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What to Say on Your Next Earnings Call in the Time of COVID-19:
Providing Insights, Disclosing Scenarios and Managing Risks

Upcoming first quarter earnings calls may be the most scrutinized in modern corporate history. How to handle these calls in light of the unprecedented social and economic impacts of COVID-19 is a question confronting every company that has not yet announced. Investors, the SEC and other stakeholders are clamoring for insight into what this extraordinary pandemic means for individual businesses, the private sector and the Nation at large. We believe that these upcoming earnings calls provide an opportunity for companies to show leadership and purpose by providing the critical insights that will help investors, analysts and other stakeholders grasp where the company stands today and what the future may hold for the business and the industry.

We [previously discussed](#) the groundbreaking April 8th [statement](#) made by the Chairman of the Securities and Exchange Commission and the Director of the SEC's Division of Corporation Finance, which urged companies to be more forthcoming about the impact of COVID-19, actions taken in response and future plans. But for the upcoming earnings season, public companies are being asked to speak at a moment of maximal uncertainty – no one can predict with any certainty the scale or length of disruption from COVID-19 or how deep and severe the economic and health impacts will be. The many unknowns include the scope and effect of further governmental, regulatory, fiscal, monetary and public health responses. The crisis has also [brought to the fore](#) critical incident and systemic risk management concerns, including traditional ESG concerns such as human capital issues, business model and supply chain resilience, and consumer welfare and social impact.

While there will be some companies in a position to provide guidance, we expect that a minority of companies will offer full-blown guidance for the rest of the year in the same manner as in prior years. What all public companies can focus on, however, is the provision of *insight*, including into the topics identified in the SEC's recent pronouncement, with an emphasis on how the company is thinking about current challenges and the internal and external factors and measures that will help explain where the company stands today, how the company's response is progressing and how operations and financial conditions may change.

Accordingly, companies should evaluate two potential avenues for discussing an uncertain near- and medium-term future on upcoming earnings calls: (1) providing qualitative or quantitative insights without necessarily giving full (or any) guidance; and (2) presenting forward-looking scenarios based on a range of assumptions and internal stress testing. Several concrete examples and illustrative topics that companies may wish to address on the next earnings call are provided below, and legal risks and related considerations are discussed at the end of this memo. As always, each company must make its own assessment of what to say, how to say it and whether an adequate basis exists to share forward-looking scenarios with investors.

Providing Insights That Are Not Guidance

Some of the companies that issued guidance before the crisis have already withdrawn it, and we expect that many others will do so at their next upcoming earnings call. Companies that

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have previously shared longer-term financial targets, such as three-year or five-year plans, or outlined long-range Investor Day commitments will also need to assess what to do and say about those. At the same time, companies in industries that are less adversely impacted, where demand for products and services has increased or where line of sight is clearer may decide they can (and should) provide 2020 quantitative outlooks as to certain measures and even, in much rarer cases, full guidance. Companies that do not provide guidance may signal that qualitative or quantitative updates could come later in the year and that guidance might be further addressed in the second half of the year. Companies that do provide financial outlooks will likely (and wisely) use ranges rather than single pinpoint figures. Companies may acknowledge that such ranges are wider than usual and are subject to heightened uncertainty. More detail should also be given about the assumptions underlying any disclosed outlooks.

But despite these difficulties and cautions regarding full year guidance, we expect companies will be forward leaning where they can and offer insights into how they are viewing the future. It is possible to provide heightened transparency regarding current and past actions, as well as future conditions, without providing guidance. Companies should also be able to outline near-term, medium-term and long-term priorities, discuss progress towards larger goals and objectives and articulate higher priorities. In addition, there may be certain operational or financial measures or trends that the company believes helpful to discuss publicly and specific external developments that management is monitoring.

Companies should also be able to describe the specific steps they have taken to deal with the crisis – including shoring up liquidity and corporate health, protecting stakeholders, enhancing supply chain integrity or addressing other operational needs. Some of this may involve speaking about important human capital-related decisions made to support employees, as well as difficult cost reduction actions that were taken or may need to be taken in order to preserve the viability or health of the enterprise. Companies with multinational footprints may highlight how lessons learned in markets impacted earlier than the U.S. will be leveraged by the company. Companies with complex and interdependent supply chains may want to talk about how they are staying in close communication with partners and planning for the extra coordination that will be needed to prepare for the return of business and move quickly once customers, providers and factories come back into production, taking into account potential mismatched timeframes as to when different parts of a supply chain come back online.

Value-creation is a long-term endeavor, and the path to value may involve setbacks, especially now. Companies may still share during these turbulent times what their long-term (*i.e.*, multi-year, after the crisis has passed) value creation frameworks look like and some steps they expect to take operationally and otherwise to be well-positioned to exit the crisis intact and ready to seize future opportunities. Some may feel comfortable addressing the resilience of their business models and supply chains, highlighting the fundamental pillars of value creation that still exist for their business and affirming how historical investments (*e.g.*, in technology or in geographical diversification), rigorous past work on the balance sheet and deleveraging and a diversified business model may have positioned the company to weather this crisis from a stronger position. And companies that are now evolving their business structures at an unprecedented pace to meet changing customer needs and behaviors can share that too.

With respect to M&A-related capital allocation and priorities, companies that have historically spoken about such matters will take different approaches on the next earnings call. Some will affirm that investing in value-creating M&A remains a priority and that their financial strength may provide additional opportunities. Others will distinguish between opportunistic and strategic M&A opportunities and address whether divestitures may be used as a tool to navigate the crisis or instead be deferred to ensure appropriate value is secured. Other capital allocation matters may also be addressed, such as prioritizing retaining capital and reinvesting in the business and employees over returning capital to shareholders.

Publicly Discussing Scenario Analysis in the COVID-19 Environment

While we expect most companies to give qualitative insights as noted above, there will be some companies that will choose to go a step further and add forward-looking scenario analysis and description to earnings discussions. This is not an “all-or-nothing” choice, and it is possible that companies will mix and match, giving mostly qualitative insights with a few mentions of scenario planning and stress test models. The purpose of scenario analysis is to consider and better understand how a business might perform under different future conditions by evaluating a range of hypothetical outcomes under divergent COVID-19-related business and economic scenarios. For example, in order to provide greater confidence to the market, business partners and employees, “what if” scenario analysis can position a company to discuss its financial condition and liquidity status under various downside scenarios, highlight how much contraction the company can absorb or even confirm the company has additional levers to pull in the future and is thinking ahead.

Relevant scenarios in the current environment could depend on assumptions and parameters regarding macroeconomic, market-specific and industry-specific drivers that would likely impact the company’s business and performance over the remainder of the year. They may also include potential timeframes for economic recovery, accessing governmental assistance and “staggered return to work” scenarios that could lead to a Q3 vs. Q4 vs. 2021 recovery or other possible outcomes. While some companies may also “weight” different scenarios and assign probabilities (including deciding whether to assume a recession of varying length, depth and severity and whether to assume any portion of “tail risks” that may apply in more severe scenarios), it is not necessary to assign weightings or probabilities to particular outcomes in order to discuss scenarios.

In creating COVID-19-related scenarios, and especially when discussing them with investors, scenarios should not be mistaken for forecasts or predictions. This point can be driven home by including several scenarios reflecting a range of assumptions and outcomes and using phrases such as “case,” “model” or “possible scenario” to describe the different hypotheticals. Indeed, companies should clearly state that scenarios are not predictions of what is likely to happen or necessarily even what the company would like to see happen.

Litigation Risks

There is, of course, concern that disclosures and discussion of COVID-19-related forward-looking statements or scenario analysis may lead to securities litigation risks or enforcement actions. At a fundamental level, whether or not companies make disclosures

regarding future scenarios at this time, companies should be conducting internal stress testing and scenario analysis and allocating appropriate internal and external resources to such efforts.

As noted above, the Chairman of the SEC and Director of the SEC's Division of Corporation Finance have expressly and directly sought to assuage potential enforcement and litigation concerns arising from forward-looking statements: "we encourage companies that respond to our call for forward-looking disclosure to avail themselves of the safe-harbors for such statements and also note that we would not expect good faith attempts to provide appropriately framed forward-looking information to be second guessed by the SEC."

When providing thoughtful discussion of COVID-19-related impacts and going-forward scenarios, companies that take advantage of the protections available under statutory and common law safe harbors, candidly acknowledge increased uncertainty, decide whether to expressly disclaim a duty to update and properly frame any statements made are unlikely to face heightened litigation risks that outweigh the benefits of being more transparent with shareholders. Companies should update their risk-factors and forward-looking statement disclaimers to address as many possible COVID-19-related factors as they can reasonably include. A thoughtful, tailored approach to such disclosures is a better choice than offering generic, high-level disclaimers that can apply equally to all companies but that do not identify the nature of the risk. Companies should contemporaneously document their then-current good-faith basis for forward-looking statements. This good-faith foundation remains the best defense in the event of later SEC scrutiny or private claims.

All companies in this environment would be well-served by engaging the audit committee and appropriate internal and external resources early. And all external statements in this environment should be subject to careful review and thought. For example, the SEC has made clear its continued focus on the use of non-GAAP measures.

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Companies should carefully consider the challenging [disclosure issues](#) arising in the COVID-19 environment and seek sound accounting and legal advice to help get it right. In addressing a broadened stakeholder audience, upcoming earnings calls provide an opportunity to embrace transparency, show leadership and purpose, and share insights about what the company has done, what the future may hold and how the company and its industry will persevere.

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