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US SECURITIES LAW DIGEST: March 2020

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

Please find below the March 2020 issue of the **US Securities Law Digest** (the "Digest"). This update 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.

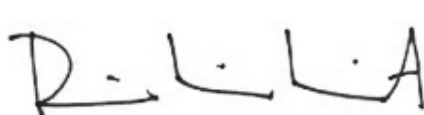
*This issue also features a comprehensive round-up of the impact of COVID-19 on US securities laws and capital markets.*

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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,



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Partner, International Capital Markets &  
US Securities  
Reed Smith LLP  
Founder and Co-Chair of the Forum

[LDIDKO@jefferies.com](mailto:LDIDKO@jefferies.com)

General Counsel for EMEA and Asia  
Jefferies  
Co-Chair of the Forum

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# US SECURITIES LAW DIGEST:

## March 2020

### COVID-19 UPDATES

#### **COVID-19: Disclosure and Capital Markets Considerations for Public Companies**

The outbreak and continuing spread of the novel coronavirus ("COVID-19") and the related disruption to the worldwide economy are affecting public companies across all industries. While noting that the ultimate effects may be difficult to quantify at this time, regulators, including the U.S. Securities and Exchange Commission ("SEC"), are asking for robust disclosure of the potential impacts of COVID-19 in public company filings. Similarly, COVID-19 is changing the contours of capital raising activities in the public and private markets. Issuers should consider including specific disclosure in their offering documents as to the potential effects of COVID-19 on their supply chain, operations, financial performance and liquidity and should expect an increased focus on the impact of COVID-19 in due diligence inquiries. Adverse impacts resulting from market declines and business disruptions may also result in increased securities litigation in future quarters.

Due to ongoing uncertainty related to the COVID-19 outbreak, as well as logistical problems caused by quarantines and travel restrictions, on March 4, 2020, the SEC provided conditional relief to public companies unable to timely file their SEC reports. The SEC has granted an additional 45 days to file reports required under the Securities Exchange Act of 1934, as amended ("Exchange Act") which are due between March 1, 2020 and April 30, 2020, subject to certain conditions, including filing a current report by the later of March 16 or the report's original filing deadline that states why the report could not be timely filed and an estimated date that the filing is expected to be made. Companies relying on this relief will be considered current and timely with respect to Form S-3 and Form S-8 eligibility. The SEC has stated that it intends to monitor the current situation and may, if necessary, extend

The SEC has encouraged companies to contact the Staff if they need additional assistance meeting filing obligations.

See the McGuire Woods alert [here](#). (March 20, 2020)

See the Shearman & Sterling alert [here](#). (March 16, 2020)

See the Paul Hastings alert [here](#). (March 13, 2020)

See SEC Release No. 34-88318 [here](#). (Mar. 4, 2020)

### **The Impact of COVID-19 on Annual Meetings**

The coronavirus (COVID-19) pandemic and the response by federal, state, and local authorities have severely affected, and will continue to affect, virtually all businesses. These effects extend to even relatively mundane matters of corporate governance, such as shareholder meetings.

Most state corporation laws, as well as the stock exchanges (for companies that list on them), require that corporations hold an annual meeting of shareholders. However, the public health restrictions imposed by federal, state, and local authorities in response to the pandemic that limit or prohibit travel and public gatherings will make in-person shareholder meetings difficult, if not impossible. As a result, public companies, as well as other companies with more than a handful of shareholders, will want to consider holding shareholder meetings via remote communication.

See the Fried Frank alert [here](#). (March 24, 2020)

See the Eversheds Sutherland alert [here](#). (March 20, 2020)

See the Morrison & Foerster alert [here](#). (March 18, 2020)

See the Cleary Gottlieb alert [here](#). (March 17, 2020)

See the Weil alert [here](#). (March 16, 2020)

See the SEC Announcement on Staff Guidance [here](#). (March 13, 2020)

### **Key Considerations for Boards of Directors Navigating COVID-19**

The global impact of the novel coronavirus (COVID-19) is creating significant challenges for businesses worldwide. Risk oversight by the board of directors has never been more critical during these unprecedented times. Below are key considerations for boards as they navigate complex issues arising from the pandemic.

See the DLA Piper alert [here](#). (March 24, 2020)

See the Norton Rose Fulbright alert [here](#). (March 24, 2020)

See the Weil alert [here](#). (March 22, 2020)

See the Clyde & Co. alert [here](#). (March 22, 2020)

See the Sidley alert [here](#). (March 16, 2020)

### **Insider Trading Compliance During the COVID-19 Pandemic**

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Intelligence Committee, Richard Burr, R-N.C., sold large amounts of stock in industries hard hit by the COVID-19 pandemic. According to reports, in mid-February, Burr sold approximately \$1.7 million worth of shares held by himself and his spouse in industries including hospitality, restaurants, health care and drug manufacturing. The sales were reportedly made after Burr participated in closed briefings on the threat of COVID-19 and nonpublic intelligence reports warned of a likely pandemic. Less than two weeks after Burr sold the stocks, the markets began their sharp decline and experts now warn that the COVID-19 crisis will likely trigger a global recession. Since Burr sold his shares, the Dow Jones Industrial Average has plummeted over 30 percent. Several other senators were also identified as having sold substantial holdings in the weeks preceding the substantial increase in market volatility that has followed the pandemic.

Federal law, including the STOCK Act, prohibits individuals from purchasing or selling a security while in the possession of material, nonpublic information (MNPI) concerning that security. The Department of Justice (DOJ) regularly investigates and prosecutes criminal insider trading cases, while the Securities and Exchange Commission (SEC) aggressively brings civil insider trading cases. In both cases, the penalties are harsh. Whether Burr's conduct constitutes a violation of the insider trading laws is complicated (it is not clear that the information he received about the impending pandemic would meet the definition of nonpublic information because, despite the nonpublic briefings Burr received as a senator, there was a lot of public information available in mid-February about the seriousness and rapid spread of COVID-19). But Burr's conduct – and the sharp public outcry and likely political consequences – should be a warning to business leaders already trying to juggle so much in the midst of this public health and economic crisis.

See the Foley Hoag alert [here](#). (March 25, 2020)

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

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

See the Columbia Law School blog [here](#). (March 21, 2020)

## **UK Equity Capital Markets and the COVID-19 Response – Key Legal and Regulatory Themes**

For obvious reasons, the finer points of the functioning and regulation of the UK's capital markets and corporate governance are not necessarily at the forefront of the minds of legislators and policy makers while addressing the COVID-19 pandemic, meaning that it is falling on market regulators and practitioners to find appropriate responses to the current challenges. Fundamentally, the existing framework of corporate law and capital markets regulation should be sufficiently robust to cope, but some changes to the pre-COVID 19 world are inevitable. And, while the situation remains fluid, themes are becoming clear from recent regulatory interventions and issuer behaviour. In the main, apart from recognising that personal interactions will be limited for the foreseeable future, the message – at least from a legal and regulatory perspective – is business as usual.

## 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").<sup>[1]</sup> 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.

Section 2 provides an overview of automatic halt mechanisms:

- Section 2.1 summarizes cross-market circuit breakers that halt trading activity across exchanges when certain thresholds are met;
- Section 2.2 discusses limit up-limit down pauses that halt the trade of a particular security that has moved beyond its specified price band; and
- Section 2.3 presents the short sale circuit breaker/alternative uptick rule, which prevents short selling a security after its price has dropped by 10% in a given day.

Section 3 covers discretionary powers to pause or stop trading activity:

- Section 3.1 details the power of the SEC to suspend trade of a particular security in light of suspicious activity;
- Section 3.2 describes the power of the SEC to halt short selling across exchanges; and
- Section 3.3 sets forth the mechanism by which the SEC can close exchanges for a period of up to 90 days.

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

## The Impact of COVID-19 on Incentive Compensation

The COVID-19 outbreak has had a swift and volatile impact on business operations and the financial markets. Because this is occurring simultaneously with the annual incentive award cycle of many companies, immediately at issue is how companies will address incentive setting and employee retention in this rapidly changing environment.

These alerts discuss the key considerations for companies and their boards as they navigate common waters in uncommon times.

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See the Paul Weiss alert [here](#). (March 13, 2020)

### **COVID-19 and Emerging Theories of Federal Securities Fraud**

The increasing spread of the coronavirus (COVID-19) has created unprecedented challenges for companies across the globe. Although the impact of COVID-19 is still rapidly unfolding, U.S. securities lawsuits related to COVID-19 were largely expected to follow on the heels of the pandemic. Those expectations are now being realized. In particular, two purported class actions—one in U.S. District Court for the Eastern District of Pennsylvania and another in the U.S. District Court for the Southern District of Florida—were recently filed, marking the first securities fraud lawsuits arising from the coronavirus. The lawsuits underscore the care companies must exercise when issuing public statements regarding COVID-19, as well as the need for companies to carefully evaluate and assess how the potential financial and business impact of the coronavirus might affect their disclosures and performance guidance.

See the Paul Hastings alert [here](#). (March 20, 2020)

### **COVID-19 Related Enforcement: Trading Suspensions**

Like the rest of the SEC, the Division of Enforcement and the Office of Compliance Inspections and Examinations continue to execute on their mission of protecting investors and remain fully operational. The agency is actively monitoring our markets for frauds, illicit schemes and other misconduct affecting U.S. investors relating to COVID-19—and as circumstances warrant, will issue trading suspensions and use enforcement tools as appropriate.

Recent trading suspensions issued by the SEC in connection with COVID-19-related misconduct include:

- [Aethlon Medical, Inc.](#) (February 7, 2020)
- [Eastgate Biotech](#) (February 24, 2020)

### **Short Sale Restrictions - Response to Recent Market Volatility**

In light of recent market activity, a number of non-US financial regulators have taken steps to temporarily ban short sales and enhance shortsale reporting.

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

### **ERISA Considerations for Investment Managers — COVID-19 and Volatile Markets**

Among the many challenges and issues to be addressed by investment managers in

amended ("ERISA").

See the Schulte Roth alert [here](#). (March 19, 2020)

### **Broker-Dealer Business Continuity Plans and the COVID-19 Crisis: Is Your BCP Adequate?**

With communities countrywide urging people to self-quarantine if they may have been exposed to the novel coronavirus (COVID-19) and employers being urged to allow employees to work from home, many brokerage firms are implementing their business continuity plans ("BCPs"). FINRA Rule 4370 requires member firms to create and maintain a written BCP that sets forth the firm's procedures relating to an emergency or significant business disruption. Such procedures must: (i) be reasonably designed to enable the firm to meet its existing obligations to customers and (ii) address the firm's existing relationships with other broker-dealers and counterparties. At a minimum, among other things, the BCP must address communications between the firm and its employees, alternate physical location of employees, regulatory reporting, and communications with regulators.

As with other significant disruptive events, the coronavirus outbreak may cause FINRA to reprioritize its BCP examinations in its review of broker-dealer readiness under stress. Consequently, broker-dealers should be reviewing their BCPs to confirm that they address the challenges they may face as a result of personnel working remotely in a pandemic situation, including technological readiness and remote supervision for extended out-of-office stints.

See the Jones Day alert [here](#). (March 20, 2020)

### **FINRA Issues Guidance and Relief in Relation to COVID-19**

On March 9, 2020, the Financial Industry Regulatory Authority, Inc. (FINRA) issued Regulatory Notice 20-08 to members, reminding FINRA-member broker-dealer firms of their business continuity planning obligations during the pandemic and granting temporary regulatory relief to members in certain areas.

FINRA granted temporary relief in the following areas:

- Remote Offices or Telework Arrangements;
- Form U4 and Form BR;
- Regulatory Filings and Responses to FINRA Inquiries, Matters, and Investigations

In addition, FINRA is calling firms' attention to the following areas:

- Emergency Office Relocations; and

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See Latham & Watkins alert [here](#). (March 17, 2020)

See FINRA Regulatory Notice 20-08: "Pandemic-Related Business Continuity Planning, Guidance and Regulatory Relief" [here](#). (March 9, 2020)

### **SEC Grants Conditional Relief from Form ADV and Form PF Deadlines for Investment Advisers Impacted by COVID-19**

In an Order dated March 13, 2020, the Securities and Exchange Commission offered an exemption to investment advisers that are confronting COVID-19-related disruptions with respect to certain filing obligations.

The Order temporarily exempts registered investment advisers and exempt reporting advisers (ERAs) from certain filing requirements under the Investment Advisers Act of 1940, as amended (the "Advisers Act"). It is limited to filing or delivery obligations from March 13, 2020 through April 30, 2020.

See the Shearman & Sterling alert [here](#). (March 18, 2020)

See the Fried Frank alert [here](#). (March 17, 2020)

See the Morgan Lewis alert [here](#). (March 17, 2020)

See the SEC Investment Advisers Act Release 5463 [here](#). (March 13, 2020)

## **RULE CHANGES AND AMENDMENTS**

### **Exempt Offering Framework Amendment Proposal**

On March 4, 2020, the Securities and Exchange Commission (SEC) announced its proposal to harmonize, simplify, and improve the exempt offering framework under the Securities Act of 1933 (the "Securities Act"). The SEC's proposals are the result of the responses submitted to the SEC in connection with the concept release issued June 18, 2019, soliciting public comment on possible ways to harmonize and improve the securities offering framework. The proposed amendments, among other things, address the ability of issuers to move from one exemption to another, increase the offering limits for Regulation A, Regulation Crowdfunding, and Rule 504 offerings, provide consistent rules governing offering communications between investors and issuers, and harmonize disclosure and eligibility requirements. The public will have until May 3, 2020 to comment on the proposed amendments.

See the Greenberg Traurig alert [here](#). (March 17, 2020)

See the Skadden alert [here](#). (March 16, 2020)

See the Winston & Strawn alert [here](#). (March 5, 2020)

See the SEC Public Statement by Commissioner Allison Herren Lee [here](#). (March 4, 2020)

See the SEC Release Nos. 33-10763; 34-88321; File No. S7-05-20 [here](#). (March 4,