



March 2020

Coronavirus Disease 2019 (COVID-19): Some Public Company Considerations

Potential Disclosure and Related Issues

- Consider whether the Risk Factors section of disclosure documents adequately describes material risks related to the potential impact of COVID-19 on the business
- Consider whether updates of previous COVID-19 risk factors are required in subsequent reports
- Ensure that proper disclaimers for forward-looking statements pertaining to COVID-19 are included in public disclosures
- Consider the necessity of MD+A disclosure with respect to the impact of COVID-19 on operating results, liquidity and/or capital resources
- Consider the necessity of MD+A disclosure with respect to the future impact of COVID-19 as a known trend/uncertainty
- Consider whether earnings guidance should be updated or withdrawn in light of the anticipated impact of COVID-19
- Consider the potential impact of COVID-19 when developing guidance for future periods
- Consider temporary suspension of issuing earnings guidance
- Consider use of the recent SEC extension of Exchange Act filing deadlines for issuers impacted by COVID-19
- Be prepared to discuss the impacts of COVID-19 on earnings calls and to anticipate related questions
- Consider Regulation FD requirements in communications with investors, analysts and other constituencies
- Ensure adequate disclosure controls and procedures
- Evaluate all public communications, whatever the purpose, for securities law implications
- Consider the impact of COVID-19 on stock price/public float, which may change classification of the company

Annual Meetings

- Consider whether it's possible to screen attendees and exclude people that appear ill or otherwise don't qualify
- Consider whether to include a warning in the notice of meeting (stating that there may be changes resulting from COVID-19)

- Consider whether to change the location of the annual meeting
- Consider whether to reschedule the annual meeting (adjourn or postpone)
- Consider a switch to a virtual meeting (if permissible under state law/governing documents; additional disclosure may be required). DGCL 211(a) permits virtual meetings (*i.e.*, “held solely by means of remote communication”), but note specific statutory requirements

Related Issues

- Is there a contingency plan in place in the event that a key executive contracts COVID-19; consider potential disclosure
- Are there mechanisms in place to keep the Board informed of COVID-19 developments to ensure its ability to perform its risk oversight function, develop appropriate responses and adhere to fiduciary duties
- Is there a contingency plan in place to fill vacancies or increase the size of the Board of Directors if one or more director(s) contract COVID-19
- Consider whether the insider-trading window should be closed until all material information related to COVID-19 has been publicly disclosed

M&A Considerations in the COVID-19 Environment

- Diligence and contractual provisions to identify the impact of COVID-19 on the target
- Bridging the valuation gap resulting from uncertainty as to the future impact of COVID-19
- Potential impact on the availability of financing and related commitment terms
- Deal certainty issues
 - Applicability of customary MAE provisions

To help our clients navigate the coronavirus (COVID-19) crisis, Arnold & Porter has established a [Coronavirus Task Force](#) covering a wide range of issues and challenges. [Subscribe](#) to our "Coronavirus (COVID-19)" mailing list to receive our latest client Advisories and register for upcoming webinars.