

SEC's Use of Trading Suspensions During the COVID-19 Pandemic and Considerations for Issuers and Broker-Dealers

Since the start of the COVID-19 pandemic in the United States, the U.S. Securities and Exchange Commission (SEC) has increasingly exercised its authority under the Securities Exchange Act of 1934 (the Exchange Act) to suspend the trading in certain securities. As of April 23, 2020, it has issued 23 such trading suspension orders in connection with false or misleading information regarding [COVID-19](#), with 19 of these orders in April 2020. Under the Exchange Act, the SEC has broad authority to suspend trading in any stock for up to 10 business days and on all national securities exchanges or otherwise for up to 90 days if the SEC believes that a suspension is required to protect investors and the public interest. Once the SEC has executed a suspension order, the end of the 10-business day halt is often just the first step necessary for trading resumption of the security, especially if it is traded in over-the-counter (OTC) markets.

The following update summarizes the pertinent sections and rules of the Exchange Act that govern trading suspensions. In addition, it examines the SEC's recent use of trading suspensions during the COVID-19 pandemic and the relevant considerations for broker-dealers seeking to resume trading in securities that have been subjected to a trading halt.

Trading Suspensions Under the Exchange Act

Pursuant to [Section 12\(k\)](#) of the Exchange Act the SEC is authorized to take proactive steps in suspending the trading of any registered security if the SEC deems it in the public interest. Once the SEC has suspended trading of a security under Section 12(k), a broker-dealer must also comply with [Rule 15c2-11](#) under the Exchange Act to resume market marking activities.

Exchange Act Section 12(k)

Under Section 12(k)(1)(A) of the Exchange Act, the SEC has broad authority to suspend trading in any security (other than an exempted security) for a period of up to 10 business days if it believes it is in the public interest and will protect investors. When the SEC exercises its authority pursuant to Section 12(k), trading is halted for the duration of the order.

After the 10-day suspension, whether and how trading resumes depends on whether the security is listed on an exchange or whether market makers provide quotations in the OTC markets:

- If the security is listed on a national securities exchange, it will resume trading as soon as the Section 12(k) suspension ends.
- If the security is quoted in an OTC market, a broker-dealer must comply with Rule 15c2-11 and FINRA Rule 6432, if applicable, including filing a [Form 211](#) with FINRA representing that it has satisfied all applicable requirements.
- It is possible that there could be limited trading in an OTC stock prior to a Form 211 approval in instances where a broker-dealer receives an unsolicited order.[1]

Exchange Act Rule 15c2-11 and FINRA Rule 6432

Exchange Act Rule 15c2-11 requires that a broker-dealer review and maintain certain records about an issuer in order to provide quotations for a security.[2] This information includes, but is not limited to:

- A copy of the issuer's most recent prospectus, circular, and/or annual report
- The issuer's state of organization, nature of business, and names of certain control affiliates
- Name of the chief executive officer and members of the board of directors
- The issuer's most recent balance sheet and its profit and loss and retained earnings statement

In addition, Rule 15c2-11 requires broker-dealers to have a reasonable basis for believing that the information is materially accurate and from reliable sources. FINRA Rule 6432 requires that its members demonstrate compliance with Rule 15c2-11 prior to initiating or resuming a quotation of a non-exchange-listed security unless an exemption applies.

SEC Trading Suspensions During the COVID-19 Pandemic

As of April 23, 2020, the SEC [exercised](#) its authority under Section 12(k) 23 times in connection with the COVID-19 pandemic.[3] The SEC's orders address public information disseminated by the issuers using various mediums such as verbal public statements, press releases, social media posts, and podcast interviews. In many of the COVID-19 related suspension orders, the SEC took issue with allegedly false or misleading statements regarding COVID-19 testing equipment, COVID-19 treatments, and the production of N95 masks. As part of its efforts to ensure market integrity the SEC suspended trading in the issuers' securities.

The SEC has suspended trading in connection with COVID-19 with an increased frequency that has generally followed the timeline of the COVID-19 spread in the United States. Of the 23 orders already issued, two were issued in February 2020, two were issued in March 2020, and 19 have been issued in April 2020. Issuers should be mindful that any public communications, regardless of the communication method, should be true in material aspects and avoid statements that a reasonable person might find misleading.

Relevant Considerations for Broker-Dealers When Seeking to Reestablish Markets in Suspended Securities

Broker-dealers should monitor their compliance obligations with regards to trading in securities that have been subject to an SEC trading suspension. Broker-dealers may want to consider the following:

- Compliance obligations pursuant to Exchange Act Rule 15c2-11
- Whether it has a reasonable basis for believing that the information is materially accurate and from a reliable source
- Maintaining accurate and complete diligence records

Conclusion

The SEC is actively exercising its authority to suspend trading, especially where it appears that issuers are attempting to capitalize off COVID-19 to the potential detriment of public confidence and investor protection. Issuers of and investors in microcap stocks should pay heightened attention, as the SEC is laser focused on this segment of the market. Of note, on April 24, 2020, the SEC [announced](#) the formation of a cross-divisional COVID-19 market monitoring group.

Individuals who believe they might be affected by these developments should contact experienced securities counsel with any questions.

Endnotes

[1] Additional information about the SEC's trading suspensions is provided in an Investor Bulletin from the SEC's Office of Investor Education and Advocacy, which can be found [here](#).

[2] The SEC issued a proposed rule and concept release on Exchange Act Rule 15c2-11 in October 2019. As of the date of this update, the proposed rule is still pending. A text of the proposed rule and concept release can be found [here](#).

[3] A full list of the SEC's trading suspensions since 1995 can be found [here](#).

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