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COVID-19 Disclosures Bring Risks For Life Sciences Companies

April 16, 2020, 6:32 PM EDT

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COVID-19 has upended every corner of the financial markets, including the disclosure regime for publicly traded companies. Over the last few weeks, the number of disclosures relating to COVID-19 has exploded, with as many coronavirus-related 8-K filings in the first two days of April (more than 150) as in the first two months of 2020.

Simultaneously, the U.S. Securities and Exchange Commission[1] and Financial Industry Regulatory Authority[2] have announced that they are actively monitoring the markets for "frauds, illicit schemes and other misconduct" concerning COVID-19, and SEC Chairman Jay Clayton recently recognized investors' thirst for information[3] as earnings season approaches.

These developments, combined with substantial market volatility, will provide countless opportunities for regulators (and private parties) to seize on corporate disclosures relating to COVID-19 as the basis for litigation and enforcement actions.

Life science companies researching vaccines and other therapeutic treatments for COVID-19 can expect special attention in this environment. As investors scour public statements and filings for information on products that can help to combat the novel coronavirus, these firms must think carefully about how to describe their development milestones, regulatory progress and ability to scale up production.

While optimistic pronouncements on COVID-19 are likely to attract a wave of new investment, those statements are also likely to prompt litigation and other legal process in the event that such optimism is unfounded or otherwise inappropriate.

Recently, the SEC suspended the trading of securities for several companies that may have provided inadequate or unreliable information to the markets for the creation of a COVID-19 vaccine,[4] testing kits[5] and the production of N95 masks.[6] These steps are in line with the SEC's actions in prior epidemics.

During the Ebola crisis, the SEC suspended trading[7] for firms purportedly involved in Ebola prevention, testing and treatment, after issuing similar warnings to investors[8] of the potential for fraudulent investment schemes. And if past is prologue, firms whose trading is suspended over concerns about their COVID-19 businesses will likely face investigation by the SEC, even if the suspension is temporary.

1 https://www.sec.gov/Coronavirus
2 https://www.finra.org/rules-guidance/key-topics/covid-19/regulatory-operations-update.
3 https://www.cnbc.com/2020/04/07/cnbc-transcript-sec-chairman-jay-clayton-speaks-with-cnbcs-andrew-ross-sorkin-on-squawk-box-today.html
4 https://www.sec.gov/litigation/suspensions/2020/34-88585.pdf
5 https://www.sec.gov/litigation/suspensions/2020/34-88582.pdf
6 https://www.sec.gov/litigation/suspensions/2020/34-88584.pdf
7 https://www.sec.gov/news/press-release/2014-262
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