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Compliance Preparedness During the COVID-19 Outbreak—Lessons From A Prior Crisis

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In times of economic uncertainty companies face numerous enterprise-wide risks. The COVID-19 pandemic exponentially magnifies these risks, but critical lessons learned from the 2008 financial crisis can help blunt the impact. While concerns over business continuity, cash flow and fulfilling contractual obligations are front-line issues for management teams, companies and their compliance departments must remain vigilant to prevent misconduct – intentional or otherwise – in order to avoid potential enforcement actions associated with fraud, waste or abuse that may follow the immediate crisis.

One consequence of the global financial crisis in 2008 was that companies in a wide variety of industries were subjected to regulatory and shareholder scrutiny that placed a spotlight on how those companies behaved during the downturn. The 2008 crisis spawned a number of federal and state investigations into accounting fraud, mortgage fraud and other corporate reporting and control issues, and in some cases resulted in exorbitant penalties. Such scrutiny led to the exposure of Bernie Madoff as having orchestrated the largest Ponzi scheme in history, causing billions of dollars in losses. Less extreme examples include mortgage underwriters' systematic failure to ensure compliance with industry guidelines.

The current economic climate, while evolving day-by-day, is similar. Actions companies take today will impact their recovery in the future, and companies must take steps to ensure that employees maintain discipline and continue to adhere to company codes of conduct.

While executive leadership is rightly focused on the immediate business risk posed by COVID-19, companies cannot lose sight of consulting with their compliance departments and counsel to develop a risk-based plan to ensure compliance during and after the pandemic. While many companies have previously conducted enterprise-wide compliance risk assessments, management should prioritize issues based on the current crisis and strategize accordingly to focus on top-line concerns posing the most risk to the company.

Management action items include:

- Messaging from executive leadership that legal and compliance guidelines must be followed in times of uncertainty. For example, compliance officers should consider reissuing written codes of conduct with an emphasis on anti-collusion, anti-corruption or anti-kickback provisions.

- Instituting and updating procurement guidelines for any emergency situations so that employees have a clear understanding of the “rules of the road” when it comes to purchasing issues.
- Stressing the importance of strict accounting controls with corporate controllers and other responsible parties to ensure compliance with booking accurate revenue, income and losses. This includes compliance with any and all trading guidelines.
- Maintaining open and frank lines of communications with banks, lenders or financing parties.
- Communicating with third-party vendors to ensure their continued compliance with the company’s code of conduct.

These measures will help ensure that management remains focused on all risks companies face amid the COVID-19 pandemic, including those implicating compliance concerns. By taking steps now to prevent misconduct, companies can focus on getting back to business when the crisis passes without the worry of a regulatory or internal investigation.