

SEC COVID Investigations

Any firm marketing COVID related services, or that has applied for or obtained benefits under recently enacted legislation tied to the virus, should carefully examine their activities in this area in view of the regulatory investigations being conducted by the SEC. The agency is currently conducting investigations related to the COVID virus. In aid of those investigations the SEC staff frequently requests voluntary cooperation in the form of document productions and telephone interviews. The requests present important and difficult questions.

The current SEC investigations can be divided into two groups. The first centers on firms that are actively marketing COVID related products. Investigations in this group typically center on press releases or statements made by a company or its executives about medications or equipment that may tie to the virus. *See, e.g. SEC v. Turbo Global Partners, Inc.*, Civil Action No. 8:20-01120 M.D. Fla. Filed May 14, 2020); (company falsely claimed to have a device that could scan crowds for those with COVID or symptoms); *SEC v. Applied Biosciences Corp.*, Civil Action No. 1:20-cv-03729 (S.D.N.Y. Filed May 14, 2020) (spurious claims that home testing kits could be purchased for COVID virus).

The investigations frequently begin with the staff contacting the company and requesting the voluntarily production of documents related to the statements. In some instances, the SEC staff may request an informal, voluntary telephone interview with an executive from the company even before the documents are produced.

If the staff requests a voluntary telephone interview the risks presented should be carefully assessed. While the interview is indeed voluntary it is still testimony before law enforcement officials subject to 18 U.S.C. 1001 which makes it a felony to not tell the truth. Any firm or executive considering such a request should carefully evaluate the risks and stakes. The restrictions and social distancing practices currently in place in probability mean that any preparation for the interview likely will be limited to telephone calls and perhaps a Zoom meeting. The inability of counsel and the client to sit face to

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face in a room with the pertinent materials substantially limits the effectiveness of any preparation. The impact of the limitations should be carefully assessed.

A second area of inquiry centers on those who have applied for or obtained funds under the recent COVID legislation. The initial contacts are made in the same manner described above. The staff typically ask for the pertinent documents to be produced and may also request an informal telephone interview. While these are also fraud inquiries the issues are more complex than in the actions discussed above.

The inquiries here begin with the application filed under the pertinent provisions of the legislation. An accurate, factual application form is only the beginning, however. In assessing the situation, the SEC staff is likely to review the firm's most recent public statements and its filings. These points, and perhaps others depending on the firm, need to be analyzed in view of the statements in the application and the statutory requirements. Since many SEC fraud actions center on the company failing to comply with its representations and/or policies or for not making the full and complete disclosures, proper preparation for any discussion with the staff is key. Again, before agreeing to a request for an informal chat it is critical that counsel and client carefully evaluate the risks in view of the limitations.