

SEC Releases Sample Comment Letter for Issuers Conducting Offerings During Periods of Volatility

On February 8, 2021, the Division of Corporation Finance of the Securities and Exchange Commission (SEC) published a sample comment letter that the SEC might send to issuers that conduct securities offerings during periods of extreme stock price volatility. The sample letter (available [here](#)) identifies a number of sample comments that the SEC may provide to issuers conducting securities offerings amid market and price volatility.

The sample comments focus on the disclosures made on the prospectus cover page and in the risk factors and use of proceeds sections regarding the impact of price volatility on an offering, investors, and the issuer. The sample comments are not intended to be an exhaustive list of issues, and any comments issued by the SEC would be based on the specific offering, as well as the issuer involved.

Prospectus Cover Page

Issuers should describe recent price volatility of their stock and disclose any known risks of investing in their stock during periods of market and price volatility. Additionally, issuers should indicate, for comparison purposes, the market price of their stock before the recent price volatility, as well as describe recent changes to their financial condition or results of operations that are consistent with recent changes in their stock price (and, if no such changes have occurred, include a statement to that effect).

Risk Factors

Issuers should consider including risk factors that:

- address the recent volatility in their stock price, which should include: recent stock price range information presented on an intra-day basis as well as covering a period of time sufficient to demonstrate recent volatility, the impact on investors, the potential for rapid and substantial decreases in their stock price (including decreases unrelated to the issuer's operating performance and prospects). To the extent such price fluctuation is significantly inconsistent with the issuer's actual or expected operating performance and other metrics, the issuer should discuss such inconsistencies and, where relevant, quantify them.
- describe the effects of a potential "short squeeze" on their stock price as a result of a rapid increase in demand for the issuer's stock;
- disclose, if relevant, that the number of shares being offered by the issuer is significant relative to the number of shares currently outstanding, along with a description of the effect that the offering could have on investors and the issuer's stock price; and
- if the issuer plans to conduct future offerings, address the dilutive effect of any such future offerings on investors acquiring stock in the current offering at a significantly higher price.

Use of Proceeds

Issuers should include clear disclosure about the maximum offering amount, the stock price that it is predicated on, that they may not raise the maximum offering amount unless they meet or exceed that price, and, to the extent applicable, include a discussion on its priorities for the intended use of proceeds in the event the issuer raises less than the maximum offering amount.

The SEC also encouraged issuers experiencing extreme stock price volatility to contact the industry office within the SEC that is responsible for their filings to discuss any questions regarding the issuer's proposed disclosure.



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To discuss any questions you may have regarding this Alert, or how it may apply to your particular circumstances, please contact a member of Cozen O'Connor's Corporate Governance & Securities Practice.