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UPDATED: COVID-19 Compliance and Legal Considerations for Asset Managers

As the world responds to COVID-19, we have identified a wide variety of compliance and legal considerations for asset managers. We previously summarized a select list of these considerations on March 18, 2020. Given the fast-evolving nature of the issues and the growing unpredictability of the extent and duration of the crisis, we have expanded on our original note.

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General Operations and Compliance Considerations

In response to government actions (summarized below), many asset management firms, like financial businesses in general, adopted far-reaching "work from home" policies. While firms with significant client or customer interaction or complicated operational processes (whether trading, operations or other functions) would appear to be at risk of some disruption, we have heard almost uniformly positive reports. To date, it appears most firms are managing their operations smoothly. That said, firms must exercise continued high levels of care to ensure these positive reports continue. As current circumstances extend in duration or expand in scope, the goal will be ensuring remote working protocols do not become strained.

Per our informal survey, nearly all asset management firms have said they formally activated their business continuity policies. Now, firms are thoughtfully evaluating how actual events tested preparedness. (See our discussion of business continuity issues below.)

Already we have the following "lessons learned":

- Compliance officers recognize that a dramatic rise in remote operations also means they must evaluate whether to adapt normal surveillance and supervision tools to the current environment.
- Compliance officers must coordinate with both senior executives and line managers to ensure all personnel understand that daily compliance monitoring and supervision must be as strong as ever, notwithstanding dramatic changes in the workplace.
- Asset management firms rely heavily on third parties, from technology providers to valuation services to administrators and custodians. These vendors likewise are under operational and compliance stresses. Staying in close contact with vendors and continuously assessing their service capabilities, and the additional security protocols they have implemented, is critical.

Privacy and Information Technology

Asset managers must continue to comply with all applicable privacy and information technology laws when implementing work from home policies. Compliance officers are coordinating with information security teams to ensure that the much higher number of remote staff and increased demands on network functionality do not compromise cyber-preparedness. This follows a COVID-19 alert from the U.S. Department of Homeland Security addressing heightened cyber risk in remote work situations. Read the alert.

Precautions to consider include:

- Stress testing information technology systems;
- Ensuring information technology personnel are ready to respond to the increased workload;
- Updating networks and equipment used for remote work with the latest software patches and security updates;
- Implementing multi-factor authentication;
- Closely monitoring cybersecurity threats, including COVID-19 phishing scams; and
- Reminding personnel of cybersecurity policies and threats, including prohibitions on using personal email.

Business Continuity Plans

The COVID-19 outbreak has required asset managers to reconsider their compliance obligations as they operate during a business continuity event. On March 25, 2020, the staff of the U.S. Securities and Exchange Commission (SEC) published guidance regarding disclosure and other securities law obligations that companies should consider during business and market disruptions.

Much of the guidance poses a series of questions companies can ask themselves to assess the commercial impacts on their business and, from that, to assess the quality and timeliness of their public disclosures. Among those questions: Has the company experienced challenges in implementing its business continuity plan? Does the company foresee material expenditures to do so? Does the company face any material resource constraints in implementing those plans?

While the guidance is not a rule and has no legal force or effect, it reflects the current views of the SEC's staff. Read the SEC staff's disclosure guidance.

Consistent with this and other SEC staff guidance, asset managers should:

- Review their business continuity plans;
- Reconsider whether business continuity plans contemplated an extended remote working environment;
- Document any revisions to those plans and the reasons for such revisions;
- Ensure key personnel are properly prepared for long-term remote working;
- Establish alternative internal and external modes of communication;
- Ensure their key service providers have adequate business continuity plans in place; and
- Consider establishing a COVID-19 task force to respond to any emergent needs and plan for an extended period of remote working.

We also summarized guidance that regulators on both sides of the Atlantic provided for banks and broker-dealers considering their business continuity responses. Read our recent alert based on guidance in the United States, the United Kingdom and the European Union.

Employment and Executive Compensation

COVID-19 and related governmental orders are forcing many businesses to operate with reduced staff, with some concluding that employee layoffs are necessary. Companies considering employment actions are working with counsel to address such issues as:

- The scope of legal notice to which employees may be entitled prior to termination;
- How to conduct terminations while working remotely;
- Reclaiming company property and confidential information;
- Final employee payments and separation pay;
- Insurance programs; and
- Workers' compensation.

Read our recent alert discussing these and other considerations.

The COVID-19 outbreak also has been occurring simultaneously with the annual incentive award cycle of many companies. Companies must now assess how to address incentive payments in the rapidly changing environment. Read our alert discussing the

key considerations for companies and their boards as they navigate issues including grant timing and pricing, long-term incentive targets, annual bonus programs, and employee messaging.

CARES Act

The Coronavirus Aid, Relief and Economic Stability Act (the CARES Act) was signed into law on March 27, 2020, and includes a nearly $2 trillion stimulus package designed to provide critical assistance to the U.S. economy. It is a complex, multifaceted law that is the signature U.S. legislative response to the crisis thus far.

While thorough summary of the law is well beyond the scope of this note, some highlights that may be of interest to asset managers are as follows:

- The CARES Act suspends the application of Section 131 of the Emergency Economic Stabilization Act of 2008 (EESA) between March 27, 2020 and December 31, 2020.

  Suspension of Section 131 of the EESA allows the Treasury Secretary to use the Exchange Stabilization Fund to establish a guaranty program for the U.S. money market mutual fund industry (as was done during the last financial crisis).

- The CARES Act allocates $349 billion for the U.S. Small Business Administration (SBA) to guarantee loans to small businesses under the Paycheck Protection Program. The loans will be distributed using the existing framework of the SBA's section 7(a) loan program.

- The SBA moved with striking speed to begin implementation of the Paycheck Protection Program, releasing a pair of interim final rules on April 2 and April 3. We understand that at least some asset managers are reviewing these rules and considering whether their businesses (or portfolio companies in which their funds are invested) might be appropriate for support under the program.

Read our alert reviewing the scope of the CARES Act in greater depth.

Read our alert summarizing the Paycheck Protection Program (PPP)'s eligibility rules and conditions and the SBA's interim rules.

Keeping the Markets Open (and Explaining "Circuit Breakers")

We previously outlined steps that would be required to close U.S. markets. We also explained the operation of "circuit breakers" that can temporarily halt trading on U.S. exchanges on days with significant market movements. Read our alert covering these issues.

Meanwhile, in a March 26, 2020 speech, SEC Chairman Jay Clayton outlined how the SEC has focused its resources on the continued orderly functioning of the securities markets – consistent with evolving health and safety directives. He opined that the government's collective efforts have been effective, and that securities exchanges, central clearing facilities and other critical components of the market infrastructure have functioned in an orderly manner as market participants have implemented business continuity plans. Read Chairman Clayton's public statement. It also was reported that Chairman Clayton, in comments to the press, said that the SEC generally should not ban short selling. This approach is in contrast to the actions of some European and Asian regulators, who have imposed temporary short selling limits (which we describe later in this note).

Work-from-Home Orders and Other State Law Considerations

The past month various U.S. states issued detailed work-from-home and "shelter-in-place" orders. As a result, firms grappled with sometimes unforeseen questions as to which classes of their employees might be treated as "essential" and therefore allowed to come into the office. Under the most common versions of these orders, a small number of employees may work on-site to perform critical functions, such as ensuring security, processing payroll, and facilitating the work-from-home ability of other employees. In addition to terms of general application, certain orders will designate particular types of firms or industries – often including financial services – as "essential," giving greater flexibility for those firms to manage their own staffing decisions. A select list of prominent state orders are linked below:

Read New York Executive Order No. 202.7, ordering all non-essential business to reduce their in person workforces by 75%.

Read California Executive Order N-33-20, ordering all individuals living in California to stay home except as needed to maintain continuity of operations of the federal critical infrastructure sectors.

Read Illinois's Executive Order 2020-10, ordering all individuals in Illinois to stay home, except to perform certain essential activities.

Read Massachusetts's COVID-19 Order No. 13, ordering all non-essential businesses to cease in-person operation, and directing the Massachusetts Department of Public Heath to issue a stay-home advisory for two weeks.

A somewhat more "below the radar" topic has focused on when a person's work-from-home status might create a temporary place of business for the individual or the firm. As background, U.S. states can fine firms for failing to properly register or license themselves or their employees when working in the state. Some states have recognized the necessity for relief or guidance under the circumstances while others have not.

The North American Securities Administrators Association (NASAA) established a resource webpage to collect COVID-19-related updates from state and provincial securities regulators.

Meanwhile, the U.K. Financial Conduct Authority (FCA) published guidance on how financial services firms should identify key workers within their organizations. According to the FCA, firms can take the following steps to help identify key financial services staff:

- Identify the activities, services or operations which, if interrupted, are likely to lead to the disruption of essential services to the real economy or financial stability;
- Identify the individuals that are essential to support these functions; and
- Identify any critical outsource partners who are essential to continued provision of services, even where these are not financial services firms.

Read our alert outlining the FCA guidance.

Client and Investor Communications – Dos and Don’ts

A Gallup survey notes that all manner of companies are communicating with the public regarding their COVID-19 responses. According to the survey, these messages tend to be tailored to the recipients, whether employees or clients/customers, and often include a personal tone alongside expert advice.

While such communications are important to the business, they also present a variety of challenges:

- Chief among these is that the communications must be accurate and complete (or “fair, clear and not misleading” in the words of European Union regulators). That is notwithstanding swiftly changing circumstances that put pressure on the ability of a firm to understand and synthesize information and leave little time for the normal institutional vetting process.
- With so many staff working in different locations, companies risk that communications may be disjointed.
- Selective disclosures could inappropriately benefit the recipient(s) relative to other similarly situated clients or investors.

In addition to general client and investor communications, we are aware that many SEC-registered and private funds and investment advisers have had ongoing interaction these past weeks with their boards and advisory committees. These communications have covered:

- Investment performance and attribution;
- Risk analytics;

- Valuation discussion;
- Shareholder or investor sentiment and flows (subscriptions / redemptions); and
- Operational updates, including the health and safety of personnel.

Throughout, firms are thoughtfully balancing the desire to be thought leaders with consistent messaging and to stay in front of clients, who sometimes have pressing questions, against the related risks of inaccurate, incomplete, contradictory or selective communications.

Risk Disclosure Assessments and Guidance

The SEC has advised any company aware of a risk related to COVID-19 that would be material to its investors to refrain from securities transactions with the public until investors have been appropriately informed about the risk. The SEC said that companies disclosing such coronavirus-related risks should disseminate such information broadly.

On March 25, 2020, the SEC's Division of Corporation Finance issued guidance, saying that when a company becomes aware of a risk related to COVID-19 that would be material to investors, the company, its directors and officers, and other corporate insiders aware of such risks should refrain from trading in the company's securities until such information is disclosed to the public, which includes the company raising capital in private or public securities offerings and insiders buying or selling company securities.

Read our recent alert on the guidance.

Against that backdrop, we have seen the following:

- Many funds are adding new risk disclosures. Others have determined their general market risk disclosures are satisfactory as-is given the broad awareness of the ongoing crisis, and are not planning any near-term changes.
- Most frequently, any new disclosures are high-level discussions of the market and economic risks associated either with COVID-19 or with pandemic health events generally. Some firms have added heightened disclosures around business interruption risks.
- Funds and investment advisers sometimes develop more detailed and fund-specific disclosures for more exposed investment programs, e.g., taking into account a particular geographic or sector focus.
- While not investment management industry-focused, the SEC has provided detailed guidance on consideration of COVID-19 risks in the context of an issuer of securities, which we summarized in an alert.
- Looking forward, some firms may need to analyze disclosure obligations—or consider "key person" undertakings to clients and investors—in light of the illness or incapacity of personnel. These considerations will require highly fact specific judgments and will balance both traditional securities and commercial law

considerations with medical privacy rights and other factors not regularly addressed by commercial lawyers. We summarized these issues and the disclosure considerations in a recent alert.

Maintenance and Access to Customer-Facing Functionality

Firms should consider how to keep public-facing services, such as account or trading portals, fully functional when demand surges during periods of stress. At least one market participant has already faced well-publicized issues, including technical problems that allegedly prevented customers from trading during days when the markets experienced significant volatility. Among the practical issues that can arise during a service outage or slowdown is ensuring that any short-term fix or workaround neither favors nor disadvantages particular groups of investors.

Short-Selling Regulations

Regulators in a number of countries have introduced emergency regulations banning or limiting short selling. Compliance teams should coordinate with their traders to track these developing requirements. As noted above, SEC Chairman Jay Clayton has said he believes the Commission should not ban short-selling in U.S. markets.

Read four of our recent alerts focusing on these bans.

March 18, 2020: EU Regulatory Response to COVID-19: ESMA Introduces Lower Short Position Reporting Threshold

March 19, 2020: Italy Bans Short Selling and Lowers Thresholds for Material Shareholdings

March 20, 2020: Crisis Impact on Capital Markets and Corporate Law (section on ESMA Ban on Net Short Positions)

March 26, 2020: Short Sale Bans in Response to the COVID-19 Pandemic

Force Majeure and Material Adverse Effect Clauses

"Force majeure" (literally "greater force") is a legal doctrine allowing contract parties to assert that they are not required to meet their contract obligations because of significant external events outside the control of the parties that prevent fulfillment of the contract.

To illustrate the potential scope of these kinds of provisions in a global crisis, Financial Times reported that the China Council for the Production of International Trade said that as of February 21, 2020 it had issued 3,325 "force majeure certificates" covering

contracts worth more than $38 billion. We have summarized COVID-19-related force majeure considerations under English law and PRC law. Read our alert.

Material adverse effect (MAE) clauses similarly allow for parties to exit or modify contracts or particular terms of contracts based on significant events arising post-signing. These may be particularly relevant for private equity or direct lending funds based on their underlying acquisition/disposition or lending activity. The contracts and other arrangements used in those contexts can have well-developed MAE terms that could be triggered in this crisis. We recommend firms closely review any applicable MAE clauses.

New York law. With respect to lender performance obligations (including to fund advances) under a New York law governed credit agreement, the COVID-19 outbreak raises a question as to whether lenders may invoke force majeure (or similar legal theories) at common law to excuse such performance. Read our alert on impossibility and frustration of purposes, New York law's two limited bases of relief.

French Law. Read our alert on force majeure and the doctrine of imprévision under French law.

Derivatives Considerations

COVID-19 and force majeure also have specific implications for derivatives contracts. Read our alert addressing whether certain aspects of the COVID-19 outbreak could constitute a force majeure or similar event of default or termination event under various derivatives contracts including International Swaps and Derivatives Association, Inc. or other market standard master agreements. In addition, asset managers should assess the following issues with respect to their derivatives contracts:

- Exposure to Net Asset Triggers: With increased value volatility and liquidity issues (see below), there will be greater risk of net asset value fluctuations. Fund managers should closely monitor whether funds they manage are likely to hit net asset value triggers in trading documentation and proactively manage this risk with their trading counterparties to avoid trading disruptions.
- Exposure to Counterparty risk: As trading counterparties adjust their businesses due to the volatility and liquidity issues in the market, fund managers should closely monitor their overall exposure to each trading counterparty to avoid concentration issues and to assure they have adequate credit lines with multiple counterparties for products that are important to their trading strategy.

Valuation and Liquidity Challenges

Market volatility and trading dislocations can put pressure on any firm's valuation and liquidity monitoring processes. This may become especially relevant in the event of market or exchange closures, as evident earlier in the year in the unscheduled extensions of the Chinese Lunar New Year holiday.

- In the event valuation or liquidity issues arise, an appropriate response should be organized, typically with input from a firm's internal and external valuation specialists, auditors and legal and compliance departments.
- For U.S. registered investment companies or other funds with a board of directors or trustees, the fund board or the board's valuation or liquidity oversight committee might be consulted.
- Valuation or liquidity matters can require consideration of client or regulator communications and assessment of options for "side pockets" or similar approaches that specially segregate or categorize illiquid or hard-to-value assets.
- In some cases, these discussions have extended to the prospect of imposing "gates" or suspensions on redemptions from the funds involved. Any such discussion is both highly sensitive commercially and will vary depending on each fund's individual governing documents. Close and typically time-sensitive consultation is needed with a variety of parties including the fund's directors or other governance body.

March 31, 2020 marked the first month-end and first quarter-end since the COVID-19 outbreak became a global pandemic. As month-end and quarter-end dates are important events under many fund documents for a variety of valuation-related reasons, it is likely that additional questions will arise in the coming days and weeks.

Additionally, many funds are required to distribute financial statements within 120 days after the end of their fiscal year. For December 31, 2019 fiscal year funds, that 120 day period runs to April 29, 2020. Finance teams will be focused on that deadline, as will compliance officers given the corresponding U.S. Investment Advisers Act custody rule timing requirement.

Loans and Leverage Challenges

Investment companies and private funds that utilize lines of credit or other financing arrangements should confirm that they continue to comply with covenants relating to asset coverage or other ratios that could result in an event of default.

Read our alert discussing how the COVID-19 outbreak may affect both borrowers and lenders.

Read our alert on the COVID-19 outbreak's implications to liquidity, material adverse effect, and cessation of business in English law loan financings.

Read our alert highlighting issues involving debt buybacks and amendment/liability management considerations.

Read our update for borrowers and lenders in Germany.

"Defensive" Investment Strategies

Firms should consider when it is appropriate to deviate from an account's "normal" investment approach in favor of a "defensive" strategy.

- Rule 35d-1 under the Investment Company Act requires that an SEC-registered investment company with a name that suggests that the company focuses on particular types of investments, industries, countries or geographic regions to adopt a policy to invest, "under normal circumstances," at least 80% of the value of its assets in the suggested type of investments. The SEC's adopting release provides that a fund may, however, depart from the 80% requirement to take a "temporary defensive position" to avoid losses in response to "adverse market, economic, political, or other conditions."
- Of course, a firm should confirm that the fund's prospectus adequately discloses how and when a fund may invest defensively. Although the SEC has yet to provide additional guidance on the nature or length of "adverse" conditions or related temporary defensive responses thereto, funds should consider establishing a clear set of circumstances for invoking their defensive strategy and closely monitor the circumstances moving forward so that they are able to timely revert to their normal investment program once adverse conditions have been mitigated.
- Absent this kind of specific guidance, it will be necessary to carefully analyze client or customer expectations and related disclosures and contract terms. It will not always be clear that a defensive approach is warranted and it may be reasonable (or even required) to stay fully invested in the relevant strategy.

Style Drift

Style drift generally refers to changes to a fund's investment strategies that gradually evolve over time while fund disclosure documents, and other firm messaging, remain static or even become stale. In times of sudden market change, style drift can accelerate.

Before pursuing new strategies or modifying existing ones, an investment manager should evaluate whether the fund's risk disclosure documents and governing documents allow, or whether certain approvals are needed prior to, implementing those strategies. Documents aside, as a fiduciary and commercial matter, an investment manager must have the requisite expertise before pursuing a new strategy. Style drift can be the basis for claims of fraud, breach of contract, and violations of securities laws.

Zero Interest Rate Issues

Central bank stimulus efforts have driven benchmark interest rates to near or below zero in many markets.

- For asset managers that are sponsors or advisers to products that promise a minimum yield or fixed net asset values (such as some U.S. money market funds), very low interest rates can result in the need for various fund support efforts, notably including fee waivers or expense reimbursements.
- Legal and compliance teams should confirm that any such arrangements have been approved by appropriate senior decision-makers, are properly documented and comply with law and relevant product contracts, and have been vetted by accounting and tax teams to ensure they work as intended.

  Disclosure obligations should be reviewed as well.

Fund Launches

A fund sponsor commencing or soon commencing a fund launch—and particularly a closed-end fund launch—might consider building in deferral mechanisms to the fund documents in order to enable the sponsor to achieve an initial close, but not commence the accrual of management fees and the commencement of the investment program or investment period until a later date. This might enable sponsors to reach an initial closing while providing some flexibility to assess the impact of COVID-19 on investment opportunities and capital deployment schedules.

Related considerations in the current environment include whether it will be advisable to:

- Extend the fundraising period prior to a first close.
- Increase the period between a fund's first close and final close.
- Issue a revised or supplemental offering memorandum incorporating revised risk factors. This is always a consideration but requires special care during periods of rapid change and unsettled markets.
- Adapt the firm's responses to diligence requests in light of travel and other restrictions. For some investors, the absence of in-person diligence meeting might be disqualifying; for others, technological alternatives will be sufficient and "bridge the gap."

E-Signatures and Notarization

Asset managers are identifying numerous practical considerations associated with travel restrictions and broad work-from-home orders, including difficulty obtaining manually signed documents (sometimes colloquially referred to as "wet ink" signatures) and notarized signatures when those are required.

This situation has given rise to a fresh focus on the processes a firm should implement when transitioning to electronic or "e-signatures." For this purpose, an e-signature is a method of signing an electronic document that identifies and authenticates a particular person as the source of the electronic message and indicates such person's approval of the information in the electronic message. In the United States, a federal law known as

the E-SIGN Act provides for broad enforceability subject to limited exceptions that can vary in implementation on state-by-state basis. A firm transitioning to an e-signature environment should be familiar with both applicable law and relevant exceptions or conditions, as well as related practical considerations such as ensuring that electronic documents are properly protected against loss or unauthorized alteration or manipulation.

On March 26, 2020, the SEC adopted a temporary final rule that provides relief from the requirement that applicants submit a notarized Form ID prior to obtaining access to the SEC's EDGAR system, subject to certain conditions. Among those conditions are that the filer indicates on its manually signed Form ID that it could not provide the required notarization due to circumstances relating to COVID-19, and that the filer submits a PDF copy of the notarized, manually-signed document within 90 days of obtaining an EDGAR account.

Read the SEC temporary final rule.

SEC Relief for Registered Investment Advisers, Registered Investment Companies and Business Development Companies

Reporting and Filing Relief

Acting twice in March, the SEC granted, then extended and expanded, temporary relief from various filing requirements for SEC-registered investment advisers, exempt reporting advisers, investment companies and business development companies.

- Details vary, but the relief is in all cases both time-limited and conditioned on notification to the regulator and/or investors that a firm is relying on the relief.
- As a welcome change, the SEC's second version of these orders (March 25, 2020) removed requirements under the original orders that a firm explain the reasons why it is relying on the relief.

Read our alerts outlining the scope and timing of these temporary SEC orders: one alert addresses relief specific to registered investment companies and BDCs; the other alert addresses relief specific to investment advisers.

In some respects (e.g., accommodating a temporary inability to prepare and deliver mandatory reports or shifting required meetings from in-person to "virtual" formats), the SEC relief largely tracks SEC actions for public reporting companies more generally, but public reporting companies are still required to disclose the reasons why they are seeking relief from reporting requirements. Read our alert on the temporary SEC regulations for public reporting companies. The time period of relief for public companies, too, was extended on March 25, 2020. Read our alert discussing the extensions on conditional exemptions from reporting and proxy delivery.

Purchasing Assets from Affiliated Money Market Funds and Registered Mutual Funds

On March 19, 2020, the SEC staff issued a temporary no-action letter to respond to emerging liquidity issues for U.S. regulated money market funds. The letter, addressed to the Investment Company Institute, permits registered money market funds regulated under Rule 2a-7 to sell securities under certain circumstances to their affiliated persons that are subject to Sections 23A and 23B of the Federal Reserve Act. Essentially the no-action position expands on existing terms allowing affiliates to purchase assets from money market funds, while also addressing technical hurdles when those firms are regulated by U.S. banking laws.

On March 26, 2020, the SEC staff issued a similar temporary no-action letter to the Investment Company Institute, this time permitting any open-end investment company that is not an exchange-traded fund ("ETF") and does not hold itself out as a money market fund to sell debt securities to an affiliated person. The relief is subject to a number of conditions and notice requirements.

Read the no-action letter for money market funds.

Read the no-action letter for other open-end investment companies.

Borrowing and Lending Exemptions

On March 23, 2020, the SEC issued temporary borrowing and lending exemptions under an order for U.S. registered open-end funds and insurance company separate accounts registered as unit investment trusts. Under the order, these funds may:

- In the case of funds with tailored SEC interfund lending orders addressed to their fund families, temporarily expand on existing interfund lending arrangements; and
- In the case of funds without such existing orders, temporarily opt into such an order (an important act of relief on the SEC's part since it normally takes months to obtain the necessary fund-by-fund orders at issue here).

Additionally, U.S. registered open-end funds and insurance company separate accounts registered as unit investment trusts (other than money market funds) may:

- Borrow from certain affiliates; and
- Participate in certain lending arrangements or borrowings that deviate from any relevant policy recited in their registration statements.

The exemptive order will remain in effect until at least June 30, 2020. Read the temporary exemptive order.

FINRA Guidance for Broker-Dealers

The Financial Institution Regulatory Authority (FINRA) in the United States temporarily suspended various requirements applicable to FINRA firms, including notifications to

FINRA regarding remote offices. FINRA also published guidance specific to FINRA's business continuity rule in light of current events. Read our alert on these FINRA regulations and guidance,

Read FINRA's guidance.

CFTC and NFA Guidance and No-Action Letters

Similar to FINRA's guidance regarding remote offices, the U.S. National Futures Association (NFA) stated that it "will not pursue a disciplinary action against" a Commodity Pool Operator or Commodity Trading Adviser that permits or requires its staff to temporarily work from locations not already listed as a branch office. The NFA guidance specifically requires firms to consider the need for "alternative supervisory methods" and appropriate recordkeeping.

Read the NFA's guidance.

On March 20, 2020, the U.S. Commodity Futures Trading Commission's (CFTC) Division of Swap Dealer and Intermediary Oversight granted temporary, targeted no-action relief to Commodity Pool Operators (CPOs) from certain reporting requirements. The relief issued pertains to the filing deadlines for Form CPO-PQR, Pool Annual Reports, and Pool Periodic Account Statements.

Pursuant to the relief granted, the time frame for small or mid-sized CPOs to file an annual report to the CFTC is extended to May 15, 2020. The time for large CPOs to file a quarterly report for Q1 2020 is extended to July 15, 2020. CPOs with a pool annual report due by April 30, 2020 have a 45-day extension to file certified financial statements with the NFA and distribute to pool participants. CPOs with a deadline of April 30, 2020 to distribute period account statements to pool participants have a 45-day extension to comply.

Read the CFTC No-Action Letters.

On March 23, 2020 the NFA issued temporary no-action relief to CPOs from similar NFA reporting requirements provided that CPOs comply with the conditions of the CFTC's March 20, 2020 relief. NFA also granted a 45-day extension for Commodity Trading Advisers to provide NFA with Form PR, due to be filed by June 30, 2020.

Read the NFA Notice to Members.

Federal Reserve Support for Money Market Funds

In addition to the support for money market mutual funds provided by the CARES Act, the Board of Governors of the Federal Reserve System broadened its program of support for the flow of credit to households and businesses by taking steps to enhance

the liquidity and functioning of money markets. Through the establishment of the Money Market Mutual Fund Liquidity Facility (MMLF), the Federal Reserve will make loans available to financial institutions secured by assets purchased by the financial institution from money market funds. The MMLF is very similar to the Asset-Backed Commercial Paper Money Market Mutual Fund Liquidity Facility that operated from late 2008 to early 2010. The Department of the Treasury will provide $10 billion of credit protection to the Federal Reserve in connection with the MMLF from the Treasury's Exchange Stabilization Fund.

Conclusion

These volatile and unsettled times have presented, and will continue to present, novel legal and compliance considerations for asset managers. In some cases, there have been proactive governmental guidance and temporary regulations. In other cases, contracts and internal policies and procedures will control. Whatever the source of guidance, measured and thoughtful attention by legal and compliance personnel should be central to an asset management firm's COVID-19 response.

Visit our COVID-19 Resource Center to stay informed on the issues. We also encourage firms to review their local regulator's websites regularly during this period. For example, the SEC maintains a summary of operational initiatives, market-focused actions guidance and targeted assistance and relief, investor protection efforts and other work of the SEC in response to the effects of COVID-19.

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