



CONSTELLATION
ADVISERS, LLC

CLIENT ALERT: 20-03

BUSINESS CONTINUITY PLANS AND THE CORONAVIRUS:

6 STEPS CLIENTS SHOULD PROACTIVELY TAKE NOW TO BE PREPARED

Rule 206(4)-7 under the Investment Advisers Act of 1940 (“Advisers Act”) requires advisers to consider their fiduciary and regulatory obligations under the Advisers Act, and adopt and implement written compliance policies and procedures reasonably designed to prevent violations of the Advisers Act. In the Rule 206(4)-7 adopting release, the SEC stated that an adviser’s compliance policies and procedures should address the adviser’s Business Continuity Plan (“BCP”) to the extent relevant to an adviser.^[1] The SEC also stated that if an adviser is unable to provide advisory services after a disruption event, its temporary inability to continue operations may put clients’ interests at risk and prevent the adviser from meeting its fiduciary duty to clients. It is also important to keep in mind that the SEC will likely conduct exams targeted at reviewing firms’ BCPs and their effectiveness following the anticipated disruption related to the Coronavirus. The SEC has conducted these types of exams following Superstorm Sandy and Hurricane Harvey. While the potential significant disruption event currently facing firms is different from weather events, the SEC’s interest in the efficacy of BCPs in difficult times will likely be similar to its interest following those storms.

To address the concerns identified by the SEC in prior guidance, Constellation Advisers put together the following recommendations.

^[1] Similarly, FINRA requires broker-dealers to have business continuity plans (see FINRA Rule 4370) and the CFTC has adopted comparable regulations (see 17 CFR 23.603(a)). Accordingly, all of our clients (not just investment advisers) should consider the recommendations in this Client Alert.

1. Consider Work From Home Protocols

You should consider initiating a work from home protocol. Either all employees working from home; or dividing employees into groups with one group working from home for one to two weeks while the other group continues to work from the office; then rotate the groups. If any employee exhibits symptoms of the Coronavirus, then that employee should remain home for two weeks.

2. Cancel Non-Essential Travel

You should consider cancelling or postponing all non-essential business travel (both international and domestic).

3. Test Your Business Continuity Plan

Even if you have recently tested your BCP, we recommend that you test it again. In light of reports of a possible pandemic, it would be advisable to have all employees login from home to confirm access to the firm's network.

- Employees should verify their ability to access emails, materials/folders on the firm's server, trading platforms, and other software and/or programs used by the firm to provide advisory services.
- We also recommend that you have all employees login at the same time to stress test your server's ability to handle all users concurrently accessing the system remotely. You can accomplish this by requiring all employees to login at a specified date and time (evening or weekend).

4. Document Your Business Continuity Plan

Firms should document this BCP test. Recommended methods for documentation include:

- having each employee email or sign a certification and send it to the CCO or designee confirming his or her ability to successfully access all of the items identified above;
- having your IT department or provider pull a report showing that each employee accessed the firm's platforms as represented by the employees;
- noting any difficulties discovered from the test;
- implementing remedial measures to address any deficiencies discovered during the testing, if any;
- documenting corrective measures taken, if any; and
- retesting to verify corrective measures were effective, if applicable.

5. Confirm Critical Vendors Have Functioning Business Continuity Plans

You should contact your critical vendors and obtain representations and documentation from them that they have conducted BCP testing recently and are ready to continue providing the critical services that have been outsourced to them.

6. Keep Website Current With Up-to-Date Information

You should consider taking measures to ensure that your website is kept up-to-date with information about the firm's operational status and general contact information during a disruption event.

While confirming that your BCP is operating effectively is advisable, it is also important to keep in mind that there is a difference between declaring a contingency that activates your BCP and asking personnel to work from home. Declaring a contingency and activating your BCP would also necessitate that you follow all of the provisions in your BCP and document that you have followed them, which is what the SEC will likely review during an exam. Simply requiring firm personnel to work from home to avoid potential exposure would not necessarily activate the BCP or require you to document your activities to demonstrate it was followed. While the firm's capabilities to operate remotely are similar, the regulatory impact of how the firm chooses to address the threat of a potential event will likely depend on whether the BCP is formally activated in a preemptive manner or not activated at all because an actual disruption event did not occur. If an actual disruption event does occur (e.g., the adviser's building is quarantined and all personnel are denied access to the adviser's office), then the BCP would likely be formally activated. In that circumstance, we recommend that the adviser follow the BCP and document that it was followed.

Of course, the overarching concern is for all of our clients and their personnel to remain safe and healthy during these uncertain times. In addition, it is prudent for investment advisers, pool operators, and all others who manage money or engage in securities or commodities related activities under regulatory regimes to remember to be prepared to meet their obligations to their clients and customers taking into consideration the unknown potential severity of the events that may lie ahead. And as always, remember Constellation Advisers is here to help you.

***If you have any questions, please contact a member
of Constellation's Compliance team for assistance:
webmail@constellationadvisers.com.***

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