

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SEC Order	3/4/2020 (Superseded)	Filing deadline relief expires July 1, 2020, per SEC Public Statement issued June 26, 2020. 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 Superseded by the SEC COVID-19 Order , dated March 25, 2020, described below.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	Filing deadline relief expires July 1, 2020, per SEC Public Statement issued June 26, 2020. Extended the filing periods covered by the March 4, 2020 Order by providing 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 July 1, 2020.
Nasdaq guidance	3/26/2020 (Last updated 5/5/2020)	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	3/31/2020	<p><i>Filing deadline relief expires July 1, 2020, per SEC Public Statement issued June 26, 2020.</i></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.</p>
SEC Division of Corporation Finance Exchange Act Forms Compliance and Disclosure Interpretations	4/6/2020	<p><i>Filing deadline relief expires July 1, 2020, per SEC Public Statement issued June 26, 2020.</i></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>
SEC Division of Corporation Finance COVID-19 Related FAQs	5/4/2020	<p><i>Filing deadline relief expires July 1, 2020, per SEC Public Statement issued June 26, 2020.</i></p> <p>Clarifies what prescribed disclosures must be included (i) in the Forms 8-K furnished by companies taking advantage of the extended filing deadlines under the SEC COVID-19 Order, and (ii) in the reports, schedules and forms that are filed on a delayed basis in reliance on the SEC COVID-19 Order.</p>

Disclosure guidance

Action	Date	Summary
SEC press release	3/4/2020	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.
CF Disclosure Guidance: Topic No. 9	3/25/2020	<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. 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>
<u>Remarks of SEC Chairman to the Investor Advisory Committee</u>	5/4/2020	<p>Reiterates that companies should disclose the impact of the COVID-19 pandemic on their liquidity and operations, specifically highlighting that investors will want to know: (i) how long companies can sustain their operations in the absence of additional funding, (ii) how supply and distribution chains have been disrupted, and (iii) how companies plan to manage the health and safety of employees and customers as business activity begins to resume.</p> <p>Also reiterates the concept of making all reasonable efforts to disclose this type of information, as well as noting that companies should focus on consistency and process.</p>
<u>CF Disclosure Guidance: Topic 9A</u>	6/23/2020	<p>Outlines additional COVID-19 related considerations companies should evaluate with respect to their operations, liquidity and capital resources disclosures, with a focus on disclosure of operational adjustments and financing activities in response to the COVID-19 pandemic. These considerations include, for example: (i) the material operational challenges presented by COVID-19 that the company is monitoring; (ii) how the company's liquidity position and outlook are evolving; (iii) whether the company has accessed revolving lines of credit or raised capital in the public or private markets to address liquidity needs; (iv) how COVID-19 related impacts have affected the company's ability to access its traditional funding sources on the same or reasonably similar terms as were available in previous periods; (v) material risks of not meeting credit agreement covenants; (vi) descriptions of reductions of capital expenditures, share repurchase programs or dividends; (vii) ability to timely service debt and other obligations; (viii) whether the company has altered terms with customers; (ix) descriptions of arrangements with supplier finance programs; and (x) the impact of material events subsequent to the end of the reporting period, but before the financial statements were issued, on liquidity and capital resources.</p> <p>Also outlines disclosure considerations for companies receiving financial assistance pursuant to the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) and disclosure considerations when there is substantial doubt about a company's ability to continue as a going concern.</p>

Public statement of SEC Chief Accountant	6/23/2020	Reminds companies to ensure that significant accounting judgments and estimates are disclosed in a manner that is understandable and useful to investors, and that the resulting financial reporting reflects and is consistent with the company’s specific facts and circumstances. Also reminds companies about their disclosure obligations relating to changes that materially affect their internal control over financial reporting and where there is substantial doubt about the company’s ability to continue as a going concern.
SEC virtual roundtable on Q2 reporting	6/30/2020 <i>(New)</i>	SEC Chairman and Division of Corporation Finance Director emphasized that the SEC will not second-guess companies’ forward-looking statements so long as they are made in good faith and consistent with discussions in the boardroom and what companies are telling investors, analysts, and the general public. Roundtable panelists strongly encouraged the SEC to seek more consistent public company disclosures on a wide range of matters, including human capital, social issues like diversity and how the pandemic is impacting operations and liquidity.
Shareholder meetings		
Action	Date	Summary
SEC staff guidance	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> <p><i>Continues in effect, per SEC Public Statement issued June 26, 2020.</i></p>
Glass Lewis Guidelines Update	3/19/2020	Suspended Glass Lewis’s standard policy on virtual-only shareholder meetings for meetings held before July 1, 2020.
SEC COVID-19 Order	3/25/2020	<p>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 Exchange Act filing deadlines.</p> <p><i>Remains available to companies needing to send proxy materials to international addresses, per SEC Public Statement issued June 26, 2020.</i></p>

Nasdaq guidance	3/26/2020 <i>(Last updated 5/5/2020)</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 .

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
<u>ISS policy guidance</u>	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 <u>shareholder meetings</u> , <u>capital raising</u> , and <u>poison pills</u> .
<u>Glass Lewis statement</u>	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 <u>capital raising</u> and <u>poison pills</u> .
Capital raising		
Action	Date	Summary
<u>Nasdaq guidance</u>	3/17/2020 <i>(Last updated 5/5/2020)</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 <u>Exchange Act filing deadlines</u> , <u>shareholder meetings</u> , and <u>stock exchange listing standards</u> .
<u>Glass Lewis statement</u>	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 <u>executive compensation</u> and <u>poison pills</u> .
<u>NYSE Rule change</u>	4/6/2020	Temporarily waived shareholder approval requirements related to certain equity issuances through June 30, 2020, including certain issuances to related parties and for certain private financings.
<u>ISS policy guidance</u>	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 <u>shareholder meetings</u> , <u>executive compensation</u> , and <u>poison pills</u> .

<u>Nasdaq Rule change</u>	5/4/2020	Provided listed companies, where certain conditions were satisfied, a temporary exception to certain shareholder approval requirements related to equity issuances through June 30, 2020 where the delay in securing shareholder approval would (i) have a material adverse impact on the company’s ability to maintain operations under its pre-COVID-19 business plan, (ii) result in workforce reductions, (iii) adversely impact the company’s ability to undertake new initiatives in response to COVID-19, or (iv) seriously jeopardize the financial viability of the enterprise. Also provided a temporary and narrow exception to shareholder approval requirements for certain stock issuances to related parties. See also related Nasdaq <u>FAQ</u> and <u>Listing of Additional Shares Notification Form COVID-19 Supplemental Instructions</u> .
<u>SEC Division of Corporation Finance COVID-19 Related FAQs</u>	5/4/2020	Addresses the circumstances in which a company may conduct takedowns using an already-effective registration statement while relying on the <u>SEC COVID-19 Order</u> for a periodic report, including a Form 10-K. Also addresses the timing of reassessing eligibility to remain on a Form S-3 and the timing of filing a new Form S-3 for companies relying on the SEC COVID-19 Order to delay a required filing. This guidance also addresses <u>Exchange Act filing deadlines</u> .
<u>NYSE Rule change</u>	5/14/2020	Provided listed companies, where certain conditions were satisfied, a temporary exception to certain shareholder approval requirements related to equity issuances through June 30, 2020 where the delay in securing shareholder approval would (i) have a material adverse impact on the company’s ability to maintain operations under its pre-COVID-19 business plan; (ii) result in workforce reductions; (iii) adversely impact the company’s ability to undertake new initiatives in response to COVID-19; or (iv) seriously jeopardize the financial viability of the enterprise. Also provided a temporary and narrow exception to shareholder approval requirements for certain stock issuances to related parties.
Poison pills		
Action	Date	Summary
<u>ISS policy guidance</u>	4/8/2020	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. 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 <u>shareholder meetings</u> , <u>executive compensation</u> , and <u>capital raising</u> .
<u>Glass Lewis statement</u>	4/8/2020	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. 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 .
Stock exchange listing standards		
Action	Date	Summary
NYSE Rule change	03/20/2020	Provided temporary relief from the continued listing minimum market capitalization requirement through June 30, 2020.
Nasdaq Rule change	4/17/2020	Provided 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 had additional time to regain compliance for these price-based requirements.
NYSE Rule change	4/20/2020	Granted 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 was out of compliance with either requirement during the tolling period was not counted towards the applicable compliance plan period under NYSE rules.
Paper filings		
Action	Date	Summary
SEC Division of Corporation Finance statement	4/10/2020 <i>(Last updated 6/25/2020)</i>	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. <i>Remains in effect until the staff provides public notice that it no longer will be in effect, which notice will be published at least two weeks before the announced termination date.</i>
SEC Division of Corporate Finance statement	4/23/2020 <i>(Last updated 6/25/2020)</i>	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. <i>Remains in effect until the staff provides public notice that it no longer will be in effect, which notice will be published at least two weeks before the announced termination date.</i>
Manual signatures on SEC filings		
Action	Date	Summary
SEC staff statement	3/24/2020 <i>(Last updated 6/25/2020)</i>	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). <i>Remains in effect until a date specified in a public notice, which date will be at least two weeks from the date of the notice.</i>

Form ID notarization process		
Action	Date	Summary
<u>SEC temporary final rule</u>	3/26/2020	<p>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.</p> <p><i>While temporary final Rule 10(c) expires July 1, 2020, the EDGAR Business Office will work with filers to continue to accept electronic and remote online notarizations, per <u>SEC Public Statement issued June 26, 2020</u>.</i></p>

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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