



Publicly-Traded Firms and COVID-19-Related Disclosures

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To restore confidence in the securities markets in the wake of the stock market crash of 1929, Congress passed the Securities Act of 1933 (Securities Act; P.L. 73-22) and the Securities Exchange Act of 1934 (Exchange Act; P.L. 73-291). The Exchange Act created the [Securities and Exchange Commission \(SEC\)](#), a key regulator of various facets of securities markets. The acts generally require companies that issue securities to the general public to publicly disclose data deemed material for investors on both the securities and the issuing firms. Financial disclosures are done quarterly, annually, and on an ad hoc basis for certain developments. Firms also can make certain legally protected, forward-looking predictive comments. The Coronavirus Disease 2019 (COVID-19) pandemic is materially impacting many public firms. In response, the SEC has issued multiple staff guidance regarding possible company disclosures relating to the pandemic's impact. Americans for Financial Reform (AFR), a coalition of groups including the AFL-CIO and Public Citizen, has advocated for disclosure requirements, not merely guidelines.

A few related bills have been introduced in Congress. H.R. 6371 would require public companies to disclose information related to risks faced by the firms during a global pandemic. H.R. 6375 would generally require public company disclosure of the risks faced by firms concerning supply-chain disruptions, as well as company plans to mitigate those risks.

The SEC's March 2020 Guidance on COVID-19-Related Disclosures

On March 25, 2020, the SEC staff [guidance](#) on disclosure policy for publicly-traded firms noted that “[t]he impact of COVID-19 on companies is evolving rapidly and its future effects are uncertain.” The guidance observed that companies were obligated to address business risks related to the pandemic. The guidance also noted that disclosure on the pandemic's impact on the following “can be material to investment and [shareholder] voting”: management's predictions on the pandemic's future corporate ramifications; management's response to evolving developments; and the nature of management's planning for pandemic-related uncertainties.

The guidance also noted that as companies evaluate COVID-19-related effects and think about their disclosure obligations, they should consider questions with respect to current and future operations, including the following:

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- “How has COVID-19 impacted your financial condition and results of operations?”
- “How has COVID-19 impacted your capital and financial resources, including your overall liquidity position and outlook?”
- “How do you expect COVID-19 to affect assets on your balance sheet and your ability to timely account for those assets?”
- “Have COVID-19-related circumstances such as remote work arrangements adversely affected your ability to maintain operations, including financial reporting systems, internal control over financial reporting, and disclosure controls and procedures?”
- “Have you experienced challenges in implementing your business continuity plans....?”
- “Do you expect COVID-19 to materially affect the demand for your products or services?”
- “Do you anticipate a material adverse impact of COVID-19 on your supply chain or the methods used to distribute your products or services? Do you expect the anticipated impact of COVID-19 to materially change the relationship between costs and revenues?”
- “Will your operations be materially impacted by any constraints or other impacts on your human capital resources and productivity?”

The SEC’s June 2020 Guidance on COVID-19-Related Disclosures

On June 23, 2020, the SEC staff released additional public company disclosure [guidance](#) with respect to the impact of COVID-19. The guidance urged firms to consider operational, health, and financial questions in their disclosures, including the following:

- “What are the material operational challenges that management and the Board of Directors are monitoring and evaluating? How and to what extent have you altered your operations, such as implementing health and safety policies for employees, contractors, and customers, to deal with these challenges....?”
- “How is your overall liquidity position and outlook evolving? To the extent COVID-19 is adversely impacting your revenues, consider whether such impacts are material to your sources and uses of funds....?”
- “Have COVID-19 related impacts affected your ability to access your traditional funding sources on the same or reasonably similar terms as were available to you in recent periods?”
- “Have you reduced your capital expenditures and if so, how?”
- “Are you able to timely service your debt and other obligations?”

Americans for Financial Reform

SEC Chair Jay Clayton [noted](#) that the goal of the disclosure guidance is to assist companies with their disclosures, noting that the guidance is not intended to be regulatory rulemaking. Guidance provides recommended actions but lacks the force of law or regulation, giving firms discretion on whether to observe the guidance. Rules generally take longer to be developed and legally require corporate compliance.

AFR is a nonprofit coalition of more than 200 civil rights, consumer, labor, business, investor, faith-based, and civic and community groups, including the AFL-CIO, the Interfaith Center on Corporate Responsibility, and Public Citizen. On June 16, 2020, AFR [wrote](#) to SEC Chair Clayton asking the agency to consider providing disclosure requirements for publicly-traded firms that would address the impact of

COVID-19. AFR noted that the guidance was a good step. In addition, AFR noted that investors were relying on news reports on the pandemic's corporate impact, and disclosure requirements were needed "to require companies to provide consistent, reliable data to investors about the economic impact of the pandemic...."

The SEC's Investor Advisory Committee

The SEC's [Investor Advisory Committee](#) (IAC), composed of various investor stakeholders, advises the SEC on issues from investors' perspectives. The May 4, 2020, [meeting](#) of the IAC was largely devoted to COVID-19-related corporate disclosures. Some committee members identified other potential areas of consideration with respect to disclosure guidelines, including

- workforce layoffs and turnover;
- employee compensation and paid sick leave; and
- worker training, with a particular emphasis on worker health and safety preparedness.

In contrast to the AFR's advocacy for a SEC regime of required COVID-19-related disclosures, several IAC committee members [observed](#) that they were pleased with the agency's COVID-19-related disclosure guidance and with the nature of applicable corporate disclosures they had seen.

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