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Board Oversight in the Age of COVID-19
Part 4

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Part 4 of a weekly series detailing approaches that independent board members are utilizing to address coronavirus-related matters and highlighting emerging issues. Part 1, Part 2 and Part 3 of the series may be accessed on our website. Please visit our Coronavirus Task Force page for more information.

The surreal nature of the current coronavirus environment in the United States continues. The number of new cases appears to have peaked in New York City and the Bay Area, while the S&P 500 ended the week down only about 13.5% year to date, and is higher now than on January 1, 2019. Yet, unemployment claims surged and are approximately 8.5 times higher than levels from the 2008–2009 financial crisis, and scores of businesses across the country remain shuttered and face bankruptcy. So the question of the past four weeks remains — where exactly do we go from here?

What Are Boards Doing Now?

Board Communications. Boards continue to evolve the nature of the periodic updates they are receiving. In addition to hearing about fund performance and operational matters, now some are including presentations from those asset management employees that focus on macro-economic themes, including the head of fixed-income research or those in similar positions.

Future Board Meetings. Boards continue to evaluate their June board schedules, and more are expecting to hold these meetings virtually. Some are also considering the need to hold additional telephonic board meetings to address items already deferred from meeting agendas in March, and expected to be deferred from June meeting agendas, as boards continue to assess the maximum length and most efficient structure of virtual board meetings.

15(c) Requests. Boards and their independent counsel continue to evaluate additional questions for 15(c) Request Letters to address COVID-19 matters. While the nature and extent of these requests is dependent on the types of periodic updates the board is already receiving, most are expecting to request and receive some form of "bring down" update from Fund management closer to the date of the meeting during which 15(c) renewals will be considered.

What's Next – Emerging Issues

Below are some emerging issues that came to light over the past week, which boards may want to consider as they continue to exercise their fiduciary duties.

Liquidity: Some complexes are filing Form N-LIQUID with respect to funds that have breached the 15% limit on illiquid securities, and related reports are being made to the board, along with a remediation plan. Breaches may be due to a more careful review of holdings or to changes in the character of holdings. Alternatively, some complexes are reporting issues with liquidity categorizations provided by third party service providers causing Liquidity Risk Program Administrators to consider overriding or challenging the liquidity classifications provided. The SEC staff has been open and willing to discuss such filings and related matters, and we are aware that OCIE staff has been participating on some of these calls.

<u>Service Providers</u>: As the impact of the virus is expanding globally, boards are considering the types of risks that may be presented by service providers with operations in less developed countries, including India, where BCP plans may be less robust, do not contemplate "work from home" opportunities for all employees and may be harder to implement. This may be a heighted concern for ETFs, as these funds tend to have more unaffiliated service providers with offshore operations.

<u>Index providers</u>: Fund management has noted the benefit of advance communication with index providers to address the potential impact of market halts or bankruptcies of companies included in an index. While most index rebalances have been suspended, the impact of other market developments remains.

<u>Back Office Issues</u>: Fund management continues to consider operational matters, including the speed and efficiency of processing customer orders and the working relationship with financial printers, where production delays and other operational concerns are occurring.

<u>Borrowing Relief</u>: So far, we are not seeing many Funds utilizing this relief to access liquidity, as fund management considers operational issues.

<u>Closed End Funds</u>: The advantages of holding virtual annual shareholders meetings are being weighed against potential disadvantages, including that certain proxy solicitation firms may object to hosting a virtual meeting if it is contested and concerns that activists could take advantage of this format to hijack the meeting.

<u>Interval Funds</u>: Boards are closely monitoring management's preparation for upcoming periodic repurchase offers to assess liquidity and valuation issues. In addition, boards are discussing whether repurchase amounts should be set at levels that seek to clear out shares tendered or to prorate, and considering the impact of such decisions on the management of the portfolio, continuing sales and liquidity for future repurchase offers.

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