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SEC Alleges COVID-19 Related Fraud by a Company after Suspending Trading

On April 28, 2020, the U.S. Securities and Exchange Commission ("SEC") filed a [complaint](#) against a company and its chief executive officer ("CEO") for alleged fraud in connection with the company's stated response to the COVID-19 pandemic. In its complaint, the SEC alleged that the company issued two press releases containing false or misleading statements in which the company purported to be negotiating the sale of N95 masks and then made claims that it was in possession of N95 masks. After regulators inquired about these claims, the SEC alleged that the company issued a third press release a month later that it did not have any N95 masks on hand. The complaint asserts that the company's stock trading volume and stock price increased significantly as a result of the initial press releases. The SEC's enforcement action against the company comes on the heels of its [trading suspension](#) of the company's securities pursuant to Section 12(k) of the Securities Exchange Act of 1934 (the "Exchange Act"). As we noted in a recent [Client Update](#), the SEC has increasingly exercised its authority under Section 12(k) to address potentially false and misleading statements made by issuers related to COVID-19, particularly with regard to statements about COVID-19 testing equipment, treatments, and the production of N95 masks. In its trading suspension order against this particular company, the SEC explained that it was temporarily halting trading in the company's stock because of questions regarding the accuracy and adequacy of the company's statements regarding having, and being able to obtain, large quantities of N95 masks. In its complaint, the SEC specifically alleged that by virtue of the initial press releases, the company and its CEO violated the Exchange Act's anti-fraud provisions of [Section 10\(b\)](#) and [Rule 10b-5](#). The SEC is seeking injunctive relief to prevent the company and its CEO from engaging in securities fraud, as well as civil monetary penalties, and a bar on the CEO from serving as an officer or director of any public company. As of the date of this post, neither the company nor its CEO has responded to the SEC's complaint.

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