

Securities Regulation Daily Wrap Up, TOP STORY—Regulators, courts adapt to the challenges of COVID-19, (Mar. 17, 2020)

Securities Regulation Daily Wrap Up

<http://resource.stg.cch.com/resource/scion/document/default/sld016b012f747d8b100091d1005056881d2302?cfu=Legal&cpid=WKUS-Legal-Cheetah&uAppCtx=cheetah>

By [Mark S. Nelson, J.D.](#)

The SEC and other securities regulators have posted resource webpages on COVID-19 while key courts have altered schedules to protect court personnel and the public.

The global spread of the novel coronavirus (COVID-19) has already prompted securities regulators to issue significant relief focused on filing deadlines and in-person meetings. Some of these same regulators have followed-up that relief with their own COVID-19 webpages and courts have begun to re-work their upcoming schedules in order to protect court personnel, litigants, and the public.

SEC, FINRA, CFTC, and MSRB. The SEC has created a [resource](#) detailing its actions to date in providing targeted relief to issuers and others under the federal securities laws. The SEC said it continues to, among other things, monitor developments across securities markets, monitor business continuity plans at firms, and coordinate with FINRA.

The SEC also has said it will not take final action until late April on proposed rulemakings whose public comment periods will end in March 2020. The affected proposals were issued in late 2019 and cover a range of topics, including the [qualifications of accountants](#) (March 16, 2020), the [definition of "accredited investor"](#) (March 16, 2020), [resource extraction issuers](#) (March 16, 2020), the [use of derivatives by registered investment companies and other entities](#) (March 24, 2020), and a [proposed order](#) that would direct securities exchanges and FINRA to submit a plan regarding consolidated equity market data (March 20, 2020). For these rulemakings, the SEC said it will consider public comments submitted after the comment deadlines up until the Commission takes final action. The SEC also said the Commission would not take final action on these proposals before April 24, 2020.

FINRA also has posted a [resource page](#) on its website listing the several actions it has taken to respond to the challenges of COVID-19. FINRA stated that it "remains fully operational," although many of FINRA's staff are working remotely. In addition to providing links to FINRA documents on pandemic-related business continuity planning, FINRA has announced that it has postponed in-person arbitrations and mediations through May 1, 2020. However, FINRA said case deadlines remain applicable unless the parties jointly agree to other arrangements. FINRA's Office of Hearing Officers also has suspended disciplinary hearings that were scheduled through April 2020, except that expedited proceedings would continue because they do not require in-person attendance.

The CFTC [announced](#) that it had cancelled the open meeting scheduled for March 19, 2020. However, the CFTC will consider on a seriatim basis matters regarding initial margin requirements for uncleared swaps and retail commodity transactions that involve digital assets. A third matter addressing commodity pool operators would be voted on at a future date.

Lastly, the MSRB has created a [resource webpage](#) for persons and firms seeking additional information about the MSRB's operations during the COVID-19 emergency. The resources include a reminder about remote supervision.

Delaware courts. Delaware's Supreme Court and Chancery Court recently made [announcements](#) about their operations for the near term. Delaware Supreme Court Chief Justice Collins J. Seitz, Jr. [declared](#) a judicial emergency effective March 16, 2020 that will continue for 30 days. The declaration said trial courts may continue trials and hearings for 30 days and that these courts are "authorized and encouraged" to permit the use of

audiovisual devices in conducting proceedings (except jury trials). The order also said Delaware court buildings would remain open pending further notice.

Delaware Chancellor Andre G. Bouchard issued a [related order](#) stating that all hearings and trials must be conducted via telephone or other electronic means and the trial judge must continue the hearing or trial if remote communications are not available. The order also stated that a party may request an in-person hearing if there is an "exigent need," which the order suggested would include "a threat of imminent irreparable harm." The moving party would have to show good cause for an in-person hearing and that alternative modes of conducting the hearing are impracticable under the circumstances. Like the Delaware Supreme Court's order, the Chancery Court order was effective March 16, 2020 and will remain in effect for 30 days.

U.S. Supreme Court. The U.S. Supreme Court has [announced](#) that oral arguments scheduled for March 23, 2020 through April 1, 2020 have been postponed. The postponement will impact *Carney v. Adams*, which was set for oral argument on [March 25, 2020](#). The case raises the question whether Delaware's state constitutional provisions for selecting judges violate the First Amendment.

The Supreme Court said it would consider options for rescheduling postponed oral arguments as developments evolve. However, the court said filing deadlines have not been extended. The court further said the justices will hold a scheduled conference on March 20, 2020, although some justices may participate remotely. The court will issue an orders list on March 23, 2020. According to the announcement, the Supreme Court building is open for official business but it is otherwise closed to the public pending further notice.

The court also sought to place its announcement in historical context by noting that the Supreme Court previously postponed or shortened its argument calendars in response to the Spanish flu epidemic in October 1918 and to several yellow fever outbreaks in the 1790s.

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