

US SECURITIES LAW DIGEST: April 2020

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US SECURITIES LAW DIGEST: April 2020

We hope that this finds you and your families safe and well during these unprecedented times.

Please find below the April 2020 issue of the **US Securities Law Digest** (the "Digest"). This Digest is intended to provide a compilation of recent legal news relevant to a capital markets practice in the London and international markets. The news pieces have been collected and summarized from various sources, and links to the original sources are provided.

As with our March 2020 Digest (available [here](#)), this issue also features a comprehensive round-up of the impact of COVID-19 on US securities laws and capital markets. We will be publishing these Digests more frequently during this period to keep you updated on the rapid developments.

Please visit the website [here](#), where you will find all past Forum content, including past digests, podcasts, and our Capital Markets Glossary (2015). The updated glossary will be published later this year. You can also download our first series of podcasts featuring topics ranging from blockchain and capital markets to dark pools on iTunes [here](#).

Please feel free to forward this email on to any colleagues or contacts who may be interested. We continue to welcome any feedback that you may have about the Digest.

Best regards,

[Subscribe](#)[Past Issues](#)[Translate ▼](#)**Daniel Winterfeldt QC (Hon)**DWinterfeldt@reedsmith.com

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US SECURITIES LAW DIGEST: APRIL 2020

COVID-19 UPDATES

SEC Chief Accountant Weighs in on Accounting Issues During the COVID-19 Outbreak

On April 3, 2020, the SEC's Chief Accountant, Sagar Teotia, issued a Statement on the Importance of High-Quality Financial Reporting in Light of the Significant Impacts of COVID-19 (the "OCA Statement"). The OCA Statement emphasizes that while the SEC Office of the Chief Accountant ("OCA") appreciates the challenging environment that companies and their auditors face in attempting to comply with their financial reporting obligations due to COVID-19, and will not second-guess their reasonable judgments, OCA expects financial reporting to continue to "provide investors with high-quality financial information." The OCA Statement also reaffirms OCA's views on the importance of gatekeepers by pointing out the critical need for auditor independence in this uncertain economic environment. In addition to this general theme, the OCA Statement contains several notable points that will have implications for companies in the current situation, both in preparing their financial statements, and in taking steps to mitigate litigation and enforcement risk.

See the Cleary Gottlieb alert [here](#). (April 9, 2020)

See the SEC Office of the Chief Accountant Statement [here](#). (April 3, 2020)

Podcast: COVID-19 & Executive Compensation - Considerations for Public Companies

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compensation practice group, Zach Blume, a partner in the firm's strategic transactions practice group and Claire Rosa, counsel in the firm's executive compensation & employee benefits practice group, discuss legal issues and other considerations related to executive compensation actions public companies are or may be considering taking in response to the current global health emergency and related economic crisis.

See Ropes & Gray podcast transcript and audio [here](#). (April 8, 2020)

Impact of COVID-19 on Quarterly Reporting; New Statement from SEC Chairman and Director of Division of Corporation Finance

Although the COVID-19 pandemic presents a unique set of fact-specific challenges for each issuer, Sullivan & Cromwell's memorandum highlights general topics issuers should consider as they prepare for upcoming earnings announcements, quarterly reports or other public disclosures. Their memorandum focuses on considerations for U.S. domestic issuers, but many of the considerations addressed are also applicable to foreign private issuers with securities listed on United States securities exchanges, and foreign private issuers which are not SEC-reporting companies but may be considering undertaking exempt securities offerings (such as pursuant to Rule 144A) in the United States.

See the Sullivan & Cromwell update [here](#). (April 9, 2020)

See the Sullivan & Cromwell update [here](#). (April 6, 2020) (*Focusing on Financial Institutions*)

Board Oversight in the Age of COVID-19: Guidance for Independent Board Members of Funds

Vedder Price is producing a weekly series detailing approaches that Independent Board Members of funds are utilizing to address Coronavirus-related matters and highlighting emerging issues including liquidity, disclosure, communications, and more.

See the Vedder Price updates [here](#), [here](#) and [here](#). (April 7, March 31, and March 23, 2020)

U.S. Capital Markets FAQs for Foreign Private Issuers

Winston & Strawn's memorandum focuses on foreign private issuers ("FPIs"), which are companies organized in foreign jurisdictions that file reports with the Securities and Exchange Commission ("SEC"), generally because they have equity or debt securities (such as American Depositary Receipts) listed on a U.S. national securities exchange, such as the New York Stock Exchange or NASDAQ, or they have made a public offering of securities in the U.S. that was registered with the SEC.

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- How will coronavirus affect the economy or my company?
- How will the coronavirus affect my company's SEC disclosures?
- How should a company handle analyst conference calls and communications?
- What should a company do to revise its earnings guidance or outlook?
- Has the SEC granted any relief to companies affected by the coronavirus?
- What should my company expect with respect to public and private securities offerings?

See the Winston & Strawn update [here](#). (April 7, 2020)

NYSE Temporarily Eases Shareholder Approval Requirements for Certain Equity Issuances

After the 2008 financial crisis, many companies sought to raise capital by selling equity in private placements, often to existing major shareholders, but faced limitations resulting from the NYSE's shareholder approval requirements. To address that concern in the Covid-19 crisis, the NYSE has proposed, and the SEC has approved and declared immediately effective, an NYSE rule change to waive, through June 30, 2020 and subject to compliance with conditions, application of certain of the shareholder approval requirements in Section 312.03 of the NYSE Listed Company Manual. That rule requires listed companies to obtain shareholder approval prior to certain types of equity issuances. The general effect of the waivers, according to the NYSE, is to make these NYSE shareholder approval requirements more comparable to the similar Nasdaq requirements on a temporary basis. The waivers are intended to provide temporary relief to listed companies that may have urgent liquidity needs in the coming months as a result of the impact of COVID-19.

See the Cooley update [here](#). (April 7, 2020)

COVID-19: Updating Risk Factor Disclosure in SEC Filings

As the COVID-19 pandemic evolves, companies are experiencing a host of adverse consequences and gaining insight into additional potential risks of the pandemic to their businesses. At the same time, general uncertainty continues to prevail about the severity, duration and long-term impacts of the pandemic.

As a result, public companies must evaluate the need for COVID-19-related disclosures, including known or reasonably likely effects of, and the types of risks presented by, COVID-19 and related business and market disruptions. The Securities and Exchange Commission's ("SEC") Division of Corporation Finance recently provided guidance in CF Disclosure Guidance: Topic No. 9 (March 25, 2020), which highlights the staff's view that disclosure of COVID-19-related effects may be necessary or appropriate, including in a company's risk factor disclosures.

This client alert provides practical tips for companies that are considering updates to their risk factor disclosures as the COVID-19 pandemic continues to develop, whether

demonstrate drafting approaches that companies should keep in mind as they update their risk factors.

See the Wilmer Hale update [here](#). (April 6, 2020)

Regulation Best Interest - SEC Chair Clayton Says No Extension on June 30, 2020 Compliance Deadline

In an April 2, 2020, statement, Securities and Exchange Commission ("SEC") Chair Jay Clayton announced that notwithstanding the many challenges currently facing market participants, the SEC will not extend the June 30 compliance date for Regulation Best Interest ("Reg BI"). In his statement, Chair Clayton said that "firms should continue to make good faith efforts around operational matters to ensure compliance by June 30, 2020, including devoting resources as necessary and available in light of the circumstances." Adopted by the SEC in June 2019, Reg BI imposes a "best interest" standard of conduct on broker-dealers making recommendations of securities or investment strategies to retail clients. The June 30 compliance date also applies to the new rule requiring both broker-dealers and investment advisers to provide retail clients with a disclosure form about the nature of their relationship, known as Form CRS.

See the Sidley update [here](#). (April 3, 2020)

See SEC Chair Jay Clayton's statement [here](#). (April 2, 2020)

SEC Chair Clayton Highlights Need for Complete Disclosure even if Periodic Reports are Delayed due to COVID-19

In a statement issued April 2, SEC Chair Jay Clayton emphasized that, although the timing of certain company filings may be impacted by COVID-19, the SEC is "keenly focused on ensuring that issuers and other registrants continue to provide material information to investors, including information related to the current and expected effects of COVID-19, as promptly as practicable." In another statement on the same day, this one to a meeting this afternoon of the SEC's Investor Advisory Committee, Clayton stressed the importance of providing information to investors, particularly "in times of economic shock and uncertainty."

See the Cooley update [here](#). (April 2, 2020)

See SEC Chair Jay Clayton's statement [here](#). (April 2, 2020)

See SEC Chair Jay Clayton's remarks to the Special Meeting of the Investor Advisory Committee [here](#). (April 2, 2020)

Social Bonds Offer Alternative Financing for Industries Impacted by COVID-19

The current global crisis resulting from COVID-19 could provide certain affected companies, sovereigns and quasi-sovereigns with an opportunity to finance or re-

See the Linklaters update [here](#). (April 2, 2020)

Mitigating Securities Litigation Risks Related to the Coronavirus (Updated)

This memorandum updates the Paul Weiss alert, "Mitigating Securities Litigation Risks Related to the Coronavirus," issued March 5, 2020, taking into account recent developments. It also outlines steps companies can take to mitigate the risks associated with COVID-19 shareholder litigation.

The spread of COVID-19 has significantly impacted the global economy and businesses' ability to manufacture, distribute and market their products and services, as well as caused the most severe U.S. stock market decline since the 2008 recession, with equity markets down nearly 30% since February. That stock market decline undoubtedly will precipitate stock drop litigation. As recent trends in event-driven litigation demonstrate, the plaintiffs' securities bar is likely to attempt to craft theories for converting these (and potential future) drops into shareholder derivative claims and class-wide fraud claims.

See the Paul Weiss update [here](#). (March 31, 2020)

COVID-19 and Compliance Risks for Financial Institutions

Financial institutions, like other businesses, are grappling with a number of challenges posed by the COVID-19 pandemic, including a dramatic market downturn, increased volatility, unprecedented levels of remote working, and other significant business disruptions. While addressing employee and business continuity concerns will be paramount, financial institutions should also remain vigilant about compliance. Financial pressures—whether resulting from a widespread crisis like the current pandemic or from more localized conditions at a particular institution—can lead to risky behaviors. And since the 2008 financial crisis, financial institutions have been subject to an unprecedented level of scrutiny from enforcement authorities globally. Compliance risks may be particularly heightened in the current environment, where (i) competitors may be more likely to be speaking to each other; (ii) markets are highly volatile and unpredictable; and (iii) surveillance and other compliance tools may be less effective due to these conditions. Financial institutions should be alert to the risks and take steps to mitigate them.

The increased scrutiny by enforcement authorities—together with economic and market conditions that may increase the risk of misconduct, and logistical difficulties that may make compliance more challenging—create a number of risks for financial institutions set out in the Freshfields update.

See the Freshfields update [here](#). (March 31, 2020)

Novel Legal Issues Arise from U.S. Lawmakers' Potential "Insider" Trades

According to media reports, at least four U.S. Senators allegedly sold millions of dollars' worth of stock shortly before the nearly unprecedented market declines triggered by the COVID-19 pandemic. The Department of Justice ("DOJ"), in conjunction with the Securities and Exchange Commission ("SEC"), is investigating whether these members of Congress traded based on confidential information ahead of the market turmoil caused by the COVID-19 crisis. On March 30, 2020, it became public that the FBI has already reached out to Senator Richard Burr (R. N.C.) regarding his sale of approximately \$1.7 million in stocks in late January and early February 2020.

A novel question remains as to the legality of these actions under various insider trading laws and any potential downstream charges stemming from these trades. Where an issue like the COVID-19 pandemic has been covered so extensively by the media, it will likely be difficult to establish what information was material nonpublic information and what information was part of the public domain.

There is also a more general question about whether regulatory information is considered "property" for purposes of insider trading law. The government is not a business and it may either carry out or deviate from its planned adoption of regulations or action. Pre-decision regulatory information may or may not be considered the government's "stock in trade" and, therefore, may or may not be considered "property" for purposes of a Title 18 criminal violation.

Regardless of the potential defenses and novel theories of prosecution, DOJ and SEC investigations of this trading activity have already begun. There will likely also be shareholder actions against the members of Congress and the downstream tippees, some of which have already started.

See Paul Hastings update [here](#). (March 31, 2020)

Regulatory Impact - Focus on Global Market Abuse Risks and COVID-19

The COVID-19 outbreak has undoubtedly increased firms' exposure to market abuse risks in a number of ways:

- Due to the rapidly changing consequences of restrictions caused by COVID-19 for companies and global markets, individuals with access to "inside" information (precise and non-public information that would be likely to have a significant effect on price if made public) are more frequently learning new inside information regarding firms' financial outlooks. Given the global market turmoil, such information is likely to be more valuable now than in normal circumstances.
- The changes to working conditions associated with COVID-19 means that firms' employees and trading teams are more likely to be working remotely with less supervision (and potentially without recorded phone lines). Some individuals may look to take advantage of this situation. Additionally, some employees may be sick and unable to work, potentially resulting in a number of substitute

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- These working conditions may also disrupt the functioning of firms' compliance teams and controls, increasing the challenges associated with monitoring market abuse risks and reporting suspected instances of market abuse.
- Firms should put in place practical steps to mitigate the risks highlighted.

The COVID-19 pandemic has caused significant disruption to businesses and the global economy. Financial regulators around the world are closely monitoring the situation and many have published information for firms focused on maintaining market integrity and providing guidance on the challenges currently facing firms. While the situation continues to evolve, firms are reminded of the continuing need to comply with their regulatory and compliance obligations. As with the Global Financial Crisis, looking back in some years' time, authorities, courts and juries are unlikely to accept a "COVID-19 defence."

Dechert focus in this update on the regulatory regime and recent pronouncements in the United Kingdom ("UK"), United States ("US"), and Hong Kong ("HK") on market abuse risks in response to COVID-19 which firms should be thinking of at this time.

See the Dechert update [here](#). (March 31, 2020)

NYSE and Nasdaq Consider Impact of COVID-19

In light of the market-wide declines caused by the COVID-19 pandemic, on March 19, 2020, the New York Stock Exchange filed with the Securities and Exchange Commission a proposed suspension of its listing requirement that companies must maintain an average global market capitalization over a consecutive 30 trading-day period of at least \$15 million (the "Market Cap Standard"). On March 20, 2020, the SEC granted NYSE's proposed suspension of the Market Cap Standard until June 30, 2020, and also designated the suspension operative upon NYSE's filing, thereby waiving the standard 30-day operative delay of proposed rule changes. Additionally, on March 26, 2020, the Nasdaq Stock Market announced that it will consider the effects of COVID-19 in its review of requests for financial viability exceptions to Nasdaq's shareholder approval rules.

See the Cadwalader update [here](#). (March 30, 2020)

See the SEC Release (Release No. 34-88441; File No. SR-NYSE-2020-21) [here](#). (March 20, 2020)

COVID-19: Key Securities Law Impacts and Considerations for Public Life Sciences Companies

The global spread of COVID-19 has impacted all aspects of business and raises significant securities law questions for public life sciences companies. In this video, Fenwick partners Rob Freedman and Amanda Rose discuss the securities law considerations that should be top of mind.

Topics covered include: SEC Updates; Governance Considerations; IR/PR

See Fenwick's webinar and presentation [here](#). (March 31, 2020)

Dividend Options for REITs Amidst Economic and Market Turmoil

A company is generally required to distribute to its stockholders at least 90% of its taxable income each year in order to qualify as a real estate investment trust ("REIT") under the Internal Revenue Code. REITs generally satisfy this requirement through quarterly or monthly cash distributions of all or substantially all of their taxable income.

Recent economic and market turmoil resulting from COVID-19 has strained the ability of many REITs to maintain sufficient liquidity to meet their obligations to creditors. As a result, a number of REITs are considering their options with respect to paying dividends on their common and preferred securities in the near future. This Vinson & Elkins alert provides an overview of these options under Maryland and Delaware law.

See the Vinson & Elkins update [here](#). (March 30, 2020)

SEC Eases Compliance with Form ID, Regulation A, and Regulation Crowdfunding Requirements

As a further response to circumstances presented by the COVID-19 pandemic, on March 26, 2020, the SEC published new temporary final rules. The temporary final rules ease requirements regarding applications for Form ID and extend due dates for certain ongoing reporting requirements in Regulation A and Regulation Crowdfunding under the Securities Act of 1933 (the "Securities Act").

The temporary final rules allow filers to obtain access to the EDGAR system on a temporary basis without initially providing the required notarization to the manually signed authentication document for Form ID from March 26, 2020 through July 1, 2020. With regard to the Regulation A and Regulation Crowdfunding requirements to file certain ongoing reports, the temporary final rules provide issuers with extended deadlines for reports due from March 26, 2020 through May 31, 2020.

See the Morrison & Foerster update [here](#). (March 30, 2020)

See the SEC Release (Release No. 33-10768; 34-88492; 39-2531; IC-33832) [here](#). (March 26, 2020)

SEC Allows Affiliated Purchases of Debt Securities from Registered Open-End Investment Companies

On March 26, the Staff of the Securities and Exchange Commission ("SEC") granted a request for no-action relief to permit certain affiliated purchase transactions involving registered open-end investment companies. The relief, in effect, temporarily extends Rule 17a-9 under the Investment Company Act of 1940 ("Investment Company Act") to all open-end investment companies (each a "Fund"), except for exchange-traded

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prohibitions under Section 17(a) of the Investment Company Act to permit affiliated persons of a money market fund (or affiliated persons of such persons) to purchase securities from the money market fund. The rule is explicitly limited to open-end investment companies that hold themselves out as money market funds.

See the Pepper Hamilton alert [here](#). (March 30, 2020)

See the SEC No Action Letter [here](#). (March 26, 2020)

KSIs Should Verify their Status in Light of Recent Market Downturn

The COVID-19 pandemic has resulted in severe market volatility in U.S. capital markets and the loss of significant equity value for many U.S. public companies. As a result, many companies may be at risk of losing their status as well-known seasoned issuers ("WKSIs") under the federal securities laws.

See the Mayer Brown update [here](#). (March 29, 2020)

SEC Offers Expanded Filing Extensions to Public Companies Grappling with the Effects of COVID-19

On March 25, 2020, the Securities and Exchange Commission ("SEC") issued an order that updated its March 4 order to extend the conditional exemptions from reporting and proxy delivery requirements for public companies, funds and investment advisers affected by COVID-19. Subject to the conditions outlined below, public companies are provided with a 45-day extension beyond the original due date to file certain disclosure reports that would otherwise have been due between March 1 and July 1, 2020. The new order extended the applicable filing window beyond April 30, included amendment filings, clarified that disclosures regarding use of the exemption apply to each late filing and made the disclosure regarding COVID-19 risks mandatory.

See the Ropes & Gray update [here](#). (March 27, 2020)

See the Baker & Hostetler update [here](#). (March 27, 2020)

See Cadwalader update [here](#). (March 25, 2020)

See the SEC release [here](#). (March 25, 2020)

Subsequently, on April 1 2020, the Corp Fin staff issued two new CDIs regarding Rule 12b-25. Both of the CDIs reaffirm that companies must comply with the conditions of the order, particularly the Form 8-K/6-K requirement, to take advantage of the relief. Companies that are unable to comply "are encouraged to contact the staff to discuss collateral consequences of late filings."

See the Cooley update [here](#). (April 1, 2020)

FINRA Warns Investors of Coronavirus-Related Scams

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investments are legitimate by: researching and verifying information prior to making an investment decision; using caution with companies that make "exaggerated claims"; checking the SEC's EDGAR database; being skeptical of companies that change their name or business focus to tout disease-prevention products; and using FINRA's "Scam Meter" to see if a potential investment is a scam.

See the Cadwalader update [here](#). (March 27, 2020)

See the FINRA release [here](#). (March 26, 2020)

Repurchase and Trading Issues Arising Out of COVID-19 Market Disruptions

The current market environment and unprecedented volatility during the COVID-19 pandemic has created novel issues, and in some cases opportunities, for public companies and individuals regarding securities trading. Skadden's Q&A addresses some federal securities laws questions that may be arising for clients, though companies also should be mindful of applicable state law requirements regarding capital impairment or surplus.

See the Skadden update [here](#). (March 26, 2020)

Summary of SEC Responses to COVID-19

The Securities and Exchange Commission (the "SEC") continues to provide tailored responses as it helps public companies navigate the uncertainties arising under COVID-19. Below is a summary of some of the SEC's COVID-19 responses as they pertain to: (1) filing extensions and delivery relief for public companies; (2) filing extensions and delivery relief for investment companies and investment advisers; (3) virtual annual meetings; (4) COVID-19's impact on a public company's disclosure documents; and (5) COVID-19's impact on the SEC's access applications requiring notarization.

See Kelly Drye & Warren update [here](#). (March 26, 2020)

COVID-19: Key Issues for Broker-Dealers

The spread of COVID-19 has presented new and unique challenges for the securities industry. The typical "playbook" for disaster relief and business continuity planning never contemplated a world – as we have today – where highly interconnected individuals are required to observe social distancing, avoid groups of more than ten persons, and work from home. As firms navigate these uncharted waters, they might take comfort in the fact that even in uncertain times, there are some concrete steps that they can take to mitigate potential legal and regulatory exposure that may result from a dispersed and remote workforce.

Wilmer Cutler discuss eight key issue areas and practice points that broker-dealers may consider in a COVID-19 environment. SEC Trading & Markets staff have told us

See Wilmer Cutler update [here](#). (March 26, 2020)

SEC Corporate Finance Division Issues Disclosure Guidance Topic No. 9 COVID-19

On March 25, 2020, the staff of the Division of Corporate Finance of the Securities and Exchange Commission ("SEC") issued Disclosure Guidance Topic No. 9, which offers the staff's views regarding disclosure considerations, trading on material inside information and reporting financial results in the context of COVID-19 and related uncertainties. The guidance includes a valuable series of questions designed to help companies assess, and to stimulate effective disclosure regarding, the impact of the coronavirus.

See the Reed Smith update [here](#). (March 31, 2020)

See Cooley update [here](#). (March 25, 2020)

See the SEC's Division of Corporate Finance guidance [here](#). (March 25, 2020)

SEC Provides Relief for Signature Page Maintenance Requirements as a Result of COVID-19

The staff of the Division of Corporation Finance, the Division of Investment Management, and the Division of Trading and Markets has received inquiries from persons and entities subject to Regulation S-T regarding the authentication document retention requirements under Rule 302(b) in light of health, transportation, and other logistical issues raised by the spread of COVID-19.

See the Stinson update [here](#). (March 25, 2020)

See the SEC release [here](#). (March 24, 2020)

COVID-19: Mitigating Enforcement and Litigation Disclosure Risks for Public Companies

The COVID-19 pandemic has created a disclosure nightmare for public companies. The Securities and Exchange Commission ("SEC") has recognized this challenge and, to its credit, has provided relief to public companies by, among other things, extending the deadline for companies to file certain disclosure reports. Nonetheless, companies are faced with the challenge of crafting disclosures regarding the risks presented by the coronavirus crisis to their business and operations and their plans for addressing those risks. This challenge is made all the more difficult by the looming presence of securities class action firms, which already have sued companies over coronavirus-related disclosures. In addition, the SEC in the recent past has charged companies for allegedly insufficient disclosures made in reaction to crisis situations.

This update provides a round-up of COVID-19 related: SEC relief; class action lawsuits and SEC enforcement; and disclosure considerations, including insider

See the Bass, Berry & Sims update [here](#). (March 25, 2020)

SEC Staff Provides Relief to “Manual Signature” Retention Requirement in Light of COVID-19 Concerns

The Staff of the various Securities Exchange Commission (“SEC”) divisions, including the Division of Corporation Finance, issued an announcement on March 24, 2020, which provides some flexibility to registrants seeking to satisfy the record retention requirement in Rule 302(b) of Regulation S-T that the registrant retain the manually signed documents.

See the Bass, Berry & Sims update [here](#). (March 25, 2020)

See the SEC announcement [here](#). (March 24, 2020)

COVID-19 and D&O Insurance Coverage

Unlike past outbreaks of the SARS and H1N1 viruses, the COVID-19 virus is spawning securities and other shareholder litigation. At least two shareholder actions have been filed in federal courts in Florida and Pennsylvania, and it is likely more will follow, not only because of the devastating economic impact across industries but also as companies struggle to comply with government directives and test compliance edicts as well. Companies and their boards also may be exposed to claims by individual employees or face class action claims by employees.

See the Reed Smith update [here](#). (March 24, 2020)

The Potential Impact of the Coronavirus (COVID-19) Pandemic on Hostile M&A and Shareholder Activism in the U.S.

Over the last month, each of the major stock market indices has experienced extreme volatility and a broad-based decline in value, largely in response to the coronavirus pandemic. The hospitality, retail, transportation and oil and gas industries have been hit particularly hard, with the oil and gas industry confronting a second issue with Saudi Arabia initiating an oil price war with Russia and the subsequent price of oil and oil-related stocks plummeting.

Conventional wisdom would suggest a resulting increase in hostile M&A activity is likely to occur, as opportunistic acquirors take advantage of companies that are undervalued and, in some cases, particularly vulnerable due to liquidity concerns. During the financial crisis of 2008, the number of unsolicited public offers for U.S. targets spiked 54% from 41 to 63 over the prior year (and then dropped to normalized historical levels in the mid-30s for each of the next three years). Similarly, activist shareholders were emboldened to launch 126 and 133 proxy fights in 2008 and 2009, respectively, against U.S. companies – more than in any year since.

COVID-19: Withdrawing or Revising Earnings Guidance

As the COVID-19 pandemic continues to shock economies around the world, many public companies have determined that their previously issued guidance is no longer accurate. As of March 23, more than 70 public companies across industries, including airline, retail, manufacturing, financial services, technology, communications, real estate, hospitality and agriculture, have either withdrawn or revised downward previously issued guidance, with the large majority opting to withdraw.

On March 4, 2020, the SEC issued conditional relief for public companies affected by COVID-19 that have SEC filings due between March 1 and April 30, 2020. (the "Conditional Relief Release") is available [here](#). In the Conditional Relief Release, the SEC suggests that public companies may need to consider whether previous disclosure should be revisited, refreshed or updated to the extent that prior disclosures have become materially inaccurate. In this update, Paul Weiss highlight some key areas of focus for public companies in considering whether to withdraw or revise guidance in light of the COVID-19 pandemic.

See the Paul Weiss update [here](#). (March 23, 2020)

Nasdaq Provides Guidance for Listed Companies Amid COVID-19 Pandemic

In light of the rapid pace of developments related to COVID-19 pandemic, Nasdaq has issued a memorandum for Nasdaq-listed companies regarding the pandemic's impact on the exchange and certain Nasdaq Listing Rules. This memorandum covers various developments and positions for Nasdaq issuers to reference for guidance in these uncertain times, including any specific waivers issued by Nasdaq of the Listing Rules in light of the pandemic. Nasdaq has committed to updating this memorandum as conditions continue to evolve.

See the Pepper Hamilton update [here](#). (March 23, 2020)

See the Nasdaq memorandum [here](#). (March 20, 2020 and updated as of April 10, 2020)

COVID-19: Stock Volatility and Your Convertible Notes

While the impact of COVID-19 and market volatility on a company's common stock may be clear, the impact on a company's equity-linked securities, like convertible bonds, may be less apparent.

This DLA Piper alert is intended to assist companies in thinking about how the market volatility could impact their outstanding convertible notes and the accompanying call-spread overlay equity derivatives. Convertible note indentures and bond hedge and warrant confirmations vary from deal to deal, sometimes significantly, so the concepts addressed are general considerations.

COVID-19: Certain Consideration for Open-Ended Fund Managers; Looking at 3/31, and Beyond

As financial markets continue to exhibit extreme volatility as a result of COVID-19, related macro and geopolitical factors and oil price movements, managers of hedge funds (and other open-ended and evergreen funds) should assess challenges and vulnerabilities to their businesses, as well as potential opportunities that may lie ahead.

See Paul Weiss update [here](#). (March 22, 2020)

SEC Grants Conditional Regulatory Relief for Transfer Agents

The SEC granted conditional regulatory relief for registered transfer agents as a result of compliance challenges posed by COVID-19. The Order is valid through May 30, 2020.

See the Cadwalader alert [here](#). (March 23, 2020)

See the SEC Order [here](#). (March 20, 2020)

Preparing for Market Disruption: Circuit Breakers and Discretionary Trading Halts

The COVID-19 outbreak and the breakdown of negotiations between oil producers have contributed to a fall in the stock market, ending the longest bull market in history and bringing about a period of volatility. As of March 23, 2020, movements in the stock market have led to four 7% declines in the S&P 500 Index this year, each triggering Level 1 cross-market circuit breakers and bringing trade to a halt across exchanges (a "trading halt"). The following memo provides an overview of certain mechanisms and discretionary powers capable of pausing or stopping the trade of individual securities or general market activity.

See the Shearman & Sterling update [here](#). (March 23, 2020)

SEC Approves NYSE Move to Full Electronic Trading

The Securities and Exchange Commission ("SEC") approved an NYSE proposed rule change to allow electronic auctions. The NYSE stated that it has temporarily closed the trading floors "to protect the health and well-being of employees and the floor community in response to COVID-19." Full electronic trading began on Monday, March 23.

See the Cadwalader update [here](#). (March 23, 2020)

See the SEC release [here](#). (March 20, 2020)

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As closed-end funds and their advisers respond to the significant challenges arising from the COVID-19 virus, Ropes & Gray attorneys have responded to a number of common questions and concerns from their clients. This alert summarizes various ideas and reminders that their attorneys have distilled from these discussions covering: initial considerations, shareholder meetings, disclosure, pricing and liquidity, borrowing and credit facilities, debt investments and conflicts, audits and financial statements, and stock dividends.

See the Ropes & Gray update [here](#). (March 23, 2020)

Material Nonpublic Information & Regulation FD

The heads of the SEC Enforcement Division, on March 23, 2020, reminded market participants of the need to keep a close eye on the persons that may have material nonpublic information. The remarks also reminded public companies of their obligations in relation to maintaining effective disclosure controls and procedures, insider trading prohibitions, and compliance with Regulation FD.

It also is a reminder to all market participants to be mindful of observing their existing internal controls and procedures regarding handling, use and dissemination of material non-public information ("MNPI") amidst the COVID-19 epidemic. The message comes at a time when executives and employees of major public companies and trading firms are managing and making significant business decisions in a seemingly non-stop flow of information about the impact of the unfolding crisis, while working from home outside of their usual systems and control environments. As a result, the SEC observes that a "greater number of people may have access" to MNPI "that may hold an even greater value than under normal circumstances."

See the Fried Frank update [here](#). (March 25, 2020)

See the Mayer Brown update [here](#). (March 23, 2020)

See the SEC Statement from Stephanie Avakian and Steven Peikin, Co-Directors of the SEC's Division of Enforcement, Regarding Market Integrity [here](#). (March 23, 2020)

COVID-19: What Types of Lawsuits Are Being Filed?

Plaintiffs' lawyers have already filed over a dozen COVID-19-related lawsuits from class actions alleging violations of federal securities laws based on statements about the development of a vaccine for the virus to suits claiming that companies were negligent in responding to the disease outbreak. The COVID-19-related lawsuits that would interest the business community fall into the four causes of action discussed below (*i.e.*, securities fraud, false advertising, negligence, and contract). While it remains to be seen whether any of these lawsuits truly have merit, there are still some lessons to learn from them. Mayer Brown's update discusses the pending COVID-19 litigation and offers tips on how companies might avoid it—taking into account the allegations in the various lawsuits.

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Norwegian Cruise Lines and the other against Inovio Pharmaceuticals, Inc. They also bullet point some of the defenses that issuers and executives may be able to raise in, and prophylactic measures they can take in order to mitigate the risk posed by, such suits.

See the Winston & Strawn update [here](#). (March 24, 2020)

See the Mayer Brown update [here](#). (March 20, 2020)

Is It Time to Consider Cash Box Placings Again to Raise Cash Quickly?

Despite the cash box being a structure which has seldom been used since March 2015 due to concerns raised by investor bodies, the urgent need for cash in uncertain times may lead to a revival of this once popular structure.

See the Bryan Cave Leighton Paisner update [here](#). (March 20, 2020)

When Markets Drop, FINRA Member Firms Must Be on Alert for Previously Concealed Bad Behavior

Severe market declines can expose previously undetected misconduct and unravel schemes that were in effect for years but masked by strong market performance. It is critical for FINRA member firms to thoroughly investigate, document and respond to customer complaints and other red flags, with an eye toward identifying trends and potential misconduct.

The current volatility and downturn in the markets related to the COVID-19 pandemic undoubtedly will generate a larger-than-normal number of customer complaints from retail investors. While member firms operate with reduced staffs and under work-from-home restrictions, they nevertheless must be vigilant in "pulling the thread" on sensitive complaints and other red flags to identify potential patterns of misconduct and to reasonably discharge their supervisory obligations.

See the Reed Smith update [here](#). (March 18, 2020)

SEC Responds to Advisers' Questions under Business Continuity Scenarios

The Securities and Exchange Commission ("SEC") and its staff are moving rapidly to address changes to normal procedures required in the face of COVID-19. In response to questions recently raised by the Investment Advisers Association ("IAA") on behalf of its members, the SEC staff clarified its expectations with respect to certain aspects of the Custody Rule (Rule 206(4)-2 under the Investment Advisers Act of 1940) and Form ADV disclosure.

See the Morrison & Foerster update [here](#). (March 19, 2020)

The US and global markets are experiencing unprecedented levels of volatility and sell-off as a result of the ongoing coronavirus disease 2019 (COVID-19) outbreak.

However, at some point the uncertainties of the current situation will abate. When they do, many public companies may consider whether to initiate a stock repurchase program or to increase the scope of an existing program. This alert provides general guidance and insights to assist boards of directors and senior management of US public companies as they evaluate these choices.

See the DLA Piper update [here](#). (March 18, 2020)

SEC Staff and NFA Issue Guidance Related to Working Remotely During COVID-19 Pandemic

On March 16, 2020, the Staff of the Securities and Exchange Commission ("SEC") published two FAQs to address questions related to investment advisers who have implemented their business continuity plans in response to COVID-19. Specifically, the FAQs address whether temporary work locations need to be included as offices on an investment adviser's Form ADV and whether an investment adviser that receives inadvertent custody of client assets by mail or delivery at its office would be deemed to have custody of such client assets if it is unable to access its mail or deliveries at that location. On March 13, 2020, the National Futures Association ("NFA") issued a notice to its members addressing requirements for temporary work locations that have not been listed as branch offices on the Form 7-R and for which there will not be a designated branch office manager.

See the Sidley update [here](#). (March 24, 2020)

See the Fried Frank update [here](#). (March 18, 2020)

See SEC Staff Guidance: New and Updated Frequently Asked Questions for Investment Advisers on: Conducting Investment Advisory Business from a Temporary Location (Form ADV Item 1.F) [here](#). (March 16, 2020)

See SEC Staff Guidance: New and Updated Frequently Asked Questions for Investment Advisers on: Inadvertent Adviser Custody During a Temporary Office Closure (Question II.1) [here](#). (March 16, 2020)

See the National Futures Association update [here](#). (March 13, 2020)

COVID-19 Pandemic: Governance and Disclosure Considerations for Public Companies

The COVID-19 outbreak has quickly developed into a historic public health crisis. As the response to the COVID-19 pandemic evolves and companies take action to address the impacts of the pandemic on their businesses, workforces and the communities they serve, public reporting companies should be mindful of related corporate governance and disclosure considerations. In a March 2020 statement, SEC Chair Jay Clayton reminded companies of the need "to provide investors with insight regarding their assessment of, and plans for addressing, material risks to their

help management and board of directors of public companies with this challenge, Cooley has developed these Q&As.

See the Cooley update [here](#). (March 17, 2020)

LEGAL UPDATES

Debt Repurchases in the Open Market and Privately Negotiated Transactions

In some instances, an issuer may opt to initiate a series of repurchases of outstanding debt securities in the open market with the assistance of a broker or dealer that will solicit or procure interested sellers of the relevant securities. Alternatively, an issuer (or an affiliate of the issuer) may opt to repurchase outstanding debt securities, in whole or in part, during a single, privately negotiated, transaction between the seller and the purchaser of the debt securities.

There are, however, significant legal, regulatory and disclosure issues relating to a series of related repurchases of debt securities in the open market (as opposed to a single, privately negotiated, purchase of debt securities from a single holder of those debt securities).

This Milbank update provides an analysis of significant legal issues applicable to debt repurchases.

See the Milbank update [here](#). (April 2, 2020)

PIPEs and Registered Directs: COVID-19 and Alternative Financing Transactions

In the current environment, as companies fear scarcity of capital and rush to draw on their existing credit lines, they should consider alternative sources of capital as part of their board deliberations and decision-making process. For public companies, private investments in public equity ("PIPEs") are one such potential source of alternative financing.

These transactions can be done quickly, even overnight. In a PIPE transaction, investors purchase equity or equity linked securities, such as common stock, convertible preferred stock, convertible notes and warrants, directly from the issuer. The securities can be sold pursuant to an exemption from registration under the Securities Act of 1933 (a PIPE) or off a shelf registration statement (commonly referred to as a "Registered Direct" transaction).

See the Shulte Roth update [here](#). (April 7, 2020) (PIPE and Registered Direct Transactions)