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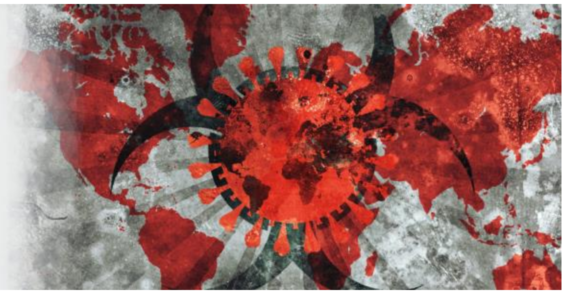

COVID-19 Update

May 2020

SEC's Enforcement Focus on Pandemic-Related Misconduct

In a recent speech at the Securities Enforcement Forum West 2020, SEC Enforcement Division Co-Director Steven Peikin described significant efforts the Division is taking to address fraud risks posed by the current pandemic, as well as some of the Division's other priorities. Peikin portrayed a Division that is actively pursuing ongoing matters while it ramps up its efforts to detect and investigate COVID-19-related misconduct. Of particular concern to the Division are insider trading and disclosure and financial fraud risks.

In March, Peikin and his Co-Director, Stephanie Avakian, announced the formation of a Coronavirus Steering Committee to focus and coordinate the Division's work in the area. Peikin said that the Steering Committee is mindful of frauds that occurred in the wake of other public health crises and national emergencies, where microcap companies made specious claims of treatments or disaster response capabilities to draw in investments. Working with the Division's Microcap Fraud Task Force and the SEC's Office of Market Intelligence, the Steering Committee has detected what Peikin called an "explosion" of potential frauds over the last few months. The Division has brought several such cases in the last few weeks, and it has also exercised its authority to suspend trading of more than 30 issuers' securities as a result of questions about the adequacy and accuracy of coronavirus-related information.

The coronavirus pandemic has also led to historic market volatility and a "steady stream of potentially market-moving announcements" by companies that can lead to opportunities for insider trading and market manipulation. With fast-changing business conditions that can create material nonpublic information and significant swings in share prices, the value of inside information is enhanced. Peikin echoed the warnings he and Avakian had issued in March about the present circumstances:

> Corporate insiders are regularly learning new material nonpublic information that may hold an even greater value than under normal circumstances. This may particularly be the case if earnings reports or required SEC disclosure filings are delayed due to COVID-19…. Those with [access to material nonpublic information] – including, for example, directors, officers, employees, and consultants and other outside professionals – should be mindful of their obligations to keep this information confidential and to comply with the prohibitions on illegal securities training.

Peikin said the Division's Market Abuse Unit is monitoring trading activity following issuers' announcements that pertain to COVID-19 matters and other market movements that may indicate illegal trading or manipulation.

The stresses placed on companies by the sudden economic downturn also increase the risk of financial statement and issuer disclosure frauds, according to Peikin. Issuers may seek to mask preexisting accounting or disclosure problems by recasting them as COVID-19-related, or they may engage in improper conduct to hide the downturn's serious impact on their businesses. According to Peikin, the Steering Committee has developed a process to review the public filings of issuers in industries that have been heavily impacted by the pandemic to identify disclosures that vary significantly from others in the same industry.

In his keynote speech and in his March announcement with Co-Director Avakian, Peikin emphasized the importance of companies following their established disclosure controls and procedures, their policies on insider trading and their codes of ethics, and Reg FD and selective disclosure prohibitions. The overall message is that the Division is using all tools available to detect and investigate potential frauds and other securities laws violations. Now is not the time for companies to relax their commitment to compliance activities, and issuers need to continue to take great care in their disclosures, particularly those concerning the effects that the pandemic is having on their businesses.

FOR MORE INFORMATION

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Additional Resources

We have assembled a firmwide multidisciplinary task force to address clients' business and legal concerns and needs related to the COVID-19 pandemic. Please see our COVID-19 Task Force page for additional information and resources.