

March 24, 2020

Controlling Material, Non-Public Information
During the Coronavirus Pandemic

In an [unusual statement](#) issued yesterday, the Co-Directors of the SEC's Division of Enforcement, Stephanie Avakian and Steven Peikin, reminded market participants of the critical importance of maintaining proper control over the dissemination of material, non-public information, adhering to the restrictions imposed by Regulation FD on selective disclosures, and assuring compliance with policies and procedures designed to prevent insider trading and other conduct that would undermine market integrity. They stressed in particular that, as companies and markets cope with the outbreak of COVID-19 and the continuing coronavirus pandemic, corporate insiders are likely learning new material, non-public information "that may hold an even greater value than under normal circumstances."

As we [noted last week](#), the current environment presents special challenges to public companies in making and evaluating disclosures, updating prior disclosures, weighing whether to delay the issuance of earnings releases or SEC filings, responding to questions from analysts and institutional investors, and managing information flows in a world where many executives and employees are working from home. Events are unfolding rapidly, the significance of information is difficult to assess in real-time, and numerous market participants are understandably hungry for information in the current environment. In such a stressed setting, the SEC Enforcement Division Directors' statement provides a timely and sensible reminder that companies must continue to focus on their internal controls and take other appropriate actions. Namely, companies should periodically remind remotely working executives and employees of the critical importance of controlling flows of information. Companies should likewise ensure that material, non-public information is handled appropriately and that established policies and procedures on insider trading are strictly followed. Updated Regulation FD training should also be provided virtually and note the heightened sensitivities and SEC enforcement focus on these issues.

In the complex, rapidly changing and stressful environment in which we are now all operating, and with so many people working in unaccustomed settings, there is a heightened risk that even well-managed companies may experience lapses in the enforcement of well-established policies and procedures. Brief periodic reminders to employees may go a long way toward preventing a problem from arising.

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