# Maintaining Financial Market Stability during Covid-19 Pandemic: A Case Study of the US Securities and Exchange Commission's Regulatory Reponses and Crisis Management Measures

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## Abstract

*This article provides an in-depth and comprehensive analysis of regulatory measures taken by the US Government to mitigate the negative effects of the Coronavirus pandemic (Covid-19) on its economy and financial markets. It focuses on the actions of the US Securities and Exchange Commission (SEC) which is in charge of the making and enforcement of capital markets regulations. This article looks at regulatory responses to the previous financial crisis to see if the regulator has learned lessons from the past experience of crisis management. It also considers the difference of the current crisis and assesses the effectiveness of the SEC's recent regulatory measures, addressing both positive or negative impacts. This article seeks to understand the strategies that the SEC has implemented to help the financial markets survive the pandemic as well as studies the concrete measures that make the crisis less traumatic for all market participants.*

## Introduction

The effective regulation of the financial system has been a difficult task for governments and financial regulators in normal times, let alone the crisis era when financial institutions and markets are exposed to tremendous risks. Crisis management needs great efforts from both domestic regulators and international organisations to ensure financial stability and consumer protection. The Covid-19 pandemic, which started from early 2020, has had huge impacts on the global economy, which calls for governments to act quickly to safeguard the economic system and to prevent another major economic crisis like the Great Depression in 1930s or the Global Financial Crisis in 2007–08. Sovereign states aim to minimise the influence of a global crisis on its territory to protect their citizens' interests. In order to achieve this, it is important for governments to be well informed and to have the necessary policy tools to make decisions regarding how to deal with an uncertain scenario that proves to be a global problem affecting most countries within a few months.[1] Governments shall best utilise their administrative powers to issue orders and rules to address the urgent scenario caused by the global pandemic, and then effectively enforce such measures to counter the crisis.

Financial markets and institutions have been playing a key role in the development of the domestic economy as they provide credits for companies and households. The US households have increased investments in both financial and non-financial assets in the last 30 years,[2] and the banking sector has grown as well in every metric that the Federal Reserve considers relevant in its key statistics for the last 18 years.[3] By borrowing credits, corporations are able to grow by employing more people, expanding their commercial strategy, and acquiring new lines of business etc. Households can use credits to buy houses, cars, and to pay for education etc. The process of credit-making perpetuates the success of the capitalist system and is of particular importance in the event of a pandemic that can potentially slow down economic growth.

The US Securities and Exchange Commission (SEC) is a federal agency which is the securities industry's primary regulatory body and has been in charge of enforcing laws for regulated exchanges, trading markets and its participants. It is one of the agencies in charge of assessing crisis scenarios and taking measures that may buffer the effect of the pandemic on the US capital markets and beyond. During market turbulence, it has

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[1] World Health Organization, "WHO Timeline—COVID-19" available at: *https://www.who.int/news/item/27-04-2020-who-timeline---covid-19* [Accessed 11 October 2021].
[2] Board of Governors of the Federal Reserve System, "Financial Accounts of the United States" available at: *https://www.federalreserve.gov/releases/z1/dataviz/z1/balance sheet/chart/#series:assets* [Accessed 11 October 2021].
[3] Board of Governors of the Federal Reserve System, "Large Commercial Banks" available at: *https://www.federalreserve.gov/releases/lbr/* [Accessed 11 October 2021].

become more difficult to strike a fine balance between effective regulation and laissez-faire that drives the market capitalism. Covid-19 has disrupted economic activities in many countries, and the failure of effective supervision of capital markets is likely to cause another major financial crisis. In order to absorb the negative economic impacts of the pandemic, governments and regulatory agencies in almost every country have decided to draft and implement emergency regulatory and economic measures.[4] The US Government has been among the early movers to tackle the crisis, as it manages the largest economy in the world. In 2019, the US GDP was around US $21.433 trillion, ahead of China (US $14.28 trillion), India (US $2.869 trillion), the UK (US $2.829 trillion), Brazil (US $1.84 trillion) and Russia (US $1.7 trillion).[5] Moreover, globalisation is a crucial factor to take into consideration in the current crisis. The Covid-19 virus spreads quickly and almost every country in the world identified local cases.[6] The financial markets witnessed the same effect as panic and sell-off spread across the world in 2020. That is why the government, through its agencies, needs to act quickly and efficiently to contain the potential effect and to minimise financial risks that the pandemic could bring to the markets and to the wider global economy.

Against this background, this article will discuss and analyse the regulatory responses from the SEC to maintain the stability of US capital markets. The fast and effective response remains the key to mitigate financial risks before they emerge and, certainly, this has been the policy objective of the SEC. This article will assess different measures taken by the SEC after the outbreak of the Covid-19 pandemic. After this introduction, the following section discusses the financial industry in the US and its regulatory agencies, in particular the Securities and Exchange Commission (SEC). The next three sections will then evaluate three types of regulatory measures taken by the SEC: first we focus on the regulatory measures which have been adopted to provide temporary relief to guarantee the continuity of the financial activities in the exchanges and markets within its regulatory scope, as the SEC aims to mitigate the regulatory burden over various market participants in order to help them conduct businesses as usual during the pandemic; next we assess the SEC's financial and economic measures to alleviate the transition such as the financial assistance to market participants and fee waiver; and then we consider some remote participation measures that have been temporarily adopted to allow the continuity of the financial activities but remotely under the global lockdown policies as well as the mandatory confinement to avoid the spread of the coronavirus. The final section concludes.

## Revisiting the US Securities and Exchange Commission (SEC)

The US has been the largest economy in the world and one of the pillars of the global economy. Its banking and financial activities have been constantly monitored by international organisations, such as the World Economic Forum,[7] the Bank for International Settlements,[8] the World Federation of Exchanges,[9] among others. It has proved the importance of governmental strategies to assess the next steps in monetary and regulatory policies. Also, those decisions taken within the US territory often have consequences beyond its borders. In 2019, nearly US $4 trillion were raised in public and private securities offerings, promoting economic growth and job creation.[10] American households own US $29 trillion worth of equities—more than 58% of the US equity market—either directly or indirectly through mutual funds, retirement accounts and other investments.[11] The SEC oversees approximately US $97 trillion in securities trading on US equity markets annually.[12] Also, the US stock exchanges are home to multinational companies that want to raise capital and to have global influence. As of Q3 2020, the US reported total assets for US $140 trillion approximately, according to the Federal Reserve System.[13] In terms of the US banking sector, by December 2020 commercial banks loaned an estimated of U$ S10 trillion.[14] The US domestic economy has been a huge driving force in creating economic outputs and international investments as it is ranked first in terms of foreign direct investment inflows.[15] International players would like to access US exchanges since they provide multiple benefits, such as capital raising projects.

The US Government fulfils its functions through its federal agencies and organisations. One of the most important institutions that undertakes financial regulation is the SEC. Every time there is a crisis, business activities will be affected directly or indirectly. As a direct consequence, households suffer from the crisis as well; for example, people lose their jobs, credit lines may shrink or even disappear, universities may cut or even shut their student loans etc. Therefore, government assistance, leveraged on its regulators, agencies and key

4 International Capital Market Association, "COVID-19 Information Hub: Regulatory responses" available at: *https://www.icmagroup.org/Regulatory-Policy-and-Market-Practice/covid-19-market-updates/regulatory-responses/* [Accessed 11 October 2021].
5 The World Bank, "Current GDP" available at: *https://data.worldbank.org/?locations=US-GB-RU-CN-BR-IN* [Accessed 11 October 2021].
6 World Health Organization, "WHO Timeline—COVID-19".
7 The World Economic Forum, "United States" available at: *https://www.weforum.org/agenda/archive/united-states/* [Accessed 11 October 2021].
8 Bank for International Settlements, "Committees and associations" available at: *https://www.bis.org/mc/currency_areas/us.htm* [Accessed 11 October 2021].
9 World Federation of Exchanges, "Board of Directors" available at: *https://www.world-exchanges.org/about/board-of-directors* [Accessed 11 October 2021].
10 Securities and Exchange Commission, "What We Do" available at: *https://www.sec.gov/about/what-we-do#section2* [Accessed 11 October 2021].
11 Securities and Exchange Commission, "What We Do" available at: *https://www.sec.gov/about/what-we-do#section2* [Accessed 11 October 2021].
12 Securities and Exchange Commission, "What We Do" available at: *https://www.sec.gov/about/what-we-do#section2* [Accessed 11 October 2021].
13 Board of Governors of the Federal Reserve System, "Financial Accounts of the United States" available at: *https://www.federalreserve.gov/releases/z1/dataviz/z1/balance sheet/table/* [Accessed 11 October 2021].
14 In commercial and industrial loans, real estate loans, consumer loans, and other loans and leases. Board of Governors of the Federal Reserve System, "Assets and Liabilities of Commercial Banks in the United States—H.8" available at: *https://www.federalreserve.gov/releases/h8/current/default.htm* [Accessed 11 October 2021].
15 UNCTAD, 30th Sess., "World Investment Report 2020" (Geneva, June 2020).

organisations, is vital to provide support through the banking and financial system by adapting the strategies to rescue and protect domestic economy in a way economic activities can move forward and avoid depression, stagflation and recession. Through the making and implementation of securities laws and regulations, the SEC provides the regulatory framework for the activities of the different participants in the US capital markets. Given the continuous evolution of markets and the rapid changes that are generated by business activities, updates and improvements need to be proposed ahead when possible and, if not, reactive responses need to be provided. That is why the SEC continues to issue rules, notices and orders to keep the regulations updated and efficient.[16] Sometimes, for example during a crisis such as this pandemic, the SEC has released a series of rules and orders to make temporary changes that will help different players deal with this transition during the crisis. This role is extremely important given that in certain circumstances it will be difficult or even impossible for companies to comply with some new requirements and this will force companies to leave the market with the extreme consequences that this may bring to them and to the domestic economy.

The SEC is an independent federal agency of the US government with the mission "to protect investors, maintain fair, orderly, and efficient markets, and facilitate capital formation".[17] It works along the Federal Reserve Board (Fed), being the central bank of the US, that "provides the nation with a safe, flexible, and stable monetary and financial system",[18] the Comptroller of the Currency (OCC) and the Federal Deposit Insurance Corporation (FDIC) to perform vast regulatory activities during the difficult times.[19] To accomplish this mission, it needs to achieve a balance between protecting the freedom of business activities to improve efficiency and profitability, but at the same time to develop a coordinated oversight that allows to it to identify and address any misconduct that arises from financial activities. The US faced major crises in 2000 and 2008 during which it took drastic measures to cope with crisis. The first one was the so-called "dot.com bubble" in 2000. From 1998–2000 internet companies were taking the markets. In February 2000, the internet sector amounted to 6% of the market capitalisation of all US public companies and 20% of all publicly traded equity volume.[20] But the share prices fell sharply in March 2000, and continued to fall throughout that year ending up in one of the biggest financial crises in the US history. After this, the terrorist attack in September 2001 took place which aggravated the situation. The second crisis was the 2008 global financial crisis. It involved financial instruments that were novel and complex, such as collateralised debt obligations (CDO) and credit default swaps (CDS). Hidden leverage in these financial instruments were the trigger to the financial crisis when the real estate market collapsed. This hidden leverage magnified mortgage-related write-downs beyond the ability of banks and insurance companies to absorb losses and thereby led to a financial crisis requiring massive government intervention.[21]

There is no denying that the SEC played a vital role in dealing with the previous crises. Now we will tend to the Covid-19 pandemic that also calls for extra government interventions in this extreme situation. After the dot.com bubble, the Sarbanes-Oxley Act (SOA) was passed by the US Congress and implemented by the SEC. This was a milestone in the history of the regulation in the US given that the SOA has been one of the most effective tools to be used by the SEC to maintain fair markets.[22] Intervention of the SEC to assist the recovery of the markets was the key to address the crisis, and the previous lessons gave rise to one of the pillars of the US regulation, i.e. the SOA.[23] Later, in 2008, the SEC was challenged by a new crisis, and there were also lessons learned. The SEC issued a statement where they clearly acknowledged their mistakes. One of them was the lack of communication and coordination with other regulators, as stated by the chairman of the SEC, and another important aspect mentioned was the request of greater authority to regulate different types of entities, such as investment bank holding companies.[24] Gaining ground after the previous crisis, and having assessed the deficiencies of the past, for the first case the lack of the corresponding regulation, and for the second case the impossibility to act regarding certain entities, gave the SEC the ability to respond quickly and firmly to the Covid-19 scenario, mitigating in advance greater losses and damages. During Covid-19, the SEC focused on keeping the players in the game and assisting them to survive this unprecedented pandemic. The SEC helps companies to continue complying with the securities laws

[16] Federal Register of the US, "Securities and Exchange Commission (SEC)" available at: *https://www.federalregister.gov/documents/search?conditions%5Bagencies%5D%5B%5D=securities-and-exchange-commission* [Accessed 11 October 2021].
[17] SEC, "About the SEC" available at: *https://www.sec.gov/about.shtml* [Accessed 11 October 2021].
[18] Board of Governors of the Federal Reserve System, "About the Fed" available at: *https://www.federalreserve.gov/aboutthefed.htm* [Accessed 11 October 2021].
[19] Federal Register of the US, "Federal Reserve System, Comptroller of the Currency and Federal Deposit Insurance Corporation" available at: *https://www.federalregister.gov/documents/search?conditions%5Bagencies%5D%5B%5D=federal-reserve-system&conditions%5Bagencies%5D%5B%5D=comptroller-of-the-currency&conditions%5Bagencies%5D%5B%5D=federal-deposit-insurance-corporation&conditions%5Bterm%5D=Federal* [Accessed 11 October 2021].
[20] Eli Ofek and Matthew P. Richardson, "Dotcom Mania: The Rise and Fall of Internet Stock Prices" (December 2001), NBER Working Paper No.w8630 available at: *https://ssrn.com/abstract=293243* [Accessed 11 October 2021].
[21] Michael Simkovic, "Secret Liens and the Financial Crisis of 2008" (4 January 2009) 83 *American Bankruptcy Law Journal* 253 available at: *https://ssrn.com/abstract=1323190* [Accessed 11 October 2021].
[22] Securities and Exchange Commission, "Speech by SEC Chairman: Remarks to the National Press Club" (30 July 2003) available at: *https://www.sec.gov/news/speech/spch073003whd.htm* [Accessed 11 October 2021].
[23] Securities and Exchange Commission, "Investor.gov" available at: *https://www.investor.gov/introduction-investing/investing-basics/role-sec/laws-govern-securities-industry#sox2002* [Accessed 11 October 2021].
[24] SEC, "Testimony Concerning the Role of Federal Regulators: Lessons from the Credit Crisis for the Future of Regulation" (23 October 2008) available at: *https://www.sec.gov/news/testimony/2008/ts102308cc.htm* [Accessed 11 October 2021].

and rules and also recognises what the pandemic has brought to the world, such as social distancing and working remotely.

Through crises, the spirit of the regulatory measures taken in capitalist economies is to maintain the economic activities such as domestic and international trade, financial activities through securities trade and capital formation, at high rates and to avoid recession, with all the consequences that this brings to national economies (e.g. loss of jobs, a decline in real income, a slowdown in industrial production and manufacturing, and a decrease in consumer spending). This is a very brief summary but it is important to understand that during crises governments need to embrace actions that will protect daily financial and economic activities and keep them under control, and be able to minimise or mitigate financial and economic risks. In this case, the global pandemic has affected different industries but the unique characteristic, given its nature, is that it affected different sectors and industries at the same time making the recovery much harder this time. As this is the first health crisis of a global scale in the past century, lessons learned from other crises will help but we will face new scenarios. We have to review and analyse latest measures and decisions taken by the SEC, including the strategies implemented and their impacts on the markets.

It is important to look at the formation of a special taskforce by the SEC, the cross-divisional "Covid-19 Market Monitoring Group". This team has two major functions: (1) to assist Commission and staff actions and analysis related to the effects of Covid-19 on markets, issuers and investors; and (2) to respond to requests for information, analysis and assistance from fellow regulators and other public sector partners.[25] Having an experienced team that works in research and that is available to provide deep analysis of the situation, that is able to provide a variety of options, and that can get in touch with participants and different organisms and agencies in order to provide a tailored advice, has been the key in optimising regulatory decisions and assessing financial risks in a crisis scenario.

Given the Covid-19 pandemic and its catastrophic consequences, the SEC has taken extensive actions to protect and rescue markets. Many of global stock exchanges closed their trading floors and offices because of the pandemic, including the New York Stock Exchange (NYSE). On 18 March 2020, the CEO of the NYSE decided that beginning 23 March 2020, the trading floor facilities located at 11 Wall Street in New York City would close and the NYSE would move, on a temporary basis, to fully electronic trading.[26] The transition from on-site to remote activities forced the regulator to examine a number of measures, given the impossibility of members and exchange employees to perform in-person tasks. The same rationale was embraced by different companies and members that decided to shut down their offices even though working remotely brings new challenges, such as in-person meetings, gathering information, taking decisions and issuing certified and updated documents etc.

## The SEC's regulatory responses: giving a temporary relief from regulatory requirements

The order and effectiveness of financial markets rely on the proper enforcement and compliance of the regulations. The SEC is responsible for the oversight of the US capital markets and its participants, which is one of its core responsibilities. During the pandemic, some regulatory requirements become difficult or even impossible to comply with, forcing certain members to default or even exit the markets. The problem is that depending on the magnitude of the crisis, the number of members in such situation could be massive. In order to prevent this, the SEC decided to provide a temporary relief from some requirements and help members to survive this extremely difficult period and continue operating.

One of the consequences caused by the closure of the trading floors was that floor brokers were not able to enter orders on the trading floor and every action had to be made electronically. It was decided that Designated Market Makers (DMM) will be able to participate electronically both intraday and for auctions. Therefore, the SEC jointly with the NYSE decided to: (1) suspend current price and volume parameters set forth in rr.7.35A and 7.35B restricting DMMs from effecting a Core Open, Trading Halt, or Closing Auction; (2) widen the percentage price parameters for when a DMM may effect a Core Open, Trading Halt, or Closing Auction electronically to 10%; (3) suspend the requirement to publish pre-opening indications; and (4) establish the Auction Collars for an Exchange-facilitated Trading Halt Auction following a Level 1 or Level 2 market-wide circuit breaker halt at the greater of 10% or $0.15. These were measures with the intention to facilitate the activity of the DMMs and ease the impact of the closure of the trading floor of the exchange in New York City.[27]

Regarding regulatory responses and the ability to quickly adapt to the new normal, the SEC proved its valuable experience and why it is one of the best regulators in the world, it understood quickly that regulations are the "rules of the game", and that if the game changes, the rules need to change as well, almost immediately. And this is why we can identify measures taken with the spirit of the continuity and survival of the US markets. It is fair to say that all these measures need to be implemented assertively. The objective of the SEC

[25] SEC, "SEC Forms Cross-Divisional COVID-19 Market Monitoring Group", Press Release 2020-95, 24 April 2020) available at: *https://www.sec.gov/news/press-release/2020-95* [Accessed 11 October 2021].

[26] SEC, Release No.34-88488 (1 April 2020) available at: *https://www.federalregister.gov/documents/2020/04/01/2020-06720/self-regulatory-organizations-new-york-stock-exchange-llc-notice-of-filing-and-immediate* [Accessed 11 October 2021].

[27] SEC, Release No.34-88444 (26 March 2020) available at: *https://www.federalregister.gov/documents/2020/03/26/2020-06290/self-regulatory-organizations-new-york-stock-exchange-llc-notice-of-filing-and-immediate* [Accessed 11 October 2021].

is to maintain a fair and efficient market and to promote its development but, at the same time, it is also important to adapt constantly to the latest situations. Markets need to be monitored on an ongoing basis and its oversight should always be guaranteed. And the risk of contradiction lies at this point. The SEC has the responsibility to identify changes in companies' behaviours that would raise questions based on normal patterns. During a crisis like the Covid-19 pandemic, the smarter decision would be to ease some of the regulations and this may lead to a potential risk in markets.[28] As a response, some of the greatest examples were temporary reliefs and waivers awarded to different members.

The SEC, jointly with the NYSE, released a proposed rule for comments to the public based on the unusual volume of companies that, according to their average global market capitalisation and s.802.01B of the NYSE*Listed Company Manual*, were close to failing to comply with the Market Capitalization Standard that states that listing companies under the previously mentioned section need "to have average global market capitalization over a consecutive 30 trading-day period of less than $15,000,000, regardless of the original standard under which it listed". Therefore, the proposal of the SEC and the NYSE was to suspend the application of the Market Capitalization Standard until 30 June 2020. This measure was adopted given the effect of the global pandemic in markets and companies capitalisation. The drop of the price of many companies made the risk of suspension from trading and being delisted based on global average market capitalisation to increase drastically, with a deeper impact and serious consequences in the global economy.[29]

Other measures were the provision of temporary reliefs for issuers and registrants to comply with certain requirements, such as presentation of documentation and information. This is the example of the temporary relief that was authorised from 1 March 2020 for registrants to fulfil and report, based on the Securities Exchange Act 1934, the following: (1) annual reports; (2) information with respect to accounts over which they exercise investment discretion; (3) proxies; (4) mandatory information to be provided to security holder before annual meeting or any other meeting of the holders of the class of securities; (5) change in majority of directors; and (6) reports of registrants under the Securities Act 1933, such as: annual reports, special financial report, specific forms, such as Form F-6, Form 40-F, Form 8-K, Form 10-Q, Form 6-K, Form 10-D, Form 20-F, reports for employee stock purchase, savings and similar plans, reporting regarding asset-backed securities, and reporting regarding certain securities underlying asset-backed securities.[30] It is important to clarify that one of the requirements was to prove that circumstances related to Covid-19 were prohibiting the fulfilment of the requirements and provide the corresponding explanations to the Commission. Furthermore, this example can also be taken into consideration to show that when necessary, as in the case of Covid-19 pandemic, these measures could be extended if the situation that originated them continued. In fact, it was in a later communication that the previous relief was extended from 30 April 2020, which was the first due date, to 1 July 2020.[31]

Moreover, the SEC decided to provide temporary relief from 16 March 2020 to 30 May 2020 regarding compliance with obligations by registered transfer agents affected by Covid-19. In light of the pandemic the Commission understood that some of the transfer agents could have difficulties complying with their obligations regarding ss.17A and s.17(f) of the Securities Exchange Act 1934 (that sets the books and records they are required to maintain), therefore if they met the criteria, they would be exempted from complying during the period of relief.[32]

Following this, under the group of exemptions provided, and considering the extremely difficult situation, not only on the trading floor but also behind doors of the registrants' offices, the SEC provided temporary reliefs for (1) in-person meetings performed by boards of directors of the investment companies for voting; and (2) timing for filing Forms N-23C-2, which is the form that Investment Companies need to file in order to redeem securities that they have issued. Both measures were extended through this Order until 15 August 2020. Following with the same communication, there was a change in a previous order regarding Form N-CEN or Form N-PORT that stated a few conditions which a registered fund that intended to rely upon the relief needed to fulfil. With this modification, they have been updated and there was a temporary exemption to file those forms when the following conditions were met: (1) the fund is unable to meet the filing because a Covid-19 related situation; (2) notify the SEC about the impossibility to comply; (3) the fund must publicly on its webpage state that is relying on this order; (4) the corresponding form should be files as soon as practicable, no later than 45 days after the original due date. This order also addressed the requirement of the investment companies to transmit to its stockholders reports and its financial statements and financial information, at least semi-annually, as requested under s.30(d) of the Investment Company Act. Moving forward, the order also provided a temporary relief to this requirement until

[28] Patricia M. Dechow, Weili Ge, Chad R. Larson and Richard G. Sloan, "Predicting Material Accounting Misstatements", Contemporary Accounting Research, Forthcoming, AAA 2008 Financial Accounting and Reporting Section (FARS) Paper (21 April 2010) available at: *https://ssrn.com/abstract=997483* [Accessed 11 October 2021].

[29] SEC, Release No.34-88441 (26 March 2020) available at: *https://www.federalregister.gov/documents/2020/03/26/2020-06303/self-regulatory-organizations-new-york-stock-exchange-llc-notice-of-filing-and-immediate* [Accessed 11 October 2021].

[30] SEC, Release No.34-88318 (4 March 2020) available at: *https://www.federalregister.gov/documents/2020/03/09/2020-04763/order-under-section-36-of-the-securities-exchange-act-of-1934-granting-exemptions-from-specified* [Accessed 11 October 2021].

[31] SEC, Release No.34-88465 (30 March 2020) available at: *https://www.federalregister.gov/documents/2020/03/30/2020-06517/order-under-section-36-of-the-securities-exchange-act-of-1934-modifying-exemptions-from-the* [Accessed 11 October 2021].

[32] SEC, Release No.34-88448 (26 March 2020) available at: *https://www.federalregister.gov/documents/2020/03/26/2020-06292/order-under-section-17a-and-section-36-of-the-securities-exchange-act-of-1934-granting-exemptions* [Accessed 11 October 2021].

30 June 2020. Furthermore, it provided relief when a registered fund does not deliver to investors the current prospectus because of circumstances related to Covid-19 during the period specified by the order.[33]

Taking a different approach, and considering also the flow of information that registrants, issuers and individuals may need, the SEC stipulated a temporary relief regarding the requirement under the r.10 of reg.S-T that in order to request access to the EDGAR database, it requires the Form ID application be submitted where the document needs to be notarised when manually signed. Given the pandemic and the physical restrictions that were mandatory, the problem that many applicants faced was that they were unable to find an authorised notary to assist them with this requirement. From 26 March 2020 to 1 July 2020, applicants were granted access with its signature in the document without the requirement of notarisation, as long as they indicated that they were unable to obtain it. There was a condition that the filer would have 90 days from the date of the issuance of the codes to provide the notarised document. In the same release, regarding Regulation Crowdfunding, the SEC provided temporarily relief regarding compliance with r.202 of Regulation Crowdfunding, that states that the issuer must file with the Commission and post on its website an annual report along with its financial statements certified by its principal executive officer to be true and complete in all material respects and a description of the financial condition of the issuer, and r.257 of reg.A, that specifies conditions for periodic and current reporting. If due to Covid-19 an issuer was unable to comply with the mentioned regulations, it would have to (1) disclose on its website that it is relying on this relief; (2) file no later than 45 days the reports and forms corresponding to these regulations, if the documentation needed to be filed from 26 March 2020 to 31 May 2020; and (3) disclose on the form that it was unable to comply and that it relied on the temporary relief.[34]

Going back in time, in November 2018, the Commission adopted amendments to r.606 of Regulation NMS to require broker-dealers to provide enhanced disclosure of information regarding the handling of their customers' orders. A new order from the SEC provided a relief regarding this rule, and some requirements were exempt: (1) broker-dealers were exempt from the requirement to provide the public report covering the first quarter of 2020 required by r.606(a) until 29 May 2020; and (2) broker-dealers that engage in outsourced routing activity were exempt from the requirement to collect the monthly customer-specific data required by r.606(b)(3) for such activity until 1 June 2020, and were exempt until 29 July 2020, from the requirement to provide a customer-specific report of June 2020 outsourced routing data within seven business days for customer requests for such customer-specific reports that were made on or before 17 July 2020. Also, broker-dealers have been required to collect the held order data since 1 January 2020, but they were not required to generate the initial public report of that data until the end of April 2020. They also had an additional month to prepare the public report of first quarter 2020 held order data. Maintaining this position, the same exemption was agreed for broker-dealers engaged in outsourced routing activity.[35]

Another important aspect of an exchange is the provision of information to members and companies. It is even more important when there are events such as an Initial Public Offering (IPO). Based on this, the NYSE proposed a temporary period until the reopening of the trading floor facilities, where the exchange would publish Trader Updates with Auction Imbalance Information for IPO Auctions. Current rules provided that the exchange did not disseminate Auction Imbalance Information if a security is an IPO and has not had its IPO Auction. During normal operations, floor brokers perform a vital role during IPO Auctions to convey information that is available on the trading floor about such auctions to their customers. In any temporary reopening of the trading floor to permit a DMM to effect an IPO Auction manually, floor brokers were not present and therefore unable to convey this information to their customers. In the absence of floor brokers, the exchange proposed that for the temporary period while the trading floor has been closed and a DMM was permitted limited entry to facilitate an IPO Auction, the exchange would disseminate specified Auction Imbalance Information via Trader Update. For a temporary period, the Exchange permitted a DMM limited entry to the trading floor to effect an IPO Auction manually. For such an IPO Auction, NYSE would disseminate certain Auction Imbalance Information provided by the DMM via Trader Update. The exchange would publish such Trader Update(s) promptly after each publication by the DMM of a pre-opening indication for such security. The Trader Update would also include the pre-opening indication range.[36] This aimed to support the activity as it did before the pandemic.

## The SEC's financial assistance to market participants and fee waiver

These were measures that the SEC decided to embrace with the intention of reducing the economic burden on different market participants. The pandemic led to an economic downturn and this impact was so critical for some companies that they had to reduce its activity or even close their doors, bringing a domino effect in other companies and ultimately to markets, where, for many,

[33] SEC, Release No.33817 (19 March 2020) available at: *https://www.federalregister.gov/documents/2020/03/19/2020-05705/investment-company-act-of-1940-order-under-section-6c-and-section-38a-of-the-investment-company-act* [Accessed 11 October 2021].
[34] SEC, Release No.33-10768 (31 March 2020) available at: *https://www.federalregister.gov/documents/2020/03/31/2020-06721/relief-for-form-id-filers-and-regulation-crowdfunding-and-regulation-a-issuers-related-to* [Accessed 11 October 2021].
[35] SEC, Release No.34-88478 (31 March 2020) available at: *https://www.federalregister.gov/documents/2020/03/31/2020-06621/order-granting-application-by-the-financial-information-forum-and-security-traders-association-for-a* [Accessed 11 October 2021].
[36] SEC, Release No.34-88488 (2020).

the activity was crucial to survive. Therefore, the reduction in some cases, and the elimination in others, of costs tied to the activity in the trading floor was of great importance. For instance, the "hot hands" fees which is the service allowing the users to use on-site data centre personnel to maintain user equipment, support network troubleshooting, rack and stack a server in a user's cabinet; power recycling; and instal and document the fitting of cable in a user's cabinet(s). The fee is $100 per half-hour for receiving the service that is provided by the NYSE. But given the closure of the trading floor, the NYSE decided to waive all "hot hands" fees for the duration of the closure.[37] Given the extent of the pandemic and the new challenges that this crisis brought, the waiver was also extended in order to provide financial relief to the different participants of the exchange while the pandemic spread.[38] In a very forward-thinking strategy, and understanding the economic difficulties that companies may encounter, and with the objective of reducing the pressure on the companies' short-term cash-flow, the SEC decided that (1) registered open-end management investment companies other than money market funds (open-end funds); and (2) insurance company separate accounts registered as unit investment trusts (separate accounts) could obtain short-term funding, by providing temporary exemptions to the Investment Company Act. Both (1) and (2) were exempted of the requirement of its ss.12(d)(3) and 18(f)(1). Meaning that no ban had been imposed on borrowing money from any affiliated person, or affiliated person of such affiliated person, that is not itself a registered investment company. Also, the exemption was extended to requirements under s.17(a) of the same Act, as to make collateralised loans to (1) and (2). In order to be in the scope of the exemption, some conditions had to be met:

> "Board of Directors reasonably determines that such borrow will be: (i) in the best interest of the company, (ii) for the purposes of satisfying shareholder redemptions, and (iii) notifies the Commission."

In this release an exemption to the Interfund Lending Arrangements has also been provided, so (i) loans could be made in an aggregate amount that did not exceed 25% of its current net assets at the time of the loan; (2) the term of any interfund loan made in reliance on this order did not extend beyond the expiration of this temporary relief; and (3) the loans will remain callable and subject to early repayment. This decision was temporary and ended on 30 June 2020, unless extended by the agencies.[39]

## The SEC's regulatory measures: remote participation on the trading floor

Regarding measures taken by the SEC in order to address the physical impossibility of working on the trading floors, some of the measures were necessary for the market to continue with all activities on a remote basis. This is a common phenomenon where many companies need to continue with their businesses and to be connected with their employees during the lockdown. The importance of remote access during the pandemic proved to be a pillar in the continuation of economic activities in society. The SEC is clearly aware of this and intends to support businesses for this transition towards remote working. Cboe Exchange, Inc requested authorisation by proposing to amend r.5.24, that describes which Trading Permit Holders (TPH) are required to connect to the exchange's backup systems as well as certain actions the exchange may take as part of its business continuity plans so that it may maintain fair and orderly markets if unusual circumstances occurred that could impact the exchange's ability to conduct business. This included what actions the exchange would take if its trading floor became inoperable. While some amendments to the regulation[40] allowed all-electronic trading to occur more similarly to open outcry trading, an all-electronic trading environment cannot fully replicate open outcry trading. The exchange proposed to adopt r.5.24(e)(3) to permit it to make available an audio and video communication programme to serve as a "virtual trading floor" in one or more option classes?if the physical trading floor was inoperable or operating in a modified state, as it was during the pandemic. The exchange created "virtual trading pits", in each of which the exchange determined which options class(es) were available for trading. The exchange uses a communication programme that has audio and video capabilities, as well as "chat" functionality, and believed it would be appropriate to require market participants to use a chat tool in the communication programme to indicate their interest in participating in a trade so that the representing floor broker was able to know the market from the trading crowd and fairly allocate the trade pursuant to regulation.[41]

[37] SEC, Release No.34-88403 (23 March 2020), Release No.34-88400 (23 March 2020); Release No.34-88399 (23 March 2020); Release No.34-88397 (23 March 2020) available at: *https://www.federalregister.gov/documents/search?conditions%5Bterm%5D=Securities+and+Exchange+Commission* [Accessed 11 October 2021].
[38] SEC, Release No.34-88523 (6 April 2020); Release No.34-88522 (6 April 2020); Release No.34-88520 (6 April 2020); Release No.34-88521 (6 April 2020); Release No.34-88518 (6 April 2020); Release No.34-88956 (2 June 2020); Release No.34-88961 (2 June 2020); Release No.34-88957 (2 June 2020); Release No.34-88958 (2 June 2020); Release No.34-88955 (2 June 2020); Release No.34-89173 (6 July 2020); Release No.34-89174 (6 July 2020); Release No.34-89175 (6 July 2020); Release No.34-89172 (6 July 2020); Release No.34-89651 (31 August 2020); Release No.34-89652 (31 August 2020); Release No.34-89654 (31 August 2020); Release No.34-89653 (31 August 2020); Release No.34-89655 (31 August 2020) available at: *https://www.federalregister.gov/documents/search?conditions%5Bterm%5D=Securities+and+Exchange+Commission* [Accessed 11 October 2021].
[39] SEC, Release No.33821 (27 March 2020) available at: *https://www.federalregister.gov/documents/2020/03/27/2020-06392/investment-company-act-of-1940-order-under-sections-6c-12d1j-17b-17d-and-38a-of-the-investment* [Accessed 11 October 2021].
[40] Dechow, Weili Ge, Larson and Sloan, "Predicting Material Accounting Misstatements" (21 April 2010).
[41] SEC, Release No.34-89131 (29 June 2020) available at: *https://www.federalregister.gov/documents/2020/06/29/2020-13875/self-regulatory-organizations-cboe-exchange-inc-notice-of-filing-of-a-proposed-rule-change-to-amend* [Accessed 11 October 2021].

Also, the Financial Industry Regulatory Authority (FINRA) addressed this scenario and proposed to adopt temporary extension of time to complete office inspections under FINRA r.3110 ("Supervision") that, in light of the operational challenges member firms faced due to the outbreak of the coronavirus disease, extended the time by which member firms should have completed their calendar year 2020 inspection obligations under r.3110(c) ("Internal Inspections") to 31 March 2021. What's more, r.3110(c) requires on-site inspections of offices of supervisory jurisdiction and supervisory branch offices at least annually (on a calendar-year basis), non-supervisory branch offices at least every three years, and non-branch locations on a regular periodic schedule, presumed to be every three years.[42]

## Conclusion

The SEC has taken a wide range of measures with the intention of reducing the burden on market participants, regarding difficulties related to the Covid-19 crisis in three important areas: (1) temporary relief from regulatory requirements; (2) financial assistance and fee waivers; and (3) remote participation measures. Regarding the first category of actions, the ultimate goal was the provision of temporary reliefs and waivers to different participants and members that would allow them to endure the crisis. Some of them were: (a) reporting requirements, (b) form completion and presentation, (c) permission to perform tasks remotely, given the impossibility to access the trading floors; (d) keeping books and records; (e) market capitalisation standards; (f) modification of percentages, prices and volumes requirements; (g) requirements to access EDGAR database; (h) provision of enhanced disclosure of information; (i) extension in deadlines for compliance with certain requirements; (j) proxy requirements; and (k) shareholders' approval. As for the second type of regulatory actions, they are focused on the promotion of funding/lending, and addressed: (a) flexibility to obtain short-term funding; (b) providing passive liquidity; (c) fee/costs modifications and waivers; (d) flexibility to obtain approval for transactions that involve the sale of the company's securities for cash; (e) flexibility for business development companies; (f) increase credit; and (g) modifications in price lists. As for the third type of regulatory actions, we can identify different strategies: (a) provide limited access to the trading floor for specific reasons; (b) provide remote access to floor-based systems; and (c) provide connection to the exchange's backup systems.

The Covid-19 pandemic opened the door to use the technology that was already in place, and to leverage and increase the use of the technology that was already being a tool for the different participants, and also to have the opportunity to be more familiar with those tools. A few examples could be the use of applications to meet virtually, to access remotely to the desktop that many people were only able to access through the computer in the office etc, something that has been proven, and that the technology was already prepared for.[43] One of the examples is the conference meetings instead of the in-person meetings.[44] This can bring great benefits to global companies that may have employees in different parts of the world by the time a decision needs to be taken, or a document or presentation needs to be approved.[45] In this line we believe the pandemic crisis paves the way to improvements that should have been previously addressed given the access to technology that listing companies have. It was clearly possible to also implemented this in the financial markets as we have seen throughout this article.

The formation of a special taskforce was also decisive, to focus on the specific challenges brought by the pandemic and to assess the Covid-19 situation and its potential impact on the relevant participants of the US financial markets since it is of vital importance to help them continue with business activities that keeps the economic system alive. During the crisis, expertise and experience became increasingly important. Providing fast responses and reacting quickly may make the difference between a longer and deeper crisis and a successful recovery where markets and businesses survive. Providing liquidity to the money market sector and understanding when more flexibility is needed in measures and requirements is vital to stabilise the financial system and to keep the market environment calm in order to return to normality as soon as possible. As discussed, the SEC had to step up in other scenarios during previous crises. Its intervention was key to set the game rules in order to take markets out of the crises, and it proves the importance of having a dedicated organisation for the oversight and regulation of financial markets like the SEC. Even though the Covid-19 pandemic was originally a public health crisis that affected almost every industry and resulted in lockdowns in most countries, it is also likely to trigger a financial crisis such as the dot.com crisis in 2000 and the 2008 global financial crisis. The evidence suggests that fast responses and temporary reliefs have been playing a crucial part in the regulatory activities of the SEC which needs to react quickly and provide certainty in catastrophic events. Clearly, the Covid-19 pandemic has tested the capabilities of the SEC

[42] SEC, Release No.34-89188 (7 July 2020) available at: *https://www.federalregister.gov/documents/2020/07/07/2020-14487/self-regulatory-organizations-financial-industry-regulatory-authority-inc-notice-of-filing-and* [Accessed 11 October 2021].

[43] Susan Lund, Anu Madgavkar, James Manyika and Sven Smit, "What's next for remote work: An analysis of 2,000 tasks, 800 jobs, and nine countries" (McKinsey & Co, 23 November 2020) available at: *https://www.mckinsey.com/featured-insights/future-of-work/whats-next-for-remote-work-an-analysis-of-2000-tasks-800-jobs-and-nine-countries#* [Accessed 11 October 2021].

[44] Emily Bary, "Zoom, Microsoft Teams usage are rocketing during coronavirus pandemic, new data show" (1 April 2020), *Market Watch* available at: *https://www.marketwatch.com/story/zoom-microsoft-cloud-usage-are-rocketing-during-coronavirus-pandemic-new-data-show-2020-03-30* [Accessed 11 October 2021].

[45] Anita K. Krug, "Temporary Securities Regulation" (20 March 2021), *Washington and Lee Law Review* [forthcoming] available at: *https://ssrn.com/abstract=3808662* [Accessed 11 October 2021].

to understand drastic market changes and to set effective strategies to minimise damages and mitigate risks, which provides valuable lessons for financial authorities around the world.