



Securities Law / Securities Litigation ADVISORY ■

MARCH 26, 2020

SEC Continues to Keenly Monitor Insider Trading During COVID-19 Pandemic

On March 23, 2020, the U.S. Securities and Exchange Commission's (SEC) Division of Enforcement [released a statement](#) about the coronavirus (COVID-19) pandemic's potential impact on public companies and the importance of "maintaining market integrity and following corporate controls and procedures." Importantly, the Division of Enforcement noted that it was "committing substantial resources to ensur[e] that our Main Street investors are not victims of fraud or illegal practices in these unprecedented market and economic conditions" and that it would be highly focused on issues related to market integrity. Further, SEC Chairman Jay Clayton stated in a separate [statement](#) on March 24, 2020, "that the continuing, orderly operation of our markets is an essential component of our national response to, and recovery from, COVID-19."

Specifically, the Division of Enforcement emphasized that:

- During this unprecedented time, corporate insiders will likely regularly come into possession of important material, nonpublic information that will have heightened relevance in the current market conditions.
- Certain individuals may come into possession of material, nonpublic information that they otherwise may not have come into possession of in the ordinary course of business operations.
- Such information could include, among many other things, information about supply-chain mechanics, the ability of a company to operate in particular markets, and the impact of COVID-19 on a company's workforce or particular key employees.

The Division of Enforcement placed particular emphasis on a company's ongoing compliance with its controls and procedures for public disclosures, particularly in periodic reports and issues associated with Regulation Fair Disclosure (Reg FD).¹

In addition, companies should be mindful of their codes of conduct and ethics and insider trading policies; safeguarding against the misuse of material, nonpublic information by directors, officers, employees, and other third parties with heightened access to material inside information should be paramount.

¹ Reg FD provides that when an issuer of securities or party acting on behalf of an issuer discloses material, nonpublic information to certain parties (for example, a securities holder who may decide to trade in securities based on that information), the issuer must then make public disclosure of that information as soon as possible to ensure a fair market and level playing field for all investors. This prohibition includes selective disclosures, such as advance warnings of earnings results to securities analysts or institutional investors.

Consider the Following

Evaluating current controls and procedures for the dissemination of material, nonpublic information

- Whether the current disclosure committee or other group composition is appropriate to address current disclosure issues.
- The timeliness of disclosure considering the rapidly changing environment.
- Whether further safeguards, such as adding additional members to a company's disclosure committee, are needed.

Insider trading policies

- Whether it is appropriate to close the trading window indefinitely or for some period of time.
- Whether a reminder is appropriate to all relevant parties about their obligations to comply with the company's insider-trading policy.
- Whether the group of individuals subject to preclearance or approval policies should be expanded beyond the current group.
- Whether there should be implementation of additional safeguards such as blackout periods, heightened preclearance procedures, and additional trainings on insider-trading issues.
- Whether there should be distribution of the organization's insider-trading policies to all employees, with electronic acknowledgement of receipt and review required, as well as to independent contractors and employee family members.

Information dissemination

- Companies should identify groups of individuals that may have early access to material, nonpublic information related to COVID-19 that may need to be disclosed.
- Examples may include certain groups that have early access to information about delays in earnings releases or disruptions in supply chains.
- If identified and instructed appropriately, such groups can be helpful in ensuring that public disclosures of this information are made in an appropriate timeframe.

Conclusion

In sum, the SEC is making it clear to issuers and company insiders alike that, despite the recent relief offered from reporting or compliance obligations in other areas under the federal securities laws, insider trading—or any other attempts to compromise market integrity—is still keenly monitored regulated activity that will not be tolerated, no matter what the market conditions may be.

Issuers and company insiders are encouraged to vigilantly monitor for any potential violations of insider-trading policies and regulations and to take appropriate responsive actions to help maintain a fair market and level playing field for all investors.

Alston & Bird has formed a multidisciplinary [task force](#) to advise clients on the business and legal implications of the coronavirus (COVID-19). You can [view all our work](#) on the coronavirus across industries and [subscribe](#) to our future webinars and advisories.

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