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## **SEC Enforcement Co-Directors Issue Statement on Potential Insider Trading and Selective Disclosure Risks Related to COVID-19**

On March 23, 2020, SEC Division of Enforcement Co-Directors Stephanie Avakian and Steven Peikin issued a statement concerning maintaining “market integrity” in light of the unprecedented and myriad impacts of the COVID-19 pandemic, and the increased likelihood that reporting company insiders could be in possession of material nonpublic information. The Co-Directors focused in particular on the importance in the current environment of strictly following corporate controls and procedures relating to material nonpublic information.

The Co-Directors observed that officers, directors and other corporate insiders are “regularly learning new material nonpublic information,” and that such information may take on even greater value given current circumstances. This may be the case particularly as “if earnings reports or required SEC disclosure filings are delayed due to COVID-19.” We note that while a number of companies have withdrawn or modified previously issued guidance, that practice is not universal. The SEC’s statement also noted that a greater number of people than usual – both within the company and external advisors – may have access to material nonpublic information. This group may well reach beyond those identified in securities trading programs that are required to pre-clear their trades in company securities. Accordingly, the Co-Directors emphasized the need for those in possession of material nonpublic information “to keep this information confidential and to comply with the prohibitions on illegal securities trading.”

The Co-Directors stressed the importance of companies adhering to corporate controls and procedures around the use and dissemination of material nonpublic information, including their disclosure controls and procedures, insider trading prohibitions, codes of ethics and Regulation FD procedures, “to ensure to the greatest extent possible that they protect against the improper dissemination and use of material nonpublic information.” The SEC’s statement also urged broker-dealers, investment advisers and other registrants to be mindful of the need to continue complying with policies and procedures designed to prevent the misuse of material nonpublic information.

Given current volatility in the market, and the potentially heightened importance and wider dissemination of material nonpublic information, public companies, their advisors and other market participants should be especially mindful of the risks of using or selectively disclosing material nonpublic information and continue to strictly enforce relevant controls and procedures. In addition, given the sharp rise in the number of people now working remotely, companies may wish to remind employees of the need to safeguard and

properly handle confidential information, including but not limited to, material nonpublic information, while they are outside the physical confines of the office.

The complete statement can be found at <https://www.sec.gov/news/public-statement/statement-enforcement-co-directors-market-integrity>.

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This memorandum is not intended to provide legal advice, and no legal or business decision should be based on its content. Questions concerning issues addressed in this memorandum should be directed to:

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