Dear Clients, Colleagues, and Friends,

We hope this finds you and yours well and staying healthy. Like you, we are absorbing and adjusting to the personal and professional realities wrought by the novel Coronavirus pandemic. Fortunately, Murphy & McGonigle has a robust infrastructure so that we can continue to serve our clients even while “working from home.” Although large parts of the national and global economy have flagged, our commitment to you has not. We are here to provide timely insight and judgment informed by our years of service as governmental regulators and prosecutors, C-suite executives, and outside counsel. Collectively, we have helped our Wall Street and Main Street clients weather legal and financial crises, and we are here to help you navigate this crisis. Summarized below is a practice-by-practice overview of legal and regulatory developments and insights into potential implications. If we have not already contacted you, please do not hesitate to reach out to us if we may assist you with your legal and regulatory needs.

James A. Murphy, Chairman

**BROKER-DEALER REGULATORY**

U.S. securities regulators are open for business. Although many of these regulators have transitioned to “working remotely,” these agencies are fully operational and continue to carry out their regulatory obligations. Their expectations of U.S. broker-dealers have not flagged. At the same time, many regulators have provided temporary relief from various rules and requirements, have changed examination protocols, and have published guidance on a myriad of issues, including cybersecurity and business continuity plans (BCPs). Such plans must be reasonably designed so the firm can meet its existing obligations to customers. Detailed guidance is available in the following links: [SEC COVID-19 response](#); [FINRA COVID-19 response](#); and [COVID-19-updates from State and Provincial Securities Regulators](#). For their part, many broker-dealers throughout the U.S. are, in whole or in part, working remotely as well.

**TRADING & MARKETS**

Volatility in the markets have caused valuations across the asset spectrum to drop, raising the specter of margin calls and defaults among asset classes. Moreover, ordinary back and middle office processes and operations may be stressed by volume brought about by market volatility. Combined with a work force working predominantly from home in U.S. and in European financial capitals, the current environment may expose firms to glitches, tardy responses, or inefficiencies in the handling of what are typically routine matters, leading to regulatory and/or litigation scrutiny. Careful counseling is crucial to validate a firm’s proposed actions, avoid litigation or mitigate its potential effects, or strengthen a firm’s litigation posture.

**CUSTOMER ARBITRATIONS**

Extraordinary volatility and declines in the equity markets will inevitably lead to a slew of new investor claims. The first quarter of 2020 saw the Dow Industrials and S&P 500 Indexes fall by more than 20%. Certain sectors, such as the oil and gas and real estate sectors, have been particularly hard hit. In real time, margin calls are leading to liquidations that are likely to produce the first wave of new cases. Fixed income investments, especially government and investment grade corporate bonds, have performed relatively well, which will lead to claims by customers that their accounts were overconcentrated in equities and not suitably diversified.

**SEC ENFORCEMENT**

All SEC staff are on mandatory telework. But the Enforcement Division continues to actively push investigations and file new litigated and settled enforcement actions. In a statement last week, Chairman Clayton stressed that the staff is “watching” and will not ease up on investor protection and market integrity during the crisis. Case in point: the Enforcement Division’s co-directors recently issued a stern warning against any form of exploitation of information asymmetries arising from the pandemic. The March 23 public statement pointed out that insiders, as well as professionals and consultants, are regularly learning new nonpublic information with enhanced materiality, particularly in situations where the crisis is delaying earnings reports or necessary SEC filings. The Commission indicated that it will be vigilant to ensure such information remains confidential and is not used for insider trading. In addition to cautioning issuers to adhere to appropriate disclosure controls and safeguards, the Commission stressed the importance for...
broker-dealers, investment advisers, and other registrants to comply with policies and procedures established to prevent misuse of insider information.

**COMMODITIES, FUTURES & DERIVATIVES**

Like its U.S. securities counterparts, the CFTC and NFA are continuing their operations unabated and have issued several waves of targeted no-action letters to provide temporary regulatory relief to market participants generally, including commodity pool operators, designated contract markets, swap execution facilities, swap dealers, floor brokers, and futures commission merchants (summarized in CFTC COVID-19 response and NFA COVID-19 response), as well as to specific entities encountering unanticipated regulatory requirements stemming from the market volatility. Enforcement investigations and litigations are continuing at the same intensity and pace, and the Division of Enforcement has issued a customer advisory warning that misconduct in the futures and derivatives markets tied to the impact of the Coronavirus pandemic will be aggressively pursued. Even during this period of uncertainty, the CFTC continues to advance its rule-making agenda and recently approved final interpretative guidance concerning retail commodity transactions involving certain digital assets.

**WHITE COLLAR**

Despite working remotely and navigating court closures, the U.S. Department of Justice and its state and international counterparts continue to exercise robust oversight, advance their investigations, and even open new ones. But within the disruption caused by the pandemic lie opportunities for companies and individuals to review and reset their engagement with the government. Prosecutors may be looking to get matters ripe for resolution across the finish line. Arguments previously made, but possibly lost in the noise of heavy caseloads, should be reconsidered and possibly pressed anew, particularly in the context of ongoing resolution or settlement discussions. At the same time, wide-scale abandonment of investigations is unlikely, and caution should be exercised so as to not upend previously adopted strategies. Finally, as with the 2008 financial crisis, the time lag between the pandemic and the wave of expected investigations and prosecutions provides companies time to stress-test their own policies and procedures and to consider freshly the deployment of their legal and compliance resources.

**CYBERSECURITY & PRIVACY**

Work-from-home and other arrangements mandated in response to the novel Coronavirus pandemic gives rise to unprecedented cybersecurity and data privacy risks across all sectors of the economy globally. By way of example, widespread use of personal devices and other off-premises endpoints creates greater opportunity for scammers to access business and personal data, including highly sensitive business plans, financial records, trade secrets, and confidential client information. Businesses should be especially vigilant to stay compliant with privacy laws and regulations that apply to their operations, as well as their internal policies and procedures. Regulators are watching, as demonstrated by the guidance published by, among others, the European Data Protection Board (in relation to the General Data Protection Regulation), Member State Data Protection Authorities, the FBI, and the California Attorney General (in relation to the California Consumer Privacy Act). Companies should carefully, but timely, evaluate adopting and implementing preventative or reactive data collecting or sharing measures, breach reporting obligations, and other sound cybersecurity and data privacy practices.

**EMPLOYMENT IN THE FINANCIAL SERVICES INDUSTRY**

The impact of state and local regulations on employers has been severe. Even legislative relief efforts, such as the Families First Coronavirus Response Act, has exacerbated the disruption. Regulatory compliance and contractual issues, not to mention labor law issues, will arise as employees work remotely, seek paid leave, or resign or are laid off. Both regional and national financial services firms should review their current employment policies and employment contracts to evaluate the impact of the disruption, to mitigate potential litigations/arbitrations and, most importantly, to ensure that their client needs are still adequately served in extremely volatile financial markets.

**COMMERCIAL & SECURITIES LITIGATION**

Elected officials and regulators have provided safe havens and lifelines to numerous sectors of the economy. But that relief generally does not apply to private enforcement of the securities laws or commercial contracts. Companies and their directors and officers remain subject to securities and fiduciary litigation related to, among other
issues, risk warning disclosures, accounting treatments, and management guidance around the novel Coronavirus. To address those risks, companies should continue to carefully vet public pronouncements; adhere to policies and procedures for preparing management and financial disclosures; and maintain robust internal controls. Attention to trading policies may help to avoid insider trading and market manipulation risk. Regarding contracts, disputes may arise from delays and failures resulting from public authority orders, vendor and customer disruption, and credit stress. Companies can prepare for the operational, financial, and legal impact by, among other steps, proactively engaging counterparties to amend, delay, or commute agreements, and exploring opportunities to mitigate damages. Companies also might have an opportunity to reevaluate and renegotiate long-standing arrangements and contractual terms.

Learn more about Murphy & McGonigle at our website: https://www.mmlawus.com/