



KEY BUSINESS AND LEGAL ISSUES TO CONSIDER

The outbreak and rapid spread of the coronavirus disease (COVID-19) has roiled markets and disrupted supply chains, threatening the global economy. It is also forcing companies to confront a host of hard questions about how they can and should conduct business during a global public health crisis.

Below, we outline questions that companies and their boards should consider as they navigate this uncertain era. Many of these questions are industry-agnostic, but all companies must also address challenges specific to the industry and regulatory environment in which they operate.

Sidley has organized a multi-disciplinary task force to address the wide range of regulatory, transactional, and litigation issues companies face in responding to COVID-19. To discuss the business and legal implications for your company, please contact one of the individuals below or the dedicated Sidley lawyer with whom you work.

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In light of the evolving situation, we are reviewing and frequently updating the information below.

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COMMON ISSUES

Antitrust

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- Collective action
 - What limitations do businesses face in communicating or coordinating with their competitors in developing a collective response to COVID-19?
 - If shortages develop, can suppliers coordinate their production and sale of goods and services?
 - To what extent can ordinary limitations on coordination be overcome at the urging of public health authorities?
- Distribution and preferences in times of supply chain disruption
 - If a company is unable to produce enough output to satisfy demand for its products, what limitations does it face in allocating its production among its customers?
 - To what extent can companies use pricing adjustments to clear markets without being accused of price gouging?
 - Where firms face supply chain disruptions for key inputs, what steps can they take to ensure adequate supply without disadvantaging rivals?

Contractual Breach and Supply Chain

Contacts: U.S. [Tai-Heng Cheng](#), [Yvette Ostolaza](#)
Europe [Dorothee Schramm](#); [David Roney](#)
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- What steps should a company take if it cannot supply its customers?
- Does the COVID-19 outbreak constitute force majeure and excuse non-performance of commercial contracts? For cross-border transactions involving a particular country severely impacted by COVID-19, how long can a party seek to avoid performance as a result of COVID-19?
- When should a force majeure notice be issued and what steps should be taken in response to a force majeure notice? How does COVID-19 affect “Time of the Essence” clauses in contracts?
- Who is responsible for losses when a supplier cannot supply a customer due to the COVID-19 outbreak?
- In the event of a disagreement about responsibility for loss, what is the most efficient way to resolve the disagreement?
- What steps should a company take if threatened with litigation over a supply chain disruption?

Employee Benefits and Executive Compensation

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- What are the implications under health and welfare plans if an employee is no longer working due to the COVID-19 outbreak?
- If employees lose health and welfare plan coverage in connection with leaves related to the COVID-19 outbreak, can a company waive plan requirements and continue coverage? If not, is the employee entitled to COBRA benefits?
- Do health plans cover (or are they required to cover) COVID-19 testing or treatment? If so, under what cost-sharing arrangements?
- Must companies provide disability pay to their employees if they are unable to come (or prohibited from coming) to work due to the COVID-19 outbreak?
- What else can companies do to help employees impacted by COVID-19? Can they allow employees to take a hardship distribution from their 401(k) plan for expenses or other financial hardships? Can companies permit employees to contribute vacation or leave time to other employees impacted by COVID-19?
- What is the financial and other impact under contracts with third-party plan service providers if they are unable to perform their services due to COVID-19?

Government Contracts, Grant Agreements, Cooperative Research and Development Agreements, Other Transaction Agreements

Contacts: [Michael A. Nemeroff](#), [Howard J. Stanislawski](#)

- How should companies understand the details and risks of emergency programs made available under the CARES Act, including the Payroll Protection Program and Emergency Industry Disaster Loans? Are there differences for public companies, private equity and venture capital firms or service providers?
- What is the significance and use of the Defense Production Act?
- What considerations are key for companies in connection with new joint ventures, contracts with federal agencies, grants from federal agencies, Cooperative Research and Development Agreements (CRADAs), Other Transaction Agreements (OTAs), including in emergency situations?
- How should companies deal with requirements of sole source contracts and related justifications, emergency procurement considerations and unsolicited proposals?
- How should companies handle the requirement that key provisions of prime government contracts and grant agreements be flowed down to new subcontractors or sub-grantees?
- How should companies prepare now for potential audits of PPP loans, government contracts and agreements?
- What do companies need to understand from the outset about the applicability of government contract and grant Cost Principles for recovery of costs from government?
- How can companies emergently contracting with the government obtain maximal protection of proprietary technical data and computer software?

- What mechanisms exist to enable recovery of additional compensation from the government, such as Changes clauses, Requests for Equitable Adjustment, formal claims, Stop Work provisions and Terminations for Convenience?

Intellectual Property Litigation

Contacts: [Jeffrey P. Kushan](#), [John W. McBride](#)

- What are the best practices for companies to protect trade secrets and other intellectual property when dealing with work-at-home orders and a remote workforce?
- What IP liability may attach to donated materials or equipment?
- What are the implications of contributing a company's intellectual property (e.g., repair manuals, operating manuals, design documents) to public repositories or institutions to support efforts to combat COVID-19?
- What IP investigation and analysis should companies undertake in connection with the fabrication of personal protective equipment, medical supplies, parts, etc.?
- What are the IP implications of the U.S. Government directing or encouraging companies to manufacture COVID-19 resources (e.g., Defense Production Act, 28 USC § 1498)?
- What are the best ways to structure temporary or limited scope licenses to intellectual property in connection with COVID-19?
- How should companies protect pharmaceuticals that hold promise for treating COVID-19?

International Trade

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Europe [Iain Sandford](#), [Arnoud R. Willems](#)

- What steps should a company take to prepare for import/export clearance delays caused by regulatory actions taken by governments?
- How should a company leverage existing supply chain security programs (e.g., C-TPAT, AEO, etc.) to help facilitate clearance?
- Has a State imposed trade barriers (explicit or disguised) in the name of taking action on COVID-19?
 - For example, have restrictions on movement of persons been imposed in a manner that appears to discriminate between populations that give rise to the same risks? Or has movement of goods been subjected to undue restrictions?
- Has a State modified import requirements for goods related to COVID-19 treatment and prevention to assist in entry processing?
- Has a State increased its enforcement of health and safety regulations for goods related to COVID-19 treatment and prevention?
- Has a State imposed export restrictions on goods related to COVID-19 treatment and prevention?
- Will the new EU investment screening or the CFIUS rules apply to the transaction or investment?

- As a result of the economic downturn, have your competitors in other countries benefited from unfair government subsidies or other benefits provided to help increase exports?

Labor, Employment and Immigration

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 Europe [Susan Fanning](#)

- When should employers reopen and how can they do so safely?
 - What are legal obligations to provide a safe and healthy workplace?
 - How do employers implement CDC, EEOC, and state and local public health protocols and guidelines, especially if there is inconsistency between the various governmental authorities?
 - Can a company force employees to stay home if they show symptoms or have traveled to affected areas? What are the rules about paying them?
 - Can a company refuse to allow vulnerable employees to return to work if they want to be at the workplace?
 - What are the rules for testing before employees enter and the social distancing rules once they do enter the workplace?
- How should employers handle employees who are working remotely?
 - How should employers handle employees who refuse to return or are afraid to return to work? What are the rules for sick pay, leave of absence, reasonable accommodations and business expenses?
 - What should a company do if an employee claims he or she was exposed to Covid-19 at work?
 - What is a company's obligation if an employee complains that a fellow employee is not social distancing?
 - How do companies comply with wage and hour laws when employees are working remotely?
 - How can companies avoid "slippery slope" arguments when the health crisis abates (e.g., making sure temporary work from home doesn't become permanent)?
- **I-9 Hiring Process:** How can employers best navigate I-9 verification requirements in the hiring process for remote workers and as part of return-to-work protocols?
- **Disability/Reasonable Accommodation**
 - Is COVID-19 a disability under state/federal law that has to be accommodated?
 - How should employers deal with employees who have asthma or other conditions that make them higher risk for complications?
- **Discrimination or Harassment:** How should companies handle possible issues around discrimination/harassment based on disability, or race/national origin perceived to be affiliated with an affected area?

- **Tort Liability:** May companies be held liable if an employee infects others with the COVID-19 virus?
- **Travel Bans:** How should companies plan for and handle employment disruptions caused by COVID-19-related travel bans? How can companies obtain waivers from the travel ban for essential workers?
- **Immigration Compliance:** How can companies plan proactively to avoid lapses in status and compliance issues in visa and immigration processes for foreign national employees in remote work situations, in furloughs and reduced hours conditions, and under return-to-work protocols?

Privacy and Information Security

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- What information can companies require their employees to disclose about their health status and symptoms, travel plans and history, exposure of family members, non-work activities and possible risk of exposure?
- What employee information can be shared in compliance with the Americans with Disabilities Act (ADA), Health Insurance Portability and Accountability Act (HIPAA), other federal law and state privacy laws?
- Can an employer take employees' temperatures or collect other health-related data directly or indirectly?
- Can employers offer or require that employees be tested for presence of COVID-19?
- Can employers require use of applications to track COVID-19 exposure or symptoms associated with the virus?
- What information can companies collect from third parties and open sources about employees' and others' health and risk of exposure?
- What personal/health information can companies request from state and federal health authorities, and what are the considerations about how this information can and should be further used and shared?
- Are there statutory, regulatory or contractual restrictions on any data collection, processing or dissemination contemplated to address COVID-19 risks? What are the risks of these activities?
- Are existing privacy disclosures and international data transfer mechanisms adequate to address any new data collection and analyses?
- Is a privacy impact assessment, or a security risk assessment, required or advisable for any new data-related activities?
- What confidentiality or other privacy considerations bear upon identifying the names of the infected or exposed to other employees, third parties, the public or governmental authorities?
- To the extent employees who do not ordinarily work remotely must do so in light of COVID-19, are proper information security measures and monitoring in place to ensure information is appropriately secured?
- Is your business prepared to support and ensure the enforceability of electronic signatures, transactions and records as the business operates remotely?

- Has the business considered the cybersecurity and records management considerations of return-to-work transition planning?

Public Health Emergency Authorities

Contacts: [Rebecca K. Wood](#)

- What are government (federal, state and local) guidelines, recommendations, and requirements relating to COVID-19 prevention, reporting, and response activities?
- How do these authorities interact with each other? Does federal law preempt these authorities?
- What are the enforcement actions and possible penalties for violations?
- What information must or should be reported to the various state and federal authorities pursuant to government (federal, state and local) mandates?
- What are the best strategies for interacting with public health authorities regarding the measures your business has in place to respond to COVID-19?

Tax Implications

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Europe [Dr. Roderic Pagel](#)

- What is the impact of changes in tax law included as part of stimulus packages and what are the requirements for qualifying for the tax relief in those packages?
- How should recent changes in tax law be addressed in transactional documents such as equity purchase agreements or credit agreements? Should previously executed agreements be revisited in light of these changes?
- What are the tax consequences associated with modifications or cancellations of contractual obligations?
- What are the tax consequences of debt modifications and exchanges or other capital restructurings and of debt forbearance (including on REMICs and other securitization vehicles)?
- To what extent do work from home requirements or travel restrictions expose businesses to taxation in jurisdictions in which they have not previously been subject to tax?
- To what extent do remote and work from home arrangements affect sourcing of income?
- What are the tax consequences of providing loans to employees, shareholders, suppliers or others who are cash-strapped?

White Collar: Government Litigation and Investigations

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Asia Pacific [Yuet Ming Tham](#)

- Has the company engaged in a risk analysis to identify potential compliance and regulatory risks to the business resulting from COVID-19, and is the company positioned to address these risks?

- What are the best practices for a company to ensure its continued compliance in a remote work environment with regulatory frameworks across multiple jurisdictions, such as, anti-bribery, AML, Sanctions, data privacy/cybersecurity, and unfair competition?
- How does a company best communicate to employees its “tone from the top” on continuing to maintain a strong compliance culture?
- How does a company effectively conduct an internal investigation using a remote working arrangement?
- How does a company effectively respond to government authorities’ requests for documents, or cooperate with government authorities in supporting their ongoing investigations, with all parties involved working remotely?
- What compliance due diligence should a company focus on in acquiring targets in countries heavily affected by the pandemic?
- How should a company conduct effective or enhanced due diligence to assess a third party’s compliance risks in the current pandemic?
- What are the company’s touch points with the government in light of newly enacted/issued regulatory frameworks to address COVID-19, including in connection with relief obtained under the Coronavirus Aid Relief and Economic Security Act (the “CARES Act”)? What is the company’s plan to prevent any misuse of funds, fraud, or other misconduct potentially arising under these new regulations?

CORPORATE AND TRANSACTIONAL CONSIDERATIONS

Capital Markets

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- Based on its individual circumstances or the industry in which it operates, is the company able to access the capital markets and, if so, what level of disclosure on the impact of COVID-19 on its business will be required for it to do so, both historically and prospectively, and what diligence is appropriate to support that disclosure?
- What has been the financial impact of COVID-19 on the company’s financial condition, liquidity, results of operations and/or prospects to date and what financial impact is likely going forward? Are material impairments, increases in allowances for credit losses or restructuring charges expected? Have any control issues been identified?
- What has been the operational and financial impact on the company of any office or facility closures, remote work arrangements, business continuity plans, supply chain disruptions or travel restrictions arising from COVID-19?
- Is there continued availability under existing funding sources, is the amount of available funding sources considered adequate in light of the COVID-19 impact and have the terms of those funding sources become more onerous to the company? What is the cushion in the company’s financing covenants to absorb the COVID-19 impact going forward?

- Is the company reliant on the commercial paper market and is that market continuing to function normally? What alternatives are available to the company if the commercial paper markets fails to continue to function normally?
- Are there meaningful differences in the terms of borrowings and the assets purchased with proceeds from those borrowings? For secured debt, is the value of the company's collateral subject to significant fluctuations that have resulted, or could result, in margin calls or requirements to post additional collateral?
- For equity offerings, has the company withdrawn, or does it intend to withdraw, its earnings guidance? If not, does the company's current earnings guidance take into account the actual or likely impact of COVID-19? If not, is the company prepared to adjust its earnings guidance prior to, or contemporaneously with, the particular securities offering?
- For debt offerings, has the actual or likely impact of COVID-19 been discussed with the rating agencies? If so, have the credit ratings been affirmed or has a downgrade or negative outlook been discussed? If no action is imminent, what is the cushion in the company's financial metrics to avoid an adverse rating agency action from such impact going forward?
- Are any of the COVID-19-related risks covered by risk insurance?

Corporate Governance

Contacts: [Holly J. Gregory](#), [John P. Kelsh](#)

- What steps should companies take to ensure that their board is kept informed and satisfying its fiduciary duties, both as a matter of oversight and in the context of board actions?
- How assertive should boards of directors be in taking control of the corporate response to the COVID-19 outbreak from management?
- What are best practices for business continuity plans and crisis management procedures? Should companies form COVID-19 task forces to monitor developments? Who should be on the task force?
- Has company management, with support of a risk management system, identified risks to the business from COVID-19 and is the board positioned to provide appropriate oversight of those risks?
- Is the board's emergency succession plan up to date with a person identified who can step in immediately as interim CEO in the event the CEO contracts COVID-19? Are plans in place for other key persons?
- Does the board have a plan in case one or more directors contracts COVID-19? For example, at what point should the board increase its size and appoint persons to fill vacancies?
- Does the company have the ability to exclude persons from a physical annual meeting venue who are showing symptoms of COVID-19?
- What steps can companies take to prepare for the possibility of shareholder activism in the current environment? Does the company have a poison pill "on the shelf" that is ready for adoption if deemed advisable by the board?

Investment Fund and Investment Adviser

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Europe [Stephen J.D. Ross](#)

Asia Pacific [Effie Vasilopoulos](#)

- How to manage fund inflows and outflows in light of the potential impact of COVID-19 (i.e., closings, capital calls, redemptions, restructuring).
- How to adequately disclose the material risks related to the evolving impact of COVID-19 on the fund's business. For mutual funds, at what point is an amendment to Form N-1A required? Should that filing be made pursuant to Rule 485(a) or (b)?
- Has the investment adviser reviewed its business continuity/disaster recovery plan in light of its fiduciary duties as noted in specific guidance issued by the U.S. Securities and Exchange Commission (SEC) and the National Futures Association (NFA)?
- What factors should investment advisers consider when determining how and when to update their Forms ADV in light of the potential impact of COVID-19 on the adviser's business? Assuming new disclosure is warranted, must the amendments be made "promptly" in an "other than annual" Form ADV amendment, or can amendments be made at the next regular update?
- How are requirements around regulatory filings evolving (e.g., Form PF, Form CPO-PQR, Form CRS, Form PR, privacy notifications)?
- What COVID-19 government resources are available to investment managers and their portfolio companies? What conditions and potential ramifications apply?
- Are there specific regulatory requirements under the Investment Advisers Act or the CFTC/NFA rules that apply to investment advisers who are considering implementing permanent work-from-home arrangements?

Leveraged Lending

Contacts: U.S. [Angela Fontana](#), [Robert J. Lewis](#)

Europe [Dr. Markus Feil](#), [Bryan Robson](#)

- What due diligence questions should banks and other lenders be asking about COVID-19 ahead of any proposed new funding?
- What steps should borrowers and lenders take if financial or other covenant breaches are anticipated due to COVID-19?
- Does the outbreak trigger a material adverse effect condition precedent to new extensions of credit or as an event of default trigger?
- Does the financing documentation provide baskets/exceptions that allow for government relief programs to be utilized without a waiver?
- What is the liquidity runway for the borrower group?
- Does the financing documentation contain a cessation of trading event of default, which would be tripped as a function of a local lockdown?

- What EBITDA add-backs and pro forma adjustments can a borrower make to stabilize EBITDA during the affected period?

M&A

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- In the event of a pending agreement to acquire another company, does the outbreak trigger a material adverse effect (MAE) under the acquisition agreement?
- What steps can companies take with respect to contracts that have not yet been signed to protect against the outbreak triggering walk-away or suspension rights for counterparties under force majeure or material adverse effect provisions?
- Does the governing law make a difference in how COVID-19 is treated for purposes of force majeure or material adverse effect provisions in commercial or acquisition agreements?
- What kinds of protections can companies negotiating acquisitions or in need of debt financing expect its lenders to ask for against COVID-19 risk in the context of their lending commitments?
- What questions should companies be asking in due diligence about the impact of the outbreak on targets?
- Should companies ask for additional representations or warranties in light of the outbreak? How should closing conditions and MAE provisions be structured?
- What expectations should companies have about the timing of regulatory or other approvals in affected jurisdictions (such as China)? Should companies make changes to how their termination provisions (including the “drop dead” date) work?
- What price structuring alternatives should buyers consider to protect against overpaying for target businesses or assets that may lose value in the sign-to-close period as a result (direct or indirect) of the COVID-19 outbreak?
- What can companies do prior to beginning a sale to address potential buyer concerns about doing a transaction at this time?
- What due diligence review should purchasers of targets in Mainland China with supply or services agreements in China or Hong Kong carry out to assess the impact and potential legal liabilities as a result of the outbreak?

OTC Derivatives

Contacts: [Kate L. Lashley](#), [Sara N. Shouse](#)

- Does COVID-19 or any declaration of a state of emergency stemming from COVID-19 trigger a force majeure event under the 2002 ISDA Master Agreement?
- Can a force majeure event trigger an acceleration and thus a breakage payment becoming due under the 2002 ISDA Master Agreement?

- What constitutes a trading disruption and/or what actions would constitute market disruptions that would affect the valuation and settlement terms of an over-the-counter derivative transaction?
- If markets are closed or trading is disrupted on a day in which a trading contract terminates, expires or settles, how will that contract be valued and/or settled?
- If an exchange floor is closed, would that constitute a market disruption under any ISDA-published definitions (e.g., the 2002 Equity Definitions, the 2005 Commodity Definitions, the 2006 ISDA Definitions, the 1998 FX and Currency Option Definitions)?
- What institution(s) determines when trading markets will be suspended and for how long can markets be suspended?
- What regulatory relief has the U.S. Commodity Futures Trading Commission (CFTC) and the National Futures Association (NFA) issued in light of the impact of COVID-19 on business operations?
- What relief have US and global regulators provided in connection with upcoming compliance deadlines relating to initial margin requirements for uncleared derivatives?
- Are there any regulatory reporting requirements triggered if a swap dealer or other CFTC-registrant or NFA member implements a teleworking plan or activates its Business Continuity Plan for purposes other than testing?

Public Company Compliance

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- How can companies draft their risk factors to effectively disclose the material risks related to the impact of COVID-19 on their business?
- How should COVID-19-related financial performance impact evaluations of materiality, both quantitatively and qualitatively?
- Is the impact or potential impact of COVID-19 on a company a “known trend” requiring disclosure in the liquidity section or elsewhere of a company’s next MD&A?
- Are there any material contingencies associated with COVID-19 that require disclosure?
- Should a company file a Form 8-K to disclose the recent operational or other impacts of COVID-19 or to update its risk factor disclosure?
- How should a company consider the questions posed in the Division of Corporation Finance’s [March 25 guidance](#) when drafting its first quarter Form 10-Q?
- Does a company’s forward-looking statement disclaimer adequately protect the company for the statements it makes regarding the expected impacts of COVID-19?
- How should a company frame its earnings guidance with respect to the current quarter and upcoming quarters? Should companies cease earnings guidance entirely?

- If a company issued 2020 earnings guidance in advance of the February outbreak, what considerations should prompt it to retract or modify its guidance, and what is the best way to do so?
- Can a company present non-GAAP financial measures that adjust for COVID-19 impacts in its first quarter earnings release?
- Do companies need to add disclosure related to the board's oversight of COVID-19 risks in their proxy statements?
- Does the drawdown of a revolving credit facility require disclosure under Form 8-K Item 2.03?
- Should companies take advantage of the SEC order granting an additional 45 days to meet Exchange Act reporting obligations for reports due between March 1 and July 1?
- Should companies reschedule their annual meetings or switch to a virtual meeting as a result of recent CDC guidance and travel restrictions related to COVID-19?
- Should companies preserve the right to switch to a virtual meeting even if they expect to hold a physical meeting at the time they mail their proxy statements?
- For companies continuing to plan for an in-person meeting, who are the minimum necessary company in-person attendees? What if those people become ill? Can other company attendees participate by telephone? Can companies impose health screenings for shareholder attendees?
- How does a company make a shareholder list available for inspection prior to the annual meeting if the company's offices are closed?
- Can companies share non-material, non-public information related to the impact of COVID-19 with their customers and other constituents?
- Do companies need to close their insider-trading windows? Can executive officers and directors purchase stock?
- Can companies institute or continue share buybacks?
- Can a company terminate an existing Rule 10b5-1 repurchase plan? If it does so, must it wait some period of time before initiating a new repurchase plan?
- Can a company suspend dividends to shareholders in order to preserve cash?

Structured Finance and Securitization

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 Europe [Rupert Wall](#)

- What are a securitization issuer's disclosure requirements related to COVID-19?
- What flexibility do receivables servicers have to defer or modify obligor payments due to COVID-19 without the consent of noteholders or rating agencies?

- Where originators are forced (or otherwise choose) to provide payment holidays on underlying securitized receivables streams, how should financiers (in private securitisations) and noteholders (in public securitisations) regard and treat the resulting payment moratoria?
- Does the outbreak constitute a force majeure event that excuses servicer performance?
- Are warehouse facilities or private securitizations subject to drawstop or early amortization events due to disruption caused by COVID-19?
- Can arrangers rely on material adverse change to market conditions to prevent a capital markets take-out?
- Is the seller's ability to originate new assets for a revolving or master trust securitization impaired and will this cause a termination of the revolving period?
- Does the sponsor or originator have continued access to information required to comply with securitization transparency and disclosure obligations, including statutory obligations?
- Do any custodians or paying agents have the right to suspend performance due to force majeure or market disruption?
- If a default or acceleration were to occur in respect of a securitization, could it trigger a cross-default under any of the seller's other financing lines?
- Has the securitization issuer appointed a back-up servicer or special servicer which has the capacity and experience to service defaulted receivables?
- Are any of the securitization bonds eligible for central bank asset purchase programs, for example are the bonds eligible marketable assets under the ECB collateral framework?
- Are there any overarching regulatory requirements that arise as a result of the market dislocation (such as notification of drops in NAV > 10%) or COVID events?

INDUSTRY-SPECIFIC ISSUES

Broker-Dealer

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 SEC-Related Issues [Stephen L. Cohen](#), [Thomas J. Kim](#), [David S. Petron](#)

- How should broker-dealers' representatives and supervisors working from home honor their obligation to register branch offices with FINRA on Form BR and inspect branch offices?
- How do FINRA and the SEC treat new workplace collaboration and communication tools under the books and records rules?
- What are the SEC and FINRA's cybersecurity expectations for remote work locations?
- In light of the SEC's and FINRA's decisions regarding postponing implementation dates for new rules, e.g. Consolidated Audit Trail (Yes) and Regulation Best Interest (No), are they showing additional flexibility?

- What should a firm's response be to communications and systems failures while working remotely and how should this be documented and communicated?
- How, if at all, does working remotely, and the potential added latency resulting therefrom, factor into the firm's best execution obligations and surveillance?
- Will the SEC implement a ban on short selling, similar to what is happening in Europe?
- How are FINRA and the SEC reviewing business continuity and market volatility issues in their exam programs?
- How should you address your firm's COVID-19 difficulties in dealing with enforcement and examination issues?
- Will the SEC still proceed with testimony and meetings?
- Should the SEC consider the importance of the matter and potential harm to firms in light of the impending recession and business issues?
- How are FINRA and SEC enforcement staff addressing alternatives to document production when hard-copy documents may not be accessible?
- What alternatives are available to in-person testimony in the current environment?
- What relief are the regulators providing for wet signature requirements for regulatory submissions?
- How are regulators dealing with fingerprinting and registration examination requirements?
- What are the implications of having physical securities certificates held in inaccessible vaults?
- What are the regulatory consequences of accepting a PPP loan?

Consumer Products and Services – Class Actions

Contacts: [Amy P. Lally](#), [Eric S. Mattson](#), [Kara L. McCall](#)

- What statements about the COVID-19 virus (or a product's ability to prevent the virus) can a company include in its labeling, marketing or other public-facing materials?
- What options does a company have if a competitor is making false statements about the competitor's product with respect to the COVID-19 virus?
- What options does a company have if a competitor is making false statements about the company's product with respect to the COVID-19 virus?
- If a consumer service provider may no longer maintain a brick and mortar service location because of COVID-19, may it alter the method of transmission for its services (e.g., provide online services) in lieu of refunding service payments or canceling subscriptions? Does the answer depend on the type of service being provided?
- Can retailers continue to sell products online if their brick and mortar locations are closed because of COVID-19? If so, what extra precautions should be taken?

Drug, Biotechnology and Medical Technology

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Asia Pacific [Lei Li](#)

- How should drug, device and medtech companies address product shortage issues with National Competent Agencies ("NCAs")?
- How should manufacturers navigate NCAs' pathways to develop medical countermeasures to diagnose, prevent or treat COVID-19?
- How are NCAs' inspections being affected by COVID-19?
- What are the 'short-cut' pathways available to get access to the market for COVID-19 treatments or necessary medical devices to treat COVID-19 patients and the scope of those pathways?
- How does COVID-19 affect the conduct and results of ongoing clinical trials?
- How can COVID-19 affect IP regulatory rights?
- How should manufacturers (or others) report fraudulent claims that a product prevents, treats or cures COVID-19?
- What is the role of the World Health Organization (WHO) in addressing COVID-19 and how do I interact with the WHO if I have a promising therapeutic/vaccine/diagnostic?
- Will NCAs be changing deadlines (e.g., US-FDA for end of enforcement discretion, PDUFA dates) in light of COVID-19 considerations?
- What are the guidelines and regulatory requirements for importing medical supplies from other countries into the national markets (in federal states from both the federal government level, e.g. the US-FDA, and the state level)?
- Does the FFCRA Act cover medical research related to COVID-19? How?
- What are the Chinese and Indian government's policies and regulatory requirements for exporting medical supplies to other countries?
- What does a COVID vaccine clinical program and regulatory pathway look like due to the desire to have accelerated approvals?
- How to handle the fluid EUA and IIE guidance from FDA on testing kits, PPE and other diagnostic products.

Energy and Infrastructure

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- For an LNG vessel, what are the implications if a port or other government agency will not allow a vessel to call as a result of an allegation of COVID-19 on the crew? Who pays demurrage?
- For financial contracts not dependent upon a particular asset's performance (e.g., power sales agreements), does COVID-19 provide an excuse to performance where general contract excuse, including force majeure, would not?

Environmental

Contacts: [David T. Buente, Jr.](#), [Timothy K. Webster](#)

- If your company engages in any of the following activities, have you consulted [EPA's List of Disinfectant Products](#) for the specific products qualified by EPA under the Federal Insecticide, Fungicide, and Rodenticide Act for use against the COVID-19 virus?
 - Manufacture, sale or distribution of any product that makes claims in packaging, labeling or marketing materials (including online materials) that the product can kill the COVID-19 virus
 - Manufacture, sale or distribution of any product intended to kill the COVID-19 virus
 - Import or export of any product that makes claims that the product kills the COVID-19 virus and/or is intended to kill the COVID-19 virus
 - Filing for EPA registration of a product intended to kill the COVID-19 virus
- If you are a registrant or distributor of a registered pesticide product, has your product been approved by EPA to make "emerging viral pathogen" claims on the master label for enveloped viruses, per EPA's 2016 [Emerging Viral Pathogen Guidance](#)?
- What legal issues should companies that import, export or otherwise distribute or sell any raw materials or other chemical inputs that are intended to be incorporated into a product intended to kill the COVID-19 virus consider?
- What legal issues should companies that are engaged in testing products intended to kill the COVID-19 virus consider?
- Under what circumstances does the impact of the COVID-19 virus on business operations constitute a force majeure event under a federal Consent Decree or other consent order?
- Has EPA issued any guidance on compliance with the Toxic Substances Control Act (TSCA) lead paint rules given the shortages in wipes and masks available to installers and renovators?
- Is your company the manufacturer, importer or distributor of a pesticide device that is making efficacy claims related to COVID-19?
- Does your company repair, renovate or paint homes/child-occupied facilities built pre-1978? Alternatively, is your company a professional renovator covered by EPA's lead safe work practices regulations/requirements? Does your company have backup supplies sufficient to meet the lead safe work practices for the foreseeable future?

- Is your company installing on-site waste bins for personnel (or customers) to dispose of gloves, disinfecting wipes, masks or other personal protective equipment that have been in contact with the virus that causes COVID-19?
- In view of the plummeting stock prices on worldwide markets and other abrupt or long term impacts on business, how do U.S. companies providing financial assurance through the use of self-guarantees based on financial tests continue to satisfy their financial assurance obligations?

Financial Institutions

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Europe [John M. Casanova](#), [Leonard Ng](#)

- How do forbearance requirements affect collections activities?
- Should banks make customer accommodations based on the direct or indirect impact the virus may be having on clients?
- How do state and local "shelter in place" requirements impact our ability, and the ability of our vendors, to operate?
- What government lending programs are available to banks and their customers, including under the CARES Act and other programs being operated by the Federal Reserve Banks and the U.S. Treasury Department?
- What are regulatory expectations for banks managing their responses to the COVID-19 outbreak and for relief from otherwise applicable regulatory requirements?
- Should banks be updating their business continuity plans in light of COVID-19?
- How should banks be managing their vendor relationships during the crisis?

Healthcare Providers

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- What is the current state of play for the provision of medical, behavioral and other services via telemedicine? How can providers deliver this care and be reimbursed?
- What obligations do healthcare providers have to communicate information proactively to state and local health authorities regarding patients known or suspected to have COVID-19? What about regarding their own employees?
- What obligations do healthcare providers have to seek information from state and local health authorities regarding employees who are suspected of having been exposed?
- Can healthcare providers post or publicize information regarding whether they have treated patients diagnosed with COVID-19? Do providers have an obligation to do so? If they do not publicize this information, do they increase their risk if other patients later acquire COVID-19 after receiving treatment from them?
- Are we in a state of emergency such that state and federal privacy laws do not restrict providers from communicating information about patients diagnosed with COVID-19?

- Can healthcare providers refuse to treat patients suspected of being exposed to COVID-19?
- What potential legal risks do healthcare providers assume when they quarantine a patient or employee?
- Can healthcare providers require that employees report temperatures, testing results and/or diagnosis information? Can they require the same from contracted physicians and other healthcare providers?
- How may healthcare providers best manage the risk of patient class actions filed for any outbreaks at sites of care?
- What are the risks attendant to entering into arrangements with clinical laboratories for COVID-19 testing, and what mitigating steps may be effective?
- What steps should healthcare providers serving as clinical trial sites and investigators consider to mitigate study subject exposure to COVID-19?
- What are the obligations of healthcare providers that have accepted various forms of CARES Act stimulus funding? What compliance measures should they adopt to mitigate the attendant False Claims Act risk?

Insurance and Financial Services

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- What additional actions are insurance regulators likely to take as the pandemic continues?
- Which federal government programs and initiatives should be of interest to the insurance industry?
- How should insurers address risks associated with the pandemic in our ORSA and Enterprise Risk Management filings?
- How should insurers modify sales and underwriting processes that previously relied on in-person interactions in compliance with state law?
- How should companies exercise third party monitoring and oversight rights and obligations in light of "shelter in place" requirements? What steps should insurers take if they believe a TPA or other service provider may be causing or is causing policyholder service failures?
- How should companies assess regulatory and tax compliance issues in the face of travel restrictions?
- What additional privacy and compliance concerns are associated with employees performing work at off-site locations or at home?
- How and when can companies safely transition employees back to the office?

Product Liability

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- Does a company have a common-law duty to warn customers, vendors or any other third parties, such as professional or personal contacts of its employees, if it becomes aware that an employee tests positive for COVID-19, is experiencing symptoms or may have come into close contact with someone who tested positive for COVID-19, and does any such duty depend upon whether the third party may have come into contact with affected company employees?

- Does a company have a common-law duty to take measures to protect or prevent employees from spreading COVID-19 to customers, vendors or other third parties? Does the scope of any duty change if customers include especially vulnerable populations?
- What measures can companies take to reduce the risk of tort liability related to COVID-19 during phased re-openings? Would compliance with federal, state, or local re-opening guidelines provide a defense to such suits?
- Does a company have a common-law duty to take measures to protect its employees from coming into contact with or being infected with COVID-19 while on the job? Does the scope of this duty change if the employees are performing essential services for the public? If a company institutes a COVID-19 and/or antibody testing program for its employees to return to work, could it face suits from employees or third parties alleging that the program or the testing itself was inadequate or inaccurate?
- Could a company face product liability suits if it manufactures, sells, distributes or delivers products that may have been contaminated by employees who test positive for COVID-19? Does the liability rest upon whether the consumer/customer tests positive or suffers personal injury?
- Could a company face product liability suits if it manufactures, sells or distributes medical supplies to diagnose or treat COVID-19 that allegedly malfunction or injure patients, or are not effective in preventing COVID-19?
- Could healthcare providers and medical facilities face lawsuits regarding allegedly inadequate care, protection or treatment for patients with COVID-19, or caregivers assisting the patients (family, friends, aids)? What about lawsuits for allegedly inadequate care, protection, attention or treatment of patients with other medical conditions, while the medical facility is treating patients with COVID-19?
- What is the scope of federal preemption and immunity from suits related to COVID-19 under the Public Readiness and Emergency Preparedness Act (PREP Act), 42 U.S.C. § 247d-6d, and Secretary Azar's March 10 declaration and how might it shield a company from liability?

Real Estate

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- How does COVID-19 affect "Time of the Essence" clauses in real estate contracts?
- Does the outbreak trigger a material adverse effect condition precedent to new extensions of credit or as an event of default trigger?
- What steps should borrowers and lenders take if financial or other covenant breaches are anticipated due to COVID-19?
- How will force majeure clauses be interpreted and will force majeure be a defense to performance?
- What actions are open to landlords when tenants have failed to pay rent under their lease obligations? How does emergency legislation impact this?
- From a tenant's perspective, is COVID-19 a defense to non-payment or partial-payment of rental obligations? Is this sector specific?

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