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FRAUD IN THE COVID-19 AGE: EXAMINING AND ANTICIPATING CHANGING ENFORCEMENT ACTIVITY

To Our Clients and Friends:

The COVID-19 pandemic is already reshaping federal and state regulatory enforcement actions in the United States and around the world. Although it is too early to know the path or impact of future enforcement, experience gleaned from previous post-disaster enforcement activity and an analysis of enforcement activity to date brings into focus a few areas likely to prominently figure in regulator's activity. These changes will not be consistent. As in the past, the political environment, enforcement resources, and ways in which fraud emerges from the crisis will differ across domestic and international borders.

With this in mind, in this alert, the beginning of a series of on-going Gibson Dunn alerts, we provide an overview of early enforcement actions in the United States, the United Kingdom, the European Union, and Asia, as well as specific areas in which increased enforcement activity is likely in the future: namely, insider trading, state-level consumer protection, and False Claims Act enforcement.

Gibson Dunn will continue to monitor enforcement actions and trends in the United States and abroad and provide updated analysis to assist our clients as they navigate the changing tides.

COVID-19 Enforcement in the United States

On March 20, 2020, the U.S. Department of Justice issued a press release announcing that Attorney General William Barr "directed all U.S. attorneys to prioritize the investigation and prosecution of Coronavirus-related fraud schemes."^[1] According to the press release, Deputy Attorney General Jeffrey Rosen "further directed each U.S. Attorney to appoint a Coronavirus Fraud Coordinator to serve as the legal counsel for the federal judicial district on matters relating to the Coronavirus, direct the prosecution of Coronavirus-related crimes, and to conduct outreach and awareness."^[2] Attorney General Barr also "urg[ed] the public to report suspected fraud schemes related to COVID-19."^[3]

On March 22, 2020, the DOJ announced its first action in federal court to combat fraud related to COVID-19. The DOJ sought, and received, a temporary restraining order in the United States District Court for the Western District of Texas against a website offering access to a (non-existent) Coronavirus vaccine kit from the World Trade Organization.^[4]

On March 24, 2020, the Department of Justice established the COVID-19 Hoarding and Price Gouging Task Force "to address COVID-19-related market manipulation, hoarding, and price gouging."^[5] On April 2, 2020, the Department of Justice, in partnership with the Department of Health and Human Services, announced "the distribution of hoarded personal protective equipment (PPE), including

approximately 192,000 N95 respirator masks,” discovered by the Federal Bureau of Investigations during an enforcement operation.[6]

Similarly, the United States Securities and Exchange Commission (“SEC”) has announced that, in response to the Coronavirus pandemic, it remains focused on “continuity of Commission operations,” “monitoring market functions and system risks,” “providing prompt, targeted regulatory relief and guidance,” and “maintaining [its] enforcement and investor protection efforts.”[7] Recently, the SEC announced trading suspensions in connection with false COVID-19 information, including the suspension of trading for a company that made statements “about having, and being able to obtain, large quantities of N95 masks,”[8] the suspension of trading for a company with “purported international marketing rights to an approved coronavirus treatment,”[9] the suspension of trading for a company in which third-party promoters disseminated information about “the viability of the company’s product to treat the coronavirus,”[10] and the suspension of trading of an OTC company amidst “concerns about investors confusing this issuer with a similarly-named NASDAQ-listed issuer . . . which has seen a rise in share price during the on-going COVID-19 pandemic.”[11]

Further, the SEC’s Office of the Chief Accountant has identified areas of particular focus with respect to ensuring high-quality financial information reporting, including the importance of well-reasoned accounting judgment and estimates (such as, fair value and impairment considerations, revenue recognition, and going concern), audit issues (in particular auditor independence issues in partnership with the Public Company Accounting Oversight Board), the impact of international accounting and audit-related standards, and continued investor outreach.[12] Notably, in the post-2008 financial crisis period, the SEC brought enforcement actions in connection with, among other things, concealed risks, misleading disclosures, false statements with respect to a company’s financial position, and the failure by auditors to appropriately scrutinize management estimates.[13] For more information on potential SEC enforcement, please refer to Gibson Dunn’s recent alert “SEC Enforcement Focus on Fallout from COVID-19: Insights for Public Companies and Investment Advisers During a Crisis.”[14]

Past may be prologue in connection with post-crisis federal enforcement—particularly with respect to oversight of emergency government stimulus funds. On March 27, 2020, the President signed into law the Coronavirus Aid Relief and Economic Security Act (the “CARES Act”), a \$2 trillion emergency stimulus package.[15] During the 2008 financial crisis, Congress similarly established emergency government stimulus programs, including the Troubled Asset Relief Program (“TARP”) “to implement programs to stabilize the financial system.”[16] Regulatory oversight was included in the legislation establishing TARP, specifically, the Office of the Special Investigator General for the Troubled Asset Relief Program (“SIGTARP”). SIGTARP, which remains active today, “is a federal law enforcement agency and an independent audit watchdog that targets financial institution crime and other fraud, waste, and abuse related to TARP.”[17] Notably, the CARES Act also establishes a Special Inspector General for Pandemic Recovery (“SIGPR”) to “conduct, supervise, and coordinate audits and investigations of the making, purchase, management, and sale of loans, loan guarantees, and other investments” made by the Department of Treasury pursuant to the CARES Act.[18] On April 4, 2020, the President nominated Brian D. Miller as the Special Inspector General.[19] Mr. Miller is currently a special assistant to the President and senior associate counsel in the Office of White House Counsel.[20] In addition to SIGPR,

the CARES Act established a Pandemic Response Accountability Committee and a Congressional Oversight Commission.[21]

SIGTARP's continued enforcement function over a decade after its enactment predicts that the even larger, suddenly-organized distribution of government funds through the CARES Act, and other legislative efforts that may follow it, will dominate much of the enforcement agenda for the next decade. That so much of it involves funds loaned through federally-insured banks will provide the government with the benefit of a ten-year statute of limitations to proceed.[22] For instance, we should expect that law enforcement will look to loan or other government funding applications as a regular component of financial fraud investigations involving domestic targets or subjects, scouring them for alleged misstatements.

COVID-19 Enforcement in The United Kingdom

In the UK, the Coronavirus Act 2020[23] and the Health Protection (Coronavirus) Regulations 2020[24] have mandated amongst other things a national "lockdown," the closure of businesses except those deemed to be essential, and restrictions on traveling to work unless necessary. The Coronavirus Act contains various offences for those that flout the rules, and limited related enforcement action has been taken by authorities.

A number of agencies have reported a spike in scams, including in the financial services sector, and there were reports early on that some companies were exploiting the pandemic and engaging in price gouging. Recently, a senior UK civil servant told Parliament that he expects to see organized crime targeting the Government's multibillion-pound employee furlough scheme.

The Crown Prosecution Service issued guidance to police forces and prosecutors directing them that "all COVID-19 related cases" must be fed into the criminal justice system "Immediately" (above "High Priority"), including, for example, assaults on emergency workers.[25]

Competition and Consumer Law: The Competition and Markets Authority ("CMA") has established a COVID-19 Taskforce[26] and in March issued Guidance indicating that competitor coordination will be permitted (and no enforcement action will be taken) if it is undertaken solely to address market needs arising from the pandemic and lasts no longer than necessary,[27] and an open letter to drug makers and food and drink companies warning against capitalizing on COVID-19 by charging unjustifiably high prices for essential goods or by making misleading claims about their efficacy.[28] The CMA publicly stated that it "will not tolerate unscrupulous businesses exploiting the crisis as a 'cover' for non-essential collusion." [29] This includes "exchanging [] information on future pricing or business strategies, where this is not necessary to meet the needs of the current situation." [30]

Financial Services Sector: The Financial Conduct Authority, the UK's financial services regulator and enforcement agency, has stated that during the COVID-19 pandemic, it is focusing its efforts on ensuring that consumers remain protected and that markets continue to function well. The FCA made several announcements in response to COVID-19, including alerting consumers to pension scams.[31] The FCA indicated that it will not change its enforcement policy and will continue to investigate and bring

enforcement action. It has warned publicly that it will not “tolerate conduct that seeks to exploit the situation and harms consumers.”^[32]

Firms must continue to monitor their compliance systems and adapt to new risks. The FCA has recognized that increased numbers of people working from home will pose unique challenges and called on firms to continue to monitor their systems and controls, for example in relation to the recording of sales and other calls. Anti-money laundering requirements (such as customer identification checks) must still be followed, although the FCA recognizes that firms may have to adapt their approach. The FCA is likely to give firms some latitude, but firms must continue to monitor risks and look at alternative options if routine compliance controls cannot operate.

Finally, the FCA wrote to companies during March imposing a two week moratorium to delay publication of preliminary results and thereby prevent investors relying on outdated market information. In the same statement announcing the moratorium, the FCA reminded companies that the Market Abuse Regulation, the EU-wide law dealing with market abuse, market manipulation, and insider dealing, remains in force.^[33]

Criminal Enforcement Agencies: The National Crime Agency and National Economic Crime Center have published several announcements, including a warning of organized crime groups exploiting the COVID-19 pandemic by using coronavirus-themed malicious apps, websites, and email phishing attacks in order to obtain personal and financial information;^[34] and alerting the public to fraud and online scams including where individuals intend to purchase medical supplies online, such as face masks and COVID-19 testing kits, which never arrive or are fake. We expect to see a spike in prosecutions of those who are engaged in COVID-19-related fraud and other scams.^[35] The NCA has not published any guidance regarding implications of the pandemic for the filing of Suspicious Activity Reports.

The UK Serious Fraud Office has yet to make any announcements in response to COVID-19, but is continuing its investigative efforts where possible. The lockdown measures will undoubtedly result in delays in SFO investigations (for example the agency may not be able to conduct interviews), but the extent of those delays will depend on the length of the lock down. To date, at least one SFO trial has been adjourned and remains on hold until further notice, and there are likely to be significant delays to others as the Lord Chief Justice has ordered a halt to all new jury trials.

Information Commissioner’s Office: The ICO has issued guidance stating that it would not penalize companies that the ICO “know[s] need to prioritise other areas or adapt their usual approach during this extraordinary period.”^[36] For further details, please refer to the Gibson Dunn alert “Privacy and Cybersecurity Issues Related to COVID-19.”^[37]

International Trade: The UK has prohibited the parallel export of certain critical medicines currently being tested for efficacy in treating COVID-19. On March 20, 2020, over 80 additional medicines used to treat patients in intensive care units were banned from parallel export from the UK in order to seek to ensure uninterrupted supply to NHS hospitals treating coronavirus patients. For further details, please refer to the Gibson Dunn alert “COVID-19 & International Trade – Nation-State Responses to a Global Pandemic.”^[38]

COVID-19 Enforcement in The European Union

In the European Union, the primary authority to fight COVID-19 and its detrimental effects on health and security lies with each of the Member States. As such, the rules and the measures adopted by Member States differ in detail among the Member States (and, for example in Federations like Germany, among different regions within a Member State).

Most of the Member States have imposed severe measures, including travel restrictions, limitations to public life, and lockdowns as a response to the pandemic. Most notably, some Member States have imposed curfews on their citizens to varying degrees of severity. Failure to follow such measures—*e.g.* opening retail stores in spite of a prohibition or ignoring a curfew—may, depending on the Member State, constitute a regulatory or even a criminal offense.^[39] The longer these restrictions remain, the more likely it becomes that enforcement actions will play a bigger role in the near future.

European security standards already are shifting focus as criminals try to benefit from the current state of affairs. Following the COVID-19 outbreak, EU law enforcement agencies, such as Europol, have observed a rise in crime in the following areas:^[40] Cybercrime, Fraud, Counterfeit and Substandard Goods, and Organized Property Crimes.

Cybercrime: Cybercrime appears to be on the rise because criminals are using the COVID-19 crisis to carry out social engineering attacks themed around the pandemic to distribute various malware packages. As a greater number of employers institute work from home policies and allow external connections to their organizations' systems, cybercriminals are expected to increase attacks on networks. Most critically, there are signals that cybercriminals have already attacked critical infrastructure such as hospitals (which is believed to have already occurred in the Czech Republic). Prior to the pandemic, in an effort to prepare for major cross-border cyberattacks, a EU Law Enforcement Emergency Response Protocol ("EU LE ERP") was adopted in December 2018. The EU LE ERP supports EU law enforcement authorities in providing immediate response to major cross-border cyberattacks through rapid assessment, the secure and timely sharing of critical information, and effective coordination of the international aspects of their investigations.^[41]

Fraud: Fraud linked to the current pandemic often preys on the fear of EU citizens. In one recent case, for example, the transfer of €6.6 million by one company to another company in Singapore in order to purchase alcohol gels and FFP3/2 masks is under investigation because the goods were never received by the buyer. Similarly, criminals are also reported to have adapted investment scams to solicit speculative investments in stocks related to COVID-19 with promises of substantial profits.

As in the United States, we expect European investigations of fraud and subsidy fraud offenses will play a bigger role as the wave of applications to get access to state aid is now under way. Various governments are keen on making support funds^[42] for businesses available—"quickly and without red tape," as governments like to emphasize—and the age-old dynamic of fraud following urgency is equally predictable in Europe. As far as European funds are affected by such fraudulent acts (*see, e.g.*, the new EU program for temporary Support to mitigate Unemployment Risks in an Emergency, also known as

SURE^[43]), EU agencies such as Europol and OLAF, the European Anti-Fraud Office, likely will get involved.

Counterfeit and Substandard Goods: The sale of counterfeit health care, sanitary/pharmaceutical products and personal healthcare equipment has become one of the main areas of criminal activity in the EU. These schemes often leverage people's fear of infection. For example, the reported distribution of fake coronavirus home testing kits are particularly worrying from a public health perspective, because apart from being ineffective these kits may inflict bodily harm upon their users.

Organized Property Crime: Organized Property Crimes include the 'nephew' or 'grandchild' trick and the impersonation of representatives of public authorities. Criminals have adapted their *modi operandi* to the current situation. The number of attempts involving these types of thefts and scams is likely to increase across the EU. Multiple Member States have reported to Europol a similar *modus operandi* for theft. The perpetrators gain access to private homes by impersonating medical staff providing information material or hygiene products or conducting a "corona test." The EU tries to handle the situation by working closely with all the Member States enforcement authorities on a 24/7 basis and informs the public about these scams regularly.^[44]

That these forms of illicit activity occur now is no surprise. But the way European regulators redeploy resources will orient the direction companies and other market actors staff and pursue compliance initiatives and should be carefully followed.

COVID-19 Enforcement in Asia

Regulators in Asian countries, which have been combating COVID-19 since January, have ramped up enforcement efforts against market misconduct such as price gouging of medical supplies and false advertising.

In China, the State Administration for Market Regulation and its local branches have launched a series of enforcement actions targeting sales of substandard face masks and price gouging of face masks as well as raw materials that are essential for producing medical supplies. Regulators around the country have initiated approximately 14,800 investigations relating to pricing violations, half of which involved face masks.^[45] As some cities in China are resuming normal business activities, local regulators are adopting a more comprehensive approach in combating market misconduct. The Shanghai Municipal Administration for Market Regulation, a key regulator for multinational companies that have operations in Shanghai, has announced an anti-unfair competition campaign that will last until the end of July of this year.^[46] The campaign focuses on, among other things, false advertising and commercial bribery in medical device procurement, medical services, and education services. Notably, the Shanghai Municipal Administration for Market Regulation has called out potentially anti-competitive practices such as donating medical devices in exchange for the purchase of consumables.^[47]

Regulators in Korea, including the Korean National Police Agency, the National Tax Services, the Ministry of Food and Drug Safety, and the Fair Trade Commission, have formed a joint task force to crack down on unfair market practices such as price gouging.^[48] For example, the Korean National

Tax Services has reportedly cracked down on 222 retailers and 41 mask manufacturers for hoarding and price gouging behavior.[49]

To contain the spread of COVID-19, government agencies and private enterprises in China are collecting personal data for contact tracing. Regulators have stepped up the protection of the personal information collected. In February 2019, the Cyberspace Administration of China (“CAC”) issued a circular regarding the collection and use of personal information in connection with COVID-19.[50] The CAC stressed in the circular that companies are only allowed to collect personal information from their employees as required by government entities for the purpose of containing COVID-19 or for purposes directly related to the performance of employment contracts, and should not use the personal information that they collected for any other purposes.[51] In particular, companies and government agencies are prohibited from disclosing names and family addresses of COVID-19 patients unless consent is given.[52] The Chinese government has already prosecuted several cases involving unauthorized disclosure of personal information of COVID-19 patients.[53] For instance, a local branch of the Commission for Discipline Inspection of the Communist Party of China is investigating a deputy at Hunan Yiyang County Health Bureau for disseminating a case study involving a COVID-19 patient that contains protected personal information of the patient and the patient’s eleven relatives.[54]

Enforcement Trends to Watch: Insider Trading

There has been widespread coverage—and condemnation—of potential insider trading by at least four senators in the early weeks of the Coronavirus pandemic. These senators allegedly received confidential briefings on how badly the U.S. economy might be hit by the pandemic, and thereafter sold substantial stock holdings before the recent Coronavirus-induced market drops, thus avoiding millions of dollars in losses.[55] The U.S. Department of Justice is now investigating,[56] the U.S. Securities and Exchange Commission issued a blanket warning against trading on material non-public information related to the coronavirus,[57] and private lawsuits are beginning to be filed.[58]

The last time allegations of pervasive congressional insider trading received this much attention, the federal government responded by passing the Stop Trading on Congressional Knowledge Act (the “STOCK Act”) in 2012. Designed to prevent members of Congress and other government employees from using nonpublic information derived from their official positions for personal benefit or other purposes, the STOCK Act prohibits members and employees of Congress and others from using “nonpublic information derived from such person’s position . . . or gained from the performance of such person’s official responsibilities as a means for making a private profit.”[59] However, certain portions of the STOCK Act that mandated greater transparency, reporting, and applicability were quietly rolled back in 2013.[60] Recent events have highlighted that potential insider trading by government officials continues to be a problem, and the public is again lamenting the country’s apparent inability to effect meaningful reform—both in Washington, D.C., and with respect to insider trading generally.[61] Indeed, some have suggested that it may be difficult to prosecute these senators for their alleged Coronavirus-related trading, given the many challenges built into our current insider trading jurisprudence.[62]

This renewed focus on insider trading arising from information asymmetries in COVID-19 related fact patterns may provide the public pressure necessary to enact real change in our country’s current insider trading laws. There are no laws specifically addressing insider trading in the U.S. Rather, insider trading law arises from a series of increasingly complex federal court decisions interpreting the anti-fraud provisions of the Securities Exchange Act of 1934. Over the years, there have been various initiatives to replace our current regime with explicit insider trading legislation—as other countries have done^[63]—but they have all failed to gain traction to date.^[64]

It is unclear whether the current public outcry hardens into the motivation necessary to systematically and comprehensively address this issue once and for all. When the dust of the current public health crisis settles, this may emerge as a top legislative issue—similar to the enactment of the Foreign Corrupt Practices Act (“FCPA”) in 1977 following concerns about widespread bribery of foreign officials by U.S. companies.^[65]

Enforcement Trends to Watch: Enhanced State-Level Consumer Protection

State Attorneys General have announced their intentions to focus on fraud in connection with the pandemic—specifically identifying consumer protection and price gouging as areas already requiring enforcement.^[66] To date, state Attorneys General have, among other things, sought temporary restraining orders and permanent injunctions to stop the sale of alleged COVID-19 treatments,^[67] issued subpoenas against third-party sellers concerning allegations of price gouging,^[68] and sent cease and desist letters to individuals and entities marketing products as COVID-19 treatments.^[69] Numerous state Attorneys General have partnered with federal authorities to identify and prosecute COVID-19-related fraud.^[70]

In addition to new federal regulatory enforcement initiatives, we can expect that preexisting anti-fraud initiatives may swiftly ripen into expanded investigative authority. The aforementioned progression of the FCPA in the aftermath of Watergate presages how enforcement initiatives facing uncertain enactment suddenly gather steam to implementation. Two state initiatives—in New York and California—may soon prove this point.^[71] In response to perceived lax enforcement over the financial services industry at the federal level by the Consumer Financial Protection Bureau (“CFPB”), both New York and California have been pursuing significant expansions of the regulatory powers of state agencies.

In New York, Governor Andrew Cuomo’s January 2020 proposed budget sought to expand the enforcement authority of the New York State Department of Financial Services (“DFS”), the state’s banking and insurance regulator.^[72] The proposed budget expanded the definition of “financial product or service” to include “the sale or provision to a consumer or small business of any security, investment advice, or money management device,” which could have turned the DFS into another state securities regulator (in addition to the New York State Attorney General)—with implications far beyond simply banks and insurance companies operating in New York.^[73] The pre-pandemic proposed budget further expanded the power of DFS to levy (increased) civil penalties by removing requirements to prove intentionality and by including oversight of unfair, deceptive, or abusive acts or practices.^[74] If passed, the DFS’ authority could have mirrored the authority of the state Attorney General under the Martin Act—the New York State law aggressively utilized by the state Attorney General to conduct

investigations and bring civil and criminal actions for securities fraud.[75] The enacted budget, signed by Governor Cuomo on April 3, 2020, however, removed the proposal from the final budget.[76] New York's effort to enhance its state financial services regulator have fallen to the wayside in response to the expected COVID-19 budget crunch.[77]

In California, Governor Gavin Newsom's proposed 2020-2021 budget, which must be voted on by June 15, 2020, expands and restructures the California Department of Business Oversight ("DBO"). At present, the DBO oversees the operations of state-licensed financial institutions, such as banks, and licenses and regulates a variety of financial businesses, such as securities brokers and dealers.[78]

The proposed budget includes the California Consumer Financial Protection Law which "seeks to cement California's consumer protection leadership amidst a retreat on that front by federal agencies." [79] Under this proposal, the DBO would be rebranded as the Department of Financial Protection and Innovation. Its budget would increase by \$19.3 million over the course of 2-3 years, and its staffing would increase by 90 positions over the same period.[80]

Explaining that "[t]he federal government's rollback of the CFPB leaves Californians vulnerable to predatory businesses," the California Consumer Financial Protection Law will expand the DBO's authority to oversee and regulate unlicensed financial services providers not currently subject to regulatory oversight, including debt collectors, credit reporting agencies, and financial technology companies.[81]

Initially, funding is proposed to be covered by available settlement proceeds, with future costs covered by fees generated from newly covered industries and increased fees on existing licenses.[82] However, this proposal was issued prior to the Coronavirus pandemic, and the impact of the Coronavirus on the proposed budget, similar to New York's recent experience, is unknown.

But when the greatest urgency from the COVID-19 pandemic passes, either or both of these bold initiatives, or some variants of them, may find ready support in New York and California. This is particularly so if they are viewed as holding promise not only to enhance enforcement, but to generate revenue derived from enforcement fines and penalties.

Enforcement Trends to Watch: False Claims Act

In a March 31, 2020 alert, Gibson Dunn detailed measures that companies can take now to decrease the risk that DOJ and/or *qui tam* whistleblowers will, down the line, successfully second-guess companies' responses to the COVID-19 pandemic (through False Claims Act suits).

Public crises prompt government spending (for example, the CARES Act), and such spending inevitably leads to post-crisis DOJ and/or whistleblower suits targeting corporations that directly received or indirectly benefited from public funds. Given this historical precedent, turning square corners with the government, documenting communications with (and decisions by) government contractors, and responding thoroughly to internal whistleblower reports can meaningfully decrease False Claims Act exposure in the wake of the COVID-19 crisis.

For more detailed information, please refer to the Gibson Dunn alert, “Implications of COVID-19 Crisis for False Claims Act Compliance.”^[83]

[1] Press Release, U.S. Dep’t of Justice, Attorney General William P. Barr Urges American Public to Report COVID-19 Fraud (Mar. 20, 2020), *available at* www.justice.gov/opa/pr/attorney-general-william-p-barr-urges-american-public-report-covid-19-fraud.

[2] *Id.*

[3] *Id.* Attorney General Barr urged the public to report suspected fraud to the National Center for Disaster Fraud (“NCDF”). The NCDF was established in 2005, in the wake of Hurricane Katrina, and is the national coordinating agency for man-made and natural disasters. In the wake of Hurricane Katrina, federal prosecutors charged over 1,300 disaster fraud cases. *See National Center for Disaster Fraud*, U.S. Dep’t of Justice, www.justice.gov/disaster-fraud (last visited Apr. 8, 2020). It can be expected that federal prosecutors will be similarly aggressive in addressing Coronavirus-related fraud reported to the NCDF.

[4] Press Release, U.S. Dep’t of Justice, Justice Department Files its First Enforcement Action Against COVID-19 Fraud (Mar. 22, 2020), *available at* www.justice.gov/opa/pr/justice-department-files-its-first-enforcement-action-against-covid-19-fraud.

[5] Memorandum from the Attorney General, U.S. Dep’t of Justice, Department of Justice COVID-19 Hoarding and Price Gouging Task Force (Mar. 24, 2020), *available at* www.justice.gov/file/1262776/download.

[6] Press Release, U.S. Dep’t of Justice, Department of Justice and Department of Health and Human Services Partner to Distribute More Than Half a Million Medical Supplies Confiscated from Price Gougers (Apr. 2, 2020), *available at* www.justice.gov/opa/pr/department-justice-and-department-health-and-human-services-partner-distribute-more-half.

[7] *SEC Coronavirus (COVID-19) Response*, U.S. Secs. & Exch. Comm’n, www.sec.gov/sec-coronavirus-covid-19-response (last visited Apr. 8, 2020).

[8] *In the Matter of Praxsyn Corp.*, 2020 WL 1611114 (Mar. 25, 2020), *available at* www.sec.gov/litigation/suspensions/2020/34-88479-o.pdf.

[9] Exchange Act Release No. 88265, 2020 WL 916766 (Feb. 24, 2020), *available at* www.sec.gov/litigation/suspensions/2020/34-88265.pdf.

[10] Exchange Act Release No. 88142, 2020 WL 870115 (Feb. 7, 2020), *available at* www.sec.gov/litigation/suspensions/2020/34-88142.pdf.

[11] Exchange Act Release No. 88477, 2020 WL 1610845 (Mar. 25, 2020), *available at* www.sec.gov/litigation/suspensions/2020/34-88477.pdf.

[12] Public Statement, Sagar Teotia, Chief Accountant, Statement on the Importance of High-Quality Financial Reporting in Light of the Significant Impacts of COVID-19 (Apr. 3, 2020), *available at* www.sec.gov/news/public-statement/statement-teotia-financial-reporting-covid-19-2020-04-03.

[13] *SEC Enforcement Actions Addressing Misconduct that Led to or Arose from the Financial Crisis*, U.S. Secs. & Exch. Comm'n (last modified July 15, 2019), www.sec.gov/spotlight/enf-actions-fc.shtml.

[14] *See SEC Enforcement Focus on Fallout from COVID-19: Insights for Public Companies and Investment Advisers During a Crisis*, Gibson Dunn & Crutcher LLP (Mar. 26, 2020), *available at* www.gibsondunn.com/sec-enforcement-focus-on-fallout-from-covid-19-insights-for-public-companies-and-investment-advisers-during-a-crisis/#_edn1.

[15] *See* Erica Werner et al., *Trump signs \$2 trillion coronavirus bill into law as companies and households brace for more economic pain*, Wash. Post (Mar. 27, 2020), *available at* www.washingtonpost.com/us-policy/2020/03/27/congress-coronavirus-house-vote/.

[16] *About TARP*, U.S. Dep't of Treasury (last modified Nov. 20, 2019), www.treasury.gov/initiatives/financial-stability/about-tarp/Pages/default.aspx.

[17] Office of the Special Inspector Gen. for the Trouble Asset Relief Program, www.sigtar.gov (last visited Apr. 8, 2020).

[18] CARES Act, H.R. 748 § 4018(c)(1) (2020).

[19] Alex Leary, *Trump Nominates White House Layer to Oversee Coronavirus Business Loans*, Wall St. J. (Apr. 4, 2020), *available at* www.wsj.com/articles/trump-nominates-white-house-lawyer-to-oversee-coronavirus-business-loans-11585965870?ns=prod/accounts-wsj.

[20] *Id.*

[21] CARES Act, H.R. 748 §§ 4020, 15010 (2020). CARES Act §§ 4020, 15010. It is of note that, in a signing statement, the President took issue with aspects of both the Pandemic Response Accountability Committee and SIGPR. As to the Pandemic Response Accountability Committee, the President announced his intention to treat as hortatory, not mandatory, the requirement that the Chairperson of the Council of the Inspectors General on Integrity and Efficiency consult with members of Congress regarding the selection of the Executive Director and Deputy Executive Director of the Committee. As to the SIGPR, the President took issue with the requirement that SIGPR report to Congress “without delay” any unreasonable refusal by a government agency to produce information requested by SIGPR. The President stated that the administration would not treat this provision as permitting SIGPR to issue reports to Congress without presidential supervision. *See* Statement by the

President, The White House (Mar. 27, 2020), *available at* www.whitehouse.gov/briefings-statements/statement-by-the-president-38/.

[22] *See* 18 U.S.C. § 3293 (2020) (“No person shall be prosecuted, tried, or punished for a violation of, or a conspiracy to violate . . . (2) section 1341 or 1343, if the offense affects a financial institution . . . unless the indictment is returned or the information is filed within 10 years after the commission of the offense.”).

[23] Coronavirus Act 2020, c. 7 (Eng.), *available at* www.legislation.gov.uk/ukpga/2020/7/contents/enacted.

[24] The Health Protection (Coronavirus) Regulations 2020, SI 2020/129, (Eng.), *available at* www.legislation.gov.uk/uksi/2020/129/contents/made.

[25] *Interim CPS Charging Protocol – Covid-19 crisis response*, CPS (Apr. 1, 2020), *available at* www.cps.gov.uk/sites/default/files/documents/legal_guidance/Interim-CPS-Charging-Protocol-Covid-19-crisis-response.pdf.

[26] *CMA COVID-19 taskforce*, U.K. Ministry of Justice (Mar. 20, 2020), www.gov.uk/government/publications/covid-19-cma-taskforce/cma-covid-19-taskforce.

[27] *CMA approach to business cooperation in response to COVID-19*, Competition and Mkts. Auth. 7 (Mar. 25, 2020), *available at* assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/875468/COVID-19_guidance_-.pdf.

[28] *An Open Letter to the Pharmaceutical and Food and Drink Industries*, Competition and Mkts. Auth. (Mar. 20, 2020), *available at* assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/874240/COVID_19_Open_letter_to_pharmaceutical_and_food_and_drink_industries2.pdf.

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The following Gibson Dunn lawyers assisted in preparing this client alert: Joel M. Cohen, F. Joseph Warin, Charles J. Stevens, Debra Wong Yang, Mylan Denerstein, Kelly Austin, Zainab Ahmad, Stephanie Brooker, John Partridge, Benno Schwarz, Patrick Doris, Darcy Harris, Amanda Aycock, David Crowley-Buck, Steve Melrose, Ning Ning, Carla Baum, and Andreas Dürr.

Gibson Dunn lawyers regularly counsel clients on the issues raised by this pandemic, and we are working with many of our clients on their response to COVID-19. Please feel free to contact the Gibson Dunn lawyer with whom you work, any member of the firm's White Collar Defense and Investigations Group (F. Joseph Warin, Charles J. Stevens, and Joel M. Cohen, Co-Chairs), or any of the authors:

GIBSON DUNN

New York

*Zainab Ahmad
Joel M. Cohen
Mylan Denerstein*

Washington, D.C.

*Stephanie L. Brooker
F. Joseph Warin*

Los Angeles

Debra Wong Yang

San Francisco

Charles J. Stevens

Denver

John D.W. Partridge

London

Patrick Doris

Munich

Benno Schwarz

Hong Kong

Kelly Austin

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