & Sterling LLP
Sidley Austin LLP
Simpson Thacher & Bartlett LLP
Skadden, Arps, Slate, Meagher & Flom LLP
Sullivan & Cromwell LLP