

COVID-19 Resources for Public Companies

I. [Securities and Exchange Commission](#)

A. Public Statements

- [“Staff Statement Regarding Rule 302\(b\) of Regulation S-T in Light of COVID-19 Concerns”](#) (June 25, 2020)

Provides temporary relief from certain aspects of the manual signature requirements for SEC filings found in Rule 302(b) of Regulation S-T.

- Office of the Chief Accountant, [“Statement on the Continued Importance of High-Quality Financial Reporting for Investors in Light of COVID-19”](#) (June 23, 2020)

Highlights the OCA’s recent work to promote high-quality financial reporting, and its engagement with the FASB, the PCAOB, the International Accounting Standards Board, the International Organization of Securities Commissions, the International Federation of Accountants, and the Public Interest Oversight Board.

Related GDC Publication: [SEC Staff provides additional disclosure guidance related to COVID-19 impact](#) (June 25, 2020)

Related GDC Publication: [Additional U.S. Public Company Disclosure Considerations Related to the Impact of COVID-19](#) (June 25, 2020)

- Chairman Jay Clayton and Director Bill Hinman, [“The Importance of Disclosure – For Investors, Markets and Our Fight Against COVID-19”](#) (April 8, 2020)

Related GDC Publication: [SEC Chairman and Division of Corporation Finance Director Issue Joint Statement on COVID-19 Disclosures](#) (April 13, 2020)

- Office of the Chief Accountant, [“Statement on the Importance of High-Quality Financial Reporting in Light of the Significant Impacts of COVID-19”](#) (April 3, 2020)

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

Emphasizes the importance of maintaining market integrity and following corporate controls and procedures, particularly with regards to insider trading.

Related GDC Publication: [SEC Enforcement Focus on Fallout from COVID-19: Insights for Public Companies and Investment Advisers During a Crisis](#) (March 26, 2020)

B. Division of Corporation Finance Guidance

- CF Disclosure Guidance, [Topic No. 9A: Coronavirus \(COVID-19\) – Disclosure Considerations Regarding Operations, Liquidity, and Capital Resources](#) (June 23, 2020)

Provides questions to ask when evaluating disclosure obligations related to: (1) operations, liquidity, and capital resources; (2) financial assistance from the CARES Act; and (3) the company’s ability to continue as a going concern.

Related GDC Publication: [SEC Staff provides additional disclosure guidance related to COVID-19 impact](#) (June 25, 2020)

Related GDC Publication: [Additional U.S. Public Company Disclosure Considerations Related to the Impact of COVID-19](#) (June 25, 2020)

- CF Disclosure Guidance, [Topic No. 9: Coronavirus \(COVID-19\)](#) (March 25, 2020)
Includes: (1) questions to ask when assessing and disclosing the impact of COVID-19; (2) discussion of considerations for insider trading; and (3) selective disclosure and the use of non-GAAP financial measures.

Related GDC Publication: [Perspectives from One Month into the COVID-19 U.S. Outbreak: Public Company Disclosure Considerations](#) (April 9, 2020)

C. Announcements

- [Staff Guidance for Conducting Shareholder Meetings in Light of COVID-19 Concerns](#) (Updated April 7, 2020)
Includes guidance on: (1) changing the date, time or location of shareholder meetings; (2) conducting virtual meetings; (3) presentation of shareholder proposals; and (4) delays in printing and mailing of full set proxy materials.
- [Staff Statement Regarding Rule 302\(b\) of Regulation S-T in Light of COVID-19 Concerns](#) (March 24, 2020)
Guidance regarding the manual signature requirement for electronically filed documents.

D. New Compliance & Disclosure Interpretations and Frequently Asked Questions

- [Staff Guidance: Exchange Act Forms, Section 104 \(Form 10-K \(Question 104.18\)\)](#) (April 6, 2020)
Addresses whether information required on Part III of a 10-K may be incorporated by reference from a proxy statement when the registration is unable to file the Part III information within the required 120-day deadline.
- [Staff Guidance: Staff Interpretations Regarding Rule 12b-25 \(Question 135.12\)](#) (March 31, 2020)
Addresses whether a registration should use Rule 12b-25 or the COVID-19 Order when unable to file a report on a timely basis without incurring an unreasonable effort or expense.
- [COVID-19 Related FAQs](#)
Provides guidance on required disclosures under the SEC's COVID-19 Order and the application of such order to Form S-3 filings.

Related GDC Publication: [SEC Releases COVID-19 FAQs to Provide Guidance on Disclosure Requirements and Form S-3](#) (May 11, 2020)

E. Relief

- [SEC Provides Additional Temporary Regulatory Relief and Assistance to Market Participants Affected by COVID-19](#) (March 26, 2020)

(1) Temporary relief from the Form ID notarization requirement (through July 1, 2020); (2) additional 45 days to file certain disclosure reports otherwise due between March 26, 2020 and May 31, 2020 under Regulation A and Regulation Crowdfunding; and (3) annual update to Form MA for municipal advisors.

Update (July 1, 2020): The temporary suspension of the notarization requirement on Form ID expires on July 1, 2020. While the SEC will continue to work with filers to accept electronic and remote online notarizations, a notarized Form ID will be required to apply for EDGAR access. See [Temporary Final Rule 10\(c\) Expires Today; Filers May Continue to Submit Electronic and Remote Online Notarization in Support of Form ID](#).

- [Order Under Section 36 of the Securities Exchange Act of 1934 Modifying Exemptions from the Reporting and Proxy Delivery Requirements for Public Companies](#) (March 25, 2020)

Extends the relief from reporting requirements under the federal securities laws due to COVID-19 to 45 days after the original due date.

Related GDC Publications: [SEC Extends Conditional Exemptions From Reporting and Proxy Delivery Requirements for Public Companies Affected By COVID-19 For Reports due on or before July 1, 2020](#) (April 1, 2020); [SEC Provides Conditional Regulatory Relief and Additional Disclosure Guidance for Companies Affected by the Coronavirus Disease 2019](#) (COVID-19) (March 8, 2020)

F. Other Useful Links

- [SEC Coronavirus \(COVID-19\) Response](#)
General SEC landing page for COVID-19 information.
- [COVID-19 Quick Reference Guide for Investors and Market Participants](#)
- [COVID-19 Resources for Small Businesses](#)

II. [Financial Accounting Standards Board](#)

- GDC Publication: [Key Considerations for Issuers and Auditors Regarding Going-Concern Analysis](#) (May 27, 2020)

Reviews the FASB accounting standards and PCAOB auditing standards regarding assessment of a company's ability to continue as a going concern, how the two standards differ, and what issuers and auditors should consider in light of COVID-19.

- Staff Q&A, "[Topic 842 and Topic 840: Accounting for Lease Concessions Related to the Effects of the COVID-19 Pandemic](#)" (Undated)

Related GDC Publication: [COVID-19 Update: Financial Reporting and Auditing Considerations for Corporate Management, Audit Committees, and Audit Firms](#) (April 13, 2020)

III. [Public Company Accounting Oversight Board](#)

- GDC Publication: [Key Considerations for Issuers and Auditors Regarding Going-Concern Analysis](#) (May 27, 2020) (See description in Section II above.)
- PCAOB Spotlight, [“COVID-19 Reminders for Audits Nearing Completion”](#) (April 2, 2020)
Related GDC Publication: [COVID-19 Update: Financial Reporting and Auditing Considerations for Corporate Management, Audit Committees, and Audit Firms](#) (April 13, 2020)
- [In Light of COVID-19, PCAOB Provides Audit Firms with Opportunity for Relief from Inspections](#) (March 23, 2020)

IV. [Stock Exchanges](#)

A. [NYSE](#)

- SEC Release, [“Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Adopt New Section 312.03T of the NYSE Listed Company Manual to Provide a Temporary Exception Through June 30, 2020 From the Application of Certain Shareholder Approval Requirements Set Forth in Sections 312.03 and 303A.08 of the Manual”](#) (May 14, 2020)

In certain circumstances related to COVID-19, temporarily suspends through June 30, 2020 the shareholder approval requirement for (i) issuance of common stock, or securities convertible into or exercisable for common stock when such issuance will represent 20 percent or more of the voting power or number of shares outstanding before the issuance, (ii) issuance of common stock, or securities convertible into or exercisable for common stock, to a related party, and (iii) issuance of securities when a stock option or purchase plan is to be established or materially amended, pursuant to which employees, officers, directors, or consultants may acquire stock.

- The National Law Review, [“NYSE Provides Temporary Relief from Certain Continued Listing Standards During COVID-19 Pandemic”](#) (April 15, 2020)

On April 3, 2020, [NYSE requested](#) that the SEC allow suspension of the \$50 million market capitalization and \$1.00 price continuing listing requirements. The SEC denied the proposal, but NYSE is in further discussions with the SEC.

Related GDC Publication: [NYSE and Nasdaq Propose Temporary Waivers of Certain market Capitalization and Trading Price Listing Requirements](#) (April 23, 2020)

- SEC Release, [“Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Waive the Application of Certain Shareholder Approval Requirements in Section 312.03 of the NYSE Listed Company Manual Through June 30, 2020 Subject to Certain Conditions”](#) (April 6, 2020)

In certain circumstances related to COVID-19, waives through June 30, 2020 (1) the shareholder approval requirement for issuance of securities to a related party for cash at a price that meets the Minimum Price requirement; and (2) for purposes of the bona fide

financing exception to the 20% requirement, the 5% limitation for any sale to an individual investor in a bona fide private financing.

- SEC Release, “[Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Suspend Until June 30, 2020 the Application of Its Continued Listing Requirement with Respect to Global Market Capitalization](#)” (March 20, 2020)

Suspends until June 30, 2020, the requirement for a \$15 million average global market cap over a consecutive 30 trading-day period.

B. Nasdaq

- SEC Release, “[Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Provide Listed Companies with a Temporary Limited Exception From Certain Shareholder Approval Requirements in Nasdaq Rules 5635\(c\) and \(d\)](#)” (May 4, 2020)

In certain circumstances related to COVID-19, temporarily suspends the requirement for shareholder approval of (1) an issuance of common stock representing 20% or more of the outstanding common stock or voting power in a transaction other than a public offering at a price that is less than the Minimum Price and (2) an issuance of securities when an employee or director stock option or purchase plan is to be established or amended.

Related GDC Publication: [Nasdaq Provides Temporary Exemption from Certain Shareholder Approval Requirements in Response to COVID-19](#) (May 11, 2020)

- SEC Release, “[Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Permit a Longer Period of Time for Companies to Regain Compliance with the Bid Price and Market Value of Publicly Held Shares Continued Listing Requirements by Tolling the Compliance Periods Through and Including June 30, 2020](#)” (April 17, 2020)

Related GDC Publication: [NYSE and Nasdaq Propose Temporary Waivers of Certain market Capitalization and Trading Price Listing Requirements](#) (April 23, 2020)

- [Nasdaq COVID-19 Center](#)
- [Nasdaq Listing Center COVID-19 FAQs](#) (Updated as of April 10, 2020)

Addresses topics including: (1) SEC extension of periodic reporting deadlines; (2) annual meetings; (3) shareholder approval rules; (4) violation of other listing rules; (5) exchange-traded funds; (6) hearings panels; (7) and other resources.

- Nasdaq Issuer Alert 2020-1, “[Impact under Nasdaq Rules of SEC Relief to Companies Affected by Coronavirus](#)” (Undated)

Discusses the interaction between Nasdaq Rule 5250 and the SEC’s 45-day relief.

Related GDC Publication: [Coronavirus Disease 2019 Update: Impact under Nasdaq Rules of SEC Relief to Affected Companies](#) (March 12, 2020)

V. [Proxy Advisory Firms](#)

A. [Institutional Shareholder Services \(ISS\)](#)

- [ISS Provides Policy Application Guidance in Light of Covid-19 Pandemic](#) (April 8, 2020)

(1) Addresses annual meeting issues including postponements and virtual-only meetings; (2) covers ISS' approach to defensive measures and board considerations, including the adoption of poison pills and director attendance; (3) addresses compensation issues such as changes in metrics and shifts in goals or targets and option repricing; and (4) discusses capital structure and payouts, dividends, share repurchases, and capital raisings.

Related GDC Publication: [ISS Provides Policy Guidance in Light of COVID-19 Pandemic](#) (April 9, 2020)

B. [Glass Lewis](#)

- Glass Lewis Blog, "[Coronavirus Fears Impacting Annual Shareholder Meetings \(Updated\)](#)" (Updated April 14, 2020)

Broad overview of worldwide changes to annual meetings, broken down by country.

- Glass Lewis Blog, "[AGM and Shareholder Meeting Tracker – Date Changes Due to Coronavirus Pandemic](#)" (Updated April 13, 2020)

List of date changes of annual meetings by company.

- Glass Lewis Blog, "[Poison Pills and Coronavirus: Understanding Glass Lewis' Contextual Policy Approach](#)" (April 8, 2020)

Overview of Glass Lewis' policy view on poison pills generally and in response to COVID-19.

- Glass Lewis Blog, "[Everything in Governance is Affected by the Coronavirus Pandemic. This is Glass Lewis' Approach.](#)" (March 26, 2020)

Guidance on (1) compensation and balance sheets; (2) board composition and effectiveness; (3) activism and M&A; (4) oil and gas; and (5) shareholder proposals and ESG.

- Glass Lewis Blog, "[Immediate Glass Lewis Guidelines Update on Virtual-Only Meetings due to COVID-19 \(Coronavirus\)](#)" (March 19, 2020)

Relaxation of policy on virtual-only shareholder meetings due to COVID-19.

VI. [Institutional Shareholders](#)

A. [BlackRock](#)

- News Article, "[BlackRock unveils impact fund with Covid-19 focus](#)" (April 16, 2020)
- Press Release, "[BlackRock's COVID-19 Response: Our Commitment to People and Communities](#)" (March 23, 2020)

B. Vanguard

- Vanguard Investment Stewardship, "[Update on the 2020 Proxy Season](#)" (April 1, 2020)
- Research & commentary, "[Our experts on COVID-19, the economy, and markets](#)" (March 25, 2020)
- [A message from Vanguard's CEO on the coronavirus](#) (March 3, 2020)

C. State Street

- [COVID-19 Resource Center](#)
- [COVID-19 Response and Preparedness Frequently Asked Questions](#)
- [Operational Certainty in Uncertain Times](#)

State Street's four priorities during the COVID-19 pandemic: (1) Communication is Key; (2) Prioritize Your People; (3) Building Resilient Operations; and (4) Providing Liquidity.

VII. State Law

A. Delaware

- "[Tenth Modification of the Declaration of A State of Emergency for the State of Delaware Due to a Public Health Threat](#)" (April 6, 2020)

States that boards of directors may notify shareholders of a change from in-person to virtual annual meeting solely by filing a notice with the SEC; further states that corporations may adjourn a physical meeting to a meeting held by remote communication at another date or time by filing a notice with the SEC.

Related GDC Publications: [Delaware Governor Issues Limited Relief for Public Company Shareholder Meetings Impacted by COVID-19](#) (April 6, 2020)

B. California

- [Executive Order N-40-20](#) (March 30, 2020)

Among other things, suspends the state law requirement for all shareholders to consent to the holding of virtual meetings.

C. New York

- [Executive Order No. 202.8](#) (March 20, 2020)

Enables New York corporations to hold virtual annual meetings.

VIII. Other Gibson Dunn Publications Relevant to Public Companies

- [Key Governance Action Items in Response to COVID-19](#) (April 7, 2020)
- [Fiduciary Duties and Board Options in a Time of Pandemic](#) (April 6, 2020)
- [COVID-19: the UK Financial Conduct Authority's expectations under the Senior Managers and Certification Regime](#) (April 6, 2020)

- [COVID 19: ESMA Suggests Regulatory Forbearance in Relation to Best Execution Reporting Deadlines](#) (April 1, 2020)
- [COVID-19: UK Financial Conduct Authority's Short Selling Notification Thresholds Amended](#) (April 1, 2020)
- [Reconsidering Poison Pills](#) (March 26, 2020)