

COVID-19: Tracker for SEC and related developments for U.S. public companies

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Our Public Company Advisory practice has developed this quick-reference guide for U.S. public companies navigating the rapidly evolving regulatory landscape which continues to impact SEC filing and disclosure obligations, shareholder meetings, listing standards, capital raising, and other regulatory and governance matters. This guide briefly summarizes recent regulatory developments from the SEC, NYSE, and Nasdaq in response to the COVID-19 pandemic and certain other COVID-19-related developments.

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Exchange Act filing deadlines		
Action	Date	Summary
SEC Order	3/4/2020 <i>(Superseded)</i>	Provided companies, where certain conditions were satisfied, with a 45-day extension to file certain disclosure reports that would otherwise have been due between March 1 and April 30, 2020. Superseded by the SEC COVID-19 Order , dated March 25, 2020, described below.
Commission staff positions	3/4/2020	Staff positions with respect to Form S-3 and Form S-8 eligibility for companies relying on the SEC's Order extending filing deadlines for certain disclosure reports.
SEC Order (the "SEC COVID-19 Order")	3/25/2020	Extends the filing periods covered by the March 4, 2020 Order by providing companies, where certain conditions are satisfied, with a 45-day extension to file certain disclosure reports that would otherwise have been due between March 1 and July 1, 2020. Companies must convey through a Form 8-K by the later of March 16 or the original reporting deadline, a summary of why the relief is needed in their particular circumstances for each report that is delayed, the estimated date when the filing will be made, and company-specific risk factors explaining any material impact of COVID-19 on its business. This Order also addresses the furnishing of proxy statements and soliciting materials for shareholder meetings .
Nasdaq guidance	3/26/2020 <i>(Last updated 4/17/2020)</i>	Clarifies that listed companies that take advantage of the SEC's extended filing deadlines under the SEC COVID-19 Order will not be considered deficient under Nasdaq Rules. This guidance also addresses shareholder meetings , capital raising , and stock exchange listing standards .

SEC Division of Corporation Finance Exchange Act Rules Compliance and Disclosure Interpretations	<p>3/31/2020</p>	<p>New CDIs 135.12 and 135.13 address the interplay between the conditions for delaying filings in reliance on the SEC COVID-19 Order and the usual notification obligations under Rule 12b-25. Clarifies that if the company only files a Form 12b-25 by the original due date of the required report, it will have not met the condition of the SEC COVID-19 Order to provide the statements called for by the original filing deadline on a furnished Form 8-K, in which case the 45-day relief period provided in the SEC COVID-19 Order will not be available.</p> <p>Also clarifies that a company relying on the SEC COVID-19 Order is permitted to subsequently rely on Rule 12b-25 if it is unable to file the report on or before the extended due date pursuant to the SEC COVID-19 Order.</p>
SEC Division of Corporation Finance Exchange Act Forms Compliance and Disclosure Interpretations	<p>4/6/2020</p>	<p>New CDI 104.18 extends the conditional relief provided under the SEC COVID-19 Order to Part III of Form 10-K so long as the 120-day deadline for filing Part III information falls within the relief period specified in the SEC COVID-19 Order (i.e., between March 1 and July 1, 2020) and the company meets the conditions of the SEC COVID-19 Order.</p>

Disclosure guidance

Action	Date	Summary
SEC press release	<p>3/4/2020</p>	<p>Encourages companies to consider their activities in light of their disclosure obligations under the federal securities laws, including whether they may need to revisit, refresh or update previous disclosures to the extent the information becomes materially inaccurate.</p>
CF Disclosure Guidance: Topic No. 9	<p>3/25/2020</p>	<p>Outlines key questions for companies to consider with respect to present and future operations in assessing and disclosing the evolving effects of COVID-19 and related risks. Encourages disclosure that is tailored to a company’s specific situation and provides material information about the impact of COVID-19 to investors. Also encourages companies to proactively revise and update disclosures as facts and circumstances change.</p> <p>Reminds companies of their obligations under Item 10 of Regulation S-K and Regulation G with respect to the presentation of non-GAAP financial measures and of the SEC’s recent guidance with respect to performance metrics disclosure. For non-GAAP financial measures that adjust for or explain the impact of COVID-19, encourages companies to highlight why management finds the measure or metric useful and how it helps investors assess the impact of COVID-19 on the company’s financial position and results of operations. In certain circumstances, provides flexibility for companies to reconcile a non-GAAP financial measure to preliminary GAAP results that either includes provisional amount(s) based on a reasonable estimate, or a range of reasonably estimable GAAP results, where a GAAP financial measure is not available at the time of the earnings release. This guidance also addresses insider trading and selective disclosure.</p> <p>Disclosure considerations for quarterly reports on Form 10-Q are highlighted in our recent Hogan Lovells publication.</p>

<u>Public statement of SEC Chief Accountant</u>	4/3/2020	Acknowledges that many accounting areas may involve significant judgments and estimates in light of the evolving status of COVID-19, including: fair value and impairment considerations; leases; debt modifications and restructurings; hedging; revenue recognition; income taxes; going concern; subsequent events; and adoption of new accounting standards. Stresses the importance of required disclosures of judgments and estimates in these and other areas.
<u>Public statement of SEC Chairman and Division of Corporation Finance Director</u>	4/8/2020	<p>Urges companies to provide as much information as is practicable regarding their current financial and operating status, as well as their future operational and financial planning, in upcoming earnings releases and during analyst and investor calls.</p> <p>Encourages companies to disclose where the company stands today (operationally and financially), how the company’s COVID-19 response, including its efforts to protect the health and well-being of its workforce and its customers, is progressing, and how its operations and financial condition may change as efforts to fight COVID-19 progress. Also encourages companies to avail themselves of the safe-harbors for such statements and notes that good faith attempts to provide appropriately framed forward-looking information should not be second guessed by the SEC.</p> <p>The request for companies to strive to provide, and update and supplement, as much forward-looking information as is practicable is driven, in part, by the belief that broad dissemination and exchange of firm-specific plans for addressing the effects of COVID-19 under various scenarios will substantially contribute to the nation’s collective effort to fight and recover from COVID-19.</p>
Shareholder meetings		
Action	Date	Summary
<u>SEC staff guidance</u>	3/13/2020 <i>(Last updated 4/7/2020)</i>	<p>Provides companies with flexibility to announce in a press release that is also filed as soliciting material with the SEC changes in the date, time or location of a shareholder meeting, or changes to use a virtual or hybrid meeting format, without incurring the cost of an additional physical mailing of proxy materials.</p> <p>Provides flexibility for companies affected by printing and mailing delays for full set proxy materials to use the notice-only delivery option for proxy materials in a manner that may not meet all aspects of the notice and timing requirements so long as shareholders are provided with proxy materials sufficiently in advance of the meeting to review the materials and exercise their voting rights under state law in an informed manner and the company announces the change in delivery method by following the guidance for announcing a change in the meeting date, time or location.</p> <p>Encourages companies to provide shareholder proponents with alternative means, such as by phone, to present their proposals at annual meetings.</p>
<u>SEC COVID-19 Order</u>	3/25/2020	Exempts companies required to furnish proxy statements, annual reports and other soliciting materials to a security holder where such security holder has a mailing address in an area where, as a result of COVID-19, delivery service has been suspended and the company making a solicitation has made a good faith effort to furnish applicable materials to the security holder. This Order also addresses <u>Exchange Act filing deadlines</u> .

Nasdaq guidance	3/26/2020 <i>(Last updated 4/17/2020)</i>	Clarifies that listed companies complying with the SEC COVID-19 Order regarding the delivery of proxy statements, annual reports and other materials to shareholders in COVID-19 affected areas where delivery service has been suspended will not be considered deficient under applicable Nasdaq rules. Confirms that Nasdaq permits virtual meetings if permissible under the relevant state law and shareholders have the opportunity to ask questions of management. This guidance also addresses Exchange Act filing deadlines , capital raising , and stock exchange listing standards .
Delaware Governor Executive Order	4/6/2020	Permits public companies incorporated in Delaware that have already provided notice of a shareholder meeting to notify their shareholders of a change to a virtual-only meeting by a press release and document filed with the SEC. Also permits companies unable to convene a meeting at a physical location due to COVID-19 to adjourn to another date or time by providing notice of such adjournment by a press release and document filed with the SEC. Other states have enacted similar orders related to virtual meetings and notice requirements, including Maryland and New York .
ISS policy guidance	4/8/2020	Encourages companies to use their standard disclosure documents (proxies, reports etc.) to keep all constituencies informed about meeting postponements and other material developments and to use webcasts, conference calls and other mediums of electronic communications to engage with investors. Acknowledges that ISS does not have a policy to recommend votes against U.S. companies holding virtual-only shareholder meetings and confirms there will be no change to that approach. Encourages companies holding virtual meetings to disclose clearly the reason for the decision (i.e., related to COVID-19), to strive to provide shareholders with a meaningful opportunity to participate as fully as possible (including by asking questions of directors and senior management), and to return to in-person or hybrid meetings (or to put that matter to shareholders to decide) as soon as practicable. This guidance also addresses executive compensation , capital raising , and poison pills .
Glass Lewis Guidelines Update	3/19/2020	Suspends Glass Lewis’s standard policy on virtual-only shareholder meetings for meetings held before July 1, 2020. Glass Lewis will generally refrain from recommending votes against governance committee members for companies holding virtual-only meetings so long as the company discloses, at a minimum, its rationale for holding a virtual-only meeting, including citing COVID-19. Encourages companies to state their intention to resume holding in-person or hybrid meetings under normal circumstances.

Insider trading and selective disclosure

Action	Date	Summary
Public statement from Co-Directors of SEC’s Division of Enforcement	3/23/2020	Cautions that material nonpublic information may hold greater value during the COVID-19 pandemic, particularly if earnings reports or required SEC disclosure filings are delayed due to COVID-19, and urges insiders to be mindful of the obligation to keep such information confidential and to comply with prohibitions on illegal securities trading. Urges companies to be mindful of their established disclosure controls and procedures, insider trading prohibitions, codes of ethics, and Regulation FD and selective disclosure prohibitions to ensure that they protect against the improper dissemination and use of material nonpublic information.

CF Disclosure Guidance: Topic No. 9	3/25/2020	Reminds companies and insiders to refrain from trading prior to the dissemination of material non-public information, including material information regarding the impact of COVID-19 on a company or a material risk related to COVID-19. Also reminds companies to avoid selective disclosure of material information related to the impacts of COVID-19 by disseminating such information broadly. This guidance also addresses disclosure guidance .
Executive compensation		
Action	Date	Summary
ISS policy guidance	4/8/2020	ISS encourages companies to make contemporaneous disclosure of any plans to materially change performance metrics, goals or targets used in their short-term compensation plans in response to the drop in the markets and the possible economic recession. ISS generally does not support changes midstream to performance goals for long-term compensation plans with multi-year periods, and will evaluate to determine if boards exercise appropriate discretion and provide an adequate explanation to shareholders of the rationale for such changes. ISS will consider structural changes to long-term plans to take the new economic environment into consideration under its existing benchmark policy frameworks. ISS will continue to apply its current policies to companies that seek to reprice (or replace/exchange/cancel and re-grant) out-of-the-money stock options, including when boards seek shareholder ratification of such actions at annual meetings. This guidance also addresses shareholder meetings , capital raising , and poison pills .
Glass Lewis statement	3/26/2020	Without formally updating its policies, Glass Lewis notes that there is a heavy burden of proof for boards and executives to justify their compensation levels in a drastically different market for talent. Glass Lewis also states that it expects boards to proactively seek executive compensation changes that align with employee and shareholder experiences, “recognizing that executives might need to take a pay cut.” This guidance also addresses capital raising and poison pills .
Capital raising		
Action	Date	Summary
NYSE Rule change	4/6/2020	Temporarily waives shareholder approval requirements related to certain equity issuances through June 30, 2020, including certain issuances to related parties and for certain private financings.
Nasdaq guidance	3/17/2020 <i>(Last updated 4/17/2020)</i>	Nasdaq will consider the impact of disruptions caused by COVID-19 in its review of requests for the waiver of shareholder approval of equity issuances under the financial viability exception, although it notes the standard is difficult to meet. This guidance also addresses Exchange Act filing deadlines, shareholder meetings, and stock exchange listing standards.
ISS policy guidance	4/8/2020	Confirms the COVID-19 pandemic constitutes exceptional circumstances which, when combined with a clear and compelling justification by the board of a company’s underlying need in the current economic environment, may permit “for” recommendations for proposals requesting equity issuances that exceed normal market-specific limits on size and potential dilution.

		When making recommendations on private placement issuances, ISS also will consider exceptional circumstances such as the company being expected to go out of business or file for bankruptcy protection if the transaction is not approved or if the company's auditor/management has indicated that the company has going concern issues. This guidance also addresses shareholder meetings , executive compensation , and poison pills .
Glass Lewis statement	3/26/2020	Without formally updating its policies, Glass Lewis notes that "some companies will need to seek more flexibility to carry out capital raisings than shareholders are used to granting in accordance with strict best practice recommendations. Dogmatic application of pre-existing standards by investors could mean the difference between a company surviving this crisis and shareholders suffering even greater losses." This guidance also addresses executive compensation and poison pills .
Poison pills		
Action	Date	Summary
ISS policy guidance	4/8/2020	<p>ISS affirms its current voting policy on poison pills and clarifies how it intends to adapt that policy in the current environment. ISS's standard policy encourages boards to put poison pills to a shareholder vote, but provides companies with latitude in adopting short-term rights plans with reasonable triggers in response to active threats.</p> <p>ISS's guidance notes that a severe stock price decline as a result of the COVID-19 pandemic is likely to be considered valid justification in most cases for adopting a pill of less than one year in duration; however, boards should provide detailed disclosure regarding their choice of duration, or on any decisions to delay or avoid putting plans to a shareholder vote beyond that period. The triggers for such plans will continue to be closely assessed within the context of the rationale provided and the length of the plan adopted, among other factors. This guidance also addresses shareholder meetings, executive compensation, and capital raising.</p>
Glass Lewis statement	4/8/2020	<p>Glass Lewis affirms its current voting policies on poison pills and clarifies how they will be applied in the current environment. Glass Lewis generally opposes the adoption of poison pills, but is supportive of poison pills that meet certain conditions, particularly those limited in scope to accomplish a particular objective which may include contextual factors like a severe drop in stock price due to a widespread industry or market downturn.</p> <p>Glass Lewis considers companies that are impacted by COVID-19 and the related economic crisis as reasonable context for adopting a poison pill so long as the duration of the pill is limited to one year or less and the company discloses a sound rationale for adoption of the pill as a result of COVID-19. If the pill does not meet these conditions, Glass Lewis will recommend opposing the re-election of all board members who served at the time of the pill's adoption. If the company fails to put the pill up for shareholder approval in the future to renew it, Glass Lewis will recommend opposing the re-election of all board members who served at the time of the pill's renewal. This guidance also addresses executive compensation and capital raising.</p>

Stock exchange listing standards		
Action	Date	Summary
<u>NYSE Rule change</u>	03/20/2020	Provides temporary relief from the continued listing minimum market capitalization requirement through June 30, 2020.
<u>Nasdaq Rule change</u>	4/17/2020	Provides temporary relief from the continued listing bid price and market value of publicly held shares listing requirements through June 30, 2020. Under the relief, companies will have additional time to regain compliance for these price-based requirements.
<u>NYSE Rule change</u>	4/20/2020	Grants listed companies a longer a period of time to regain compliance with the minimum stockholders' equity and market capitalization requirement and minimum share price listing requirement by tolling the applicable compliance period through June 30, 2020. Any time period for which a listed company is out of compliance with either requirement during the tolling period will not be counted towards the applicable compliance plan period under NYSE rules.
Paper filings		
Action	Date	Summary
<u>SEC Division of Corporation Finance statement</u>	4/10/2020	Temporarily authorizes e-mail submission of Forms 144 to the SEC in lieu of paper submissions and grants conditional relief from manual signature requirements in light of logistical difficulties due to COVID-19.
<u>SEC Division of Corporate Finance statement</u>	4/23/2020	Temporarily authorizes e-mail submission of Forms 11-K to the SEC in lieu of paper submissions and grants conditional relief from manual signature requirements in light of logistical difficulties due to COVID-19.
Manual signatures on SEC filings		
Action	Date	Summary
<u>SEC staff statement</u>	3/24/2020	Provides relief to the manual signature retention requirement under Rule 302(b) of Regulation S-T. Subject to the satisfaction of other conditions, the SEC Staff will not recommend the SEC take enforcement action if a signatory retains a manually signed signature page or other document authenticating, acknowledging, or otherwise adopting his or her signature that appears in typed form within the electronic filing and provides such document, as promptly as reasonably practicable, to the filer for retention in the ordinary course (e.g., a signatory could execute a hard copy of the signature page remotely and hold it for delivery to the filer upon his or her return to the place of work).

Form ID notarization process		
Action	Date	Summary
<u>SEC temporary final rule</u>	3/26/2020	Temporarily allows FORM ID filers to obtain EDGAR access codes by submitting a manually signed authenticating document, without the notarization required by Rule 10(b) of Regulation S-T, so long as the submitted document includes a notation that the filer was unable to obtain the required notarization due to circumstances relating to COVID-19. A filer who receives EDGAR access codes under the temporary rule must submit a notarized document as correspondence via EDGAR within 90 days of receiving the EDGAR access codes. This relief is available through July 1, 2020.

Additional information

For further information on any of the topics highlighted in our *COVID-19: Tracker for SEC and related developments for U.S. public companies* please reach out to a member from our [Public Company Advisory practice](#).

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