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RESPONDING TO THE 2019 NOVEL CORONAVIRUS

MANAGING YOUR SECURITIES AND M&A LEGAL ISSUES

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Kathryn McGuigan

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Agenda

SELECT M&A AND CAPITAL MARKETS ISSUES PRESENTED BY THE CORONAVIRUS COVID-19 EMERGENCY

- Public Company Financial Reporting and Disclosure Issues
- SEC Exemptive Orders
- Virtual Annual Meetings and Proxy Solicitation Issues – SEC Guidance
- Issues in M&A transactions
- Top-Of-Mind Employment Issues
- New Cybersecurity Considerations and Issues

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SEC EXEMPTIVE ORDERS

Operation of SEC Exemptive Order – Application to Securities Offerings

- Securities Exchange Act of 1934, Release No. 34-88318 (March 4, 2020) (“The Relief Order”)
 - Exemptive relief under the Exchange Act for reporting entities that are affected by the coronavirus (COVID-19)
 - The Relief Order (i) is limited to Exchange Act reports by companies subject to reporting requirements of Section 13(a) or 15(d) AND (ii) applies only to enumerated sections:
 - Exchange Act Sections 13(a), 13(f), 13(g), 14(a), 14(c), 14(f), 15(d) and Regulations 13A, Regulation 13D-G (except for those provisions mandating the filing of Schedule 13D or amendments to Schedule 13D), 14A, 14C and 15D, and Exchange Act Rules 13f-1 and 14f-1.
 - This includes among others Forms 10-K, 10-Q and 8-K
 - Also note that the Relief Order does not apply to Section 16 reporting obligations.
 - Time Period for Relief – March 1, 2020 through April 30, 2020
 - Commission may extend time period for relief.
 - Consider interaction with Rule 12b-25.
- The Relief Order: <https://www.sec.gov/rules/other/2020/34-88318.pdf>

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SEC Exemptive Order (continued)

- The Relief Order establishes *conditional relief*, not automatic or applicable to every reporting entity. Conditions to relief are:
 - *Unable* to meet a filing deadline *due to circumstances related to COVID-19*
 - Must *furnish* (not file) to the Commission a Form 8-K (Item 7.01) or Form 6-K by the original filing deadline of the report stating:
 - 1) that it is relying on this Order;
 - 2) a brief description of the reasons why it could not file such report, schedule or form on a timely basis;
 - 3) the estimated date by which the report, schedule, or form is expected to be filed;
 - 4) if appropriate, a risk factor explaining, if material, the impact of COVID-19 on its business; and
 - 5) if reliance on order is necessary due to a third party's inability to furnish a report or opinion, file as an exhibit a statement signed by such party explaining its reasons.
 - Filing must be within 45 days of original due date. (Again, consider interaction with Rule 12b-25.)
 - Disclose in report when filed that it is relying on this Order and state the reasons why it could not file such report, schedule or form on a timely basis.
- Relief is limited to Exchange Act reporting. It does not address financial statement requirements in registered securities offerings and M&A transactions.
 - Section 10(a)(3)
 - Regulation S-X. Item 3-12

PUBLIC COMPANY FINANCIAL REPORTING AND DISCLOSURE ISSUES

Ongoing Disclosure and Financial Reporting Issues

- **No general obligation under federal securities laws to update already filed Exchange Act reports or issued earnings releases**
- CF Disclosure Guidance: Topic No. 9 (March 25, 2020) <https://www.sec.gov/corpfin/coronavirus-covid-19>
- When should a company update:
 - Form 8-K – Item 2.03 (Creation of a direct financial obligation “that is material to the registrant”)
 - For instance, due to liquidity and capital concerns, if the company draws on an existing credit facility (consider materiality) or enters into a new credit facility, or if the company cannot meet covenants such as debt ratio in existing facilities.
 - Form 8-K – Item 7.01 (Regulation FD)
 - Has the company selectively disclosed the effect of COVID-19 to certain individuals or entities, such as analysts?
 - Press Releases and other public disclosure do not trigger a Form 8-K
 - Consider implications of undisclosed business disruptions if insider trading window remains open.
 - Form 8-K – Item 8.01 (Regulation FD)
 - Consider whether COVID-19 updates, including liquidity, need to be made in advance of an offering
 - Update or withdraw guidance?
 - Non-GAAP COVID-19 Adjustments
- Some areas that may need to address COVID-19 in upcoming 10-Ks and 10-Qs: Risk Factors (do not couch in hypothetical language if effect is already occurring), MD&A (liquidity and capital resources, known trends, events or uncertainties), Performance Measures for Outstanding Awards; Financial Reporting (impairment of assets, implications for internal controls and procedures).

VIRTUAL ANNUAL MEETINGS AND PROXY SOLICITATION ISSUES – SEC GUIDANCE

Proxy Issues

- The Relief Order also provides conditional relief with respect to Proxy Statements
 - Applies to delivery obligation *when mail delivery is not possible*
 - Requisite conditions to relief:
 - a) The registrant's security holder has a mailing address located in an area where, *as a result of COVID-19*, the common carrier has suspended delivery service of the type or class customarily used by the registrant or other person making the solicitation; and
 - b) The registrant or other person making a solicitation has made a good faith effort to furnish the Soliciting Materials or Information Statements to the security holder.

Guidance regarding Annual Meetings/Virtual Meetings

- Shareholder meetings are primarily governed by state law, charters and by-laws
 - State law considerations: provide shareholders opportunity to attend, ask questions and vote
- Glass Lewis:
 - “[G]iven the current situation, we believe that [virtual-only] meetings provide compelling advantages for both companies and shareholders to preserve the timing, certainty, agendas and voting of shareholder meetings.”
 - For virtual-only meetings due to COVID-19, up through June 30, Glass Lewis “will generally refrain from recommending to vote against members of the governance committee on this basis, provided that the company discloses, at a minimum, its rationale for doing so, including citing COVID-19.” After June 30, their standard policy on virtual-only meetings will apply.
- SEC Guidance issued March 13 provides that the Staff will not object to virtual-only or hybrid meetings so long as the proxy statement provides robust disclosure in a timely manner and includes clear logistical disclosure of i) how shareholders can access the meeting, ii) participate in the meeting, and iii) vote at the meeting.
 - Additional considerations: vendor logistics, board attendance, CEO presentation, proxy counting, auditor attendance/statement.

Guidance regarding Annual Meetings/Virtual Meetings (continued)

- A company that has already mailed and filed definitive proxy materials can change the *date, time and location* of the meeting *without mailing additional soliciting materials or amending proxy materials*, so long as the company:
 - Issues a press release announcing such change;
 - Files the announcement as definitive additional soliciting materials; and
 - Takes all reasonable steps necessary to inform other intermediaries in the proxy process (such as any proxy service provider) and other relevant market participants (such as the appropriate national securities exchanges) of such change.
- Rule 14a-8 (shareholder proposal) compliance:
 - Rule 14a-8 requires that proponents to appear and present their proposal.
 - The Staff “encourages” companies, to the extent feasible under state law, to provide proponents the ability to present their proposals through alternative means.
- SEC Staff Guidance relating to Annual Meetings (March 13, 2020):
<https://www.sec.gov/ocr/staff-guidance-conducting-annual-meetings-light-covid-19-concerns?auHash=zrsDVFen7QmUL6Xou7EIHYou4Y6IfRTjW3KPSVukQs>

ISSUES IN M&A TRANSACTIONS

Material Adverse Effect

- There is no single answer – it will always depend on both the language in the acquisition agreement and the facts.
- The tools for analyzing an MAE have not changed.
- Our legal analysis today will focus on Delaware law because many acquisition agreements are governed by Delaware law, it has the best-developed body of MAE jurisprudence, and other jurisdictions often look to Delaware for guidance.

Material Adverse Effect

- Standalone or back-door MAE?
- Three principal elements to define and analyze:
 - Is the effect material and adverse?
 - Are forward-looking effects included?
 - Does the effect fall within any of the carve-outs?
 - If so, is there an applicable disproportionate effect carve-out from the carve-outs?
- The construct is an attempt to distinguish target-specific risks from broader business risks.

Sample Material Adverse Effect Definition

- “Company Material Adverse Effect” means any event, circumstance, development, change, occurrence or effect that, individually or in the aggregate, is or is reasonably likely to result in, a material adverse effect on (x) the condition (financial or otherwise), assets, liabilities, business or results of operations of the Company and its Subsidiaries, taken as a whole, or (y) the ability of the Company and its Subsidiaries to timely consummate the Closing (including the Merger) on the terms set forth herein or to perform their agreements or covenants hereunder; provided that, in the case of clause (x) only, no event, circumstance, development, change, occurrence or effect to the extent resulting from, arising out of, or relating to any of the following shall be deemed to constitute, or shall be taken into account in determining whether there has been, a Company Material Adverse Effect, or whether a Company Material Adverse Effect would reasonably be expected to occur: (i) any changes after the date hereof in general United States or global economic conditions, including changes in United States or global securities, credit, financial, debt or other capital markets, (ii) any changes after the date hereof in conditions generally affecting the securities brokerage industry or the other industries in which the Company or any of its Subsidiaries materially engages, (iii) any decline, in and of itself, in the market price or trading volume of the Company Stock, any changes in credit ratings and any changes in any analysts’ recommendations or ratings with respect to the Company or any of its Subsidiaries (it being understood and agreed that this clause (iii) shall not preclude Parent from asserting that any facts or occurrences giving rise to or contributing to such decline that are not otherwise excluded from the definition of Company Material Adverse Effect should be deemed to constitute, or be taken into account in determining whether there has been, or would reasonably be expected to be, a Company Material Adverse Effect), (iv) any failure, in and of itself, by the Company or any of its Subsidiaries to meet any internal or published projections, forecasts, estimates or predictions in respect of revenues, earnings or other financial or operating metrics for any period (it being understood and agreed that this clause (iv) shall not preclude Parent from asserting that any facts or occurrences giving rise to or contributing to such failure that are not otherwise excluded from the definition of Company Material Adverse Effect should be deemed to constitute, or be taken into account in determining whether there has been, or would reasonably be expected to be, a Company Material Adverse Effect), (v) the execution and delivery of this Agreement, the public announcement or the pendency of this Agreement (it being understood and agreed that this clause (v) shall not apply with respect to any representation or warranty that is intended to address the consequences of the execution and delivery of this Agreement or the public announcement or the pendency of this Agreement), (vi) any changes after the date hereof in any Applicable Law or GAAP (or authoritative interpretations thereof), (vii) any action or omission taken by the Company pursuant to the written request of Parent or Merger Sub or (viii) any acts of God, natural disasters, terrorism, armed hostilities, sabotage, war or any escalation or worsening of acts of war, epidemic, pandemic or disease outbreak (including the COVID-19 virus), except in the case of each of clauses (i), (ii), (vi) or (viii), to the extent that any such event, circumstance, development, change, occurrence or effect has a disproportionate adverse effect on the Company and its Subsidiaries, taken as a whole, relative to the adverse effect such event, circumstance, development, change, occurrence or effect has on other companies operating in the securities brokerage industry or the other industries in which the Company or any of its Subsidiaries materially engages.

Durational Significance

Akorn, Inc. v. Fresenius Kabi AG (Del. Ch. Oct. 1, 2018).

A buyer faces a heavy burden when it attempts to invoke a material adverse effect clause in order to avoid its obligation to close. A short-term hiccup in earnings should not suffice; rather the Material Adverse Effect should be material when viewed from the longer-term perspective of a reasonable acquirer. In the absence of evidence to the contrary, a corporate acquirer may be assumed to be purchasing the target as part of a long-term strategy. The important consideration therefore is whether there has been an adverse change in the target's business that is consequential to the company's long-term earnings power over a commercially reasonable period, which one would expect to be measured in years rather than months.

This, of course, is not to say that evidence of a significant decline in earnings by the target corporation during the period after signing but prior to the time appointed for closing is irrelevant. Rather, it means that for such a decline to constitute a material adverse effect, poor earnings results must be expected to persist significantly into the future.

Put differently, the effect should substantially threaten the overall earnings potential of the target in a durationally-significant manner.

Durational Significance “Cheat Sheet”

Case	Magnitude	Duration	Holding
<i>Akorn, Inc. v. Fresenius Kabi AG</i> , C.A. No. 2018-0300-JTL (Del. Ch. 2018, affirm’d 2018)	Year-over-year declines in revenues of 25%, operating income of 105%, and EBITDA of 86%.	One year.	Material adverse effect.
<i>In re IBP, Inc. Shareholders Litigation</i> , 789 A.2d 14 (Del. Ch. 2001)	Year-over-year decline in quarterly earnings of 64%.	Two quarters.	No material adverse effect.
<i>Hexion Specialty Chems., Inc. v. Huntsman Corp.</i> , 965 A.2d 715, 739 (Del. Ch. 2008)	Year-over-year decline in EBITDA projected to range from 7% (target projection) to 33% (buyer projection).	Year-over-year projections.	No material adverse effect.
<i>Genesco, Inc. v. The Finish Line, Inc.</i> , 2007 WL 4698244, at *19 (Tenn. Ch. Dec. 27, 2007)	Year-over-year decline in quarterly earnings of 61%.	Two quarters.	No material adverse effect due to general economic conditions carveout.

Analysis of Carve-outs

- Changes in economic, political, regulatory, financial, or capital markets conditions.
- Natural disasters; does a pandemic count?
- Change of law.
- Decline in stock price or credit rating.
- Failure to meet projections; can underlying cause of failure be considered?
- Specific exclusions?

Disproportionate Effects Carve-outs

- How is the industry or other relevant market to be defined?
- Are there specific or unique impacts to the target's business?

Other Topics

- Deal Processes
 - Due diligence
 - Management presentations
- Closing Mechanics
 - Stock certificates
 - Lender lien releases

TOP-OF-MIND EMPLOYMENT ISSUES

Continued Business Operations

- Keeping your physical business open
 - Are you an essential business/service
 - Review applicable state and local orders
 - Most are relying on the CISA Critical Infrastructure Sectors and Workers Guidance
- Do you have essential workers
 - engaged and working in production and service sectors designated as COVID-19 essential
- Making the determination
 - Review the orders and other publications
 - Consult with counsel
 - Some jurisdictions may have agency making the decision
 - Consider providing vendors, customers, and employees with letters explaining the essential business determination
- Telecommuting Issues – for businesses and workers not considered essential
 - Business expense reimbursement
 - Non-exempt employees
- Union issues
 - Are any changes in the workplace subject to negotiations

Furloughs, Layoffs, and Shut Downs

- Federal and State Warn
 - While there has been relaxation of notice requirements, you need to consider
- Temporary layoffs
 - Usually 6 months or less (CA – 10 business days or a pay period)
 - Must be a date certain return date
 - Wages and benefits
 - Accrued time off
 - Sick leave
 - Mandated time off
 - Unemployment insurance
 - Disability issues
- Federal and State Legislation
 - Federal Families First Coronavirus Response Act (500 or less employees)
 - Effective April 2
 - No regulations yet from Department of Labor
 - House has new bill that would cover employers with 500+ employees
- Federal CARES
 - Small business loans with repayment forgiveness depending on number of employees
- State legislation
 - Check for state employment related changes including sick leave, paid time off, and unemployment

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COVID-19 In The Workplace

- Can you take employee temperatures?
 - Yes. The EEOC has confirmed that measuring employees' body temperatures is permissible given the current circumstances
 - Don't share information with other employees.
 - Control information through human resources
- An employee has tested positive for COVID-19
 - Communicate with affected workers
 - Do not identify by name the infected employee or you could risk a violation of confidentiality laws
 - Send the employee home
 - Ask employee to identify individuals who worked in close proximity (3-6 feet) within
 - Send home all employees who worked closely with that employee for a 14-day period of time to ensure the infection does not spread
 - Clean and disinfect the workplace
- Employee has suspected but unconfirmed COVID-19
 - Same precautions as above; treat as confirmed
- Exposure to or care of COVID-19 patients
 - Same precautions as above; treat as confirmed
- Reporting responsibilities
 - Check with state and local health departments
 - No obligation to report to CDC

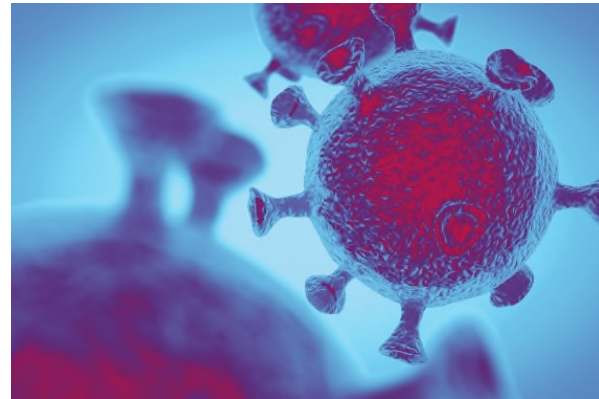
Internal and External Employee Threats

- Internal Threats
 - Employees' concerns of working and COVID-19
 - Consider carefully your internal employee communications
 - Employees are concerned and some may be scared
 - There may be a push for masks, gloves and other protective equipment
 - Union interference
 - Ensure you keep any unions apprised of layoffs, furloughs, reduced hours
 - Review union agreements for any issues you may need to bargain for
 - Employee theft, sabotage of systems, procedures, protocols, and products
 - While we have not seen any indication of theft yet, now is the time to consider physical plant security
 - Photography of employees and managers
 - Employees may attempt to take photos for social media and internet postings
- External Threats
 - Social media
 - News media

NEW CYBERSECURITY CONSIDERATIONS AND ISSUES

New Cybersecurity Considerations and Issues

- Increased Threats
- New Vulnerabilities
- “Heightened State of Cybersecurity”



Increased Threats

LILY HAY NEWMAN

SECURITY 03.19.2020 02:12 PM

Coronavirus Sets the Stage for Hacking Mayhem

As more people work from home and anxiety mounts, expect cyberattacks of all sorts to take advantage.



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Coronavirus now possibly largest-ever cyber security threat

The cumulative volume of coronavirus-related email lures and other threats is the largest collection of attack types exploiting a single theme for years, possibly ever

By Alex Scroxton, Security Editor Published: 18 Mar 2020 15:47

The total volume of phishing emails and other security threats relating to the Covid-19 coronavirus now represents the largest coalescing of [cyber attack](#) types around a single theme that has been seen in a long time, and possibly ever, according to Sherrod DeGrippo, senior director of threat research and detection at Proofpoint.

How to get the most out of the Internet of Things

CIO Trends #7

Tailoring your IT operating model to the digital age

Free Download

ComputerWeekly.com

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<https://www.wired.com/story/coronavirus-cyberattacks-ransomware-phishing/>

<https://www.computerweekly.com/news/252480238/Coronavirus-now-possibly-largest-ever-cyber-security-threat>

Increased Threats



FEDERAL TRADE COMMISSION
Consumer Information

MONEY & CREDIT | **HOMES & MORTGAGES** | **HEALTH & FITNESS** | **JOBS & MAKING MONEY** | **PRIVACY, IDENTITY & ONLINE SECURITY**

Coronavirus: Scammers follow the headlines

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February 10, 2020
by Colleen Tressler
Consumer Education Specialist, FTC

Scammers are taking advantage of fears surrounding the Coronavirus. They're setting up websites to sell bogus products, and using fake emails, texts, and social media posts as a ruse to take your money and get your personal information.

Recent Blog Posts:
[Sprays are not true.](#)
March 19, 2020
[FTC: Coronavirus scams](#)
March 19, 2020
[Online security tips](#)

Re:SAFTY CORONA VIRUS AWARENESS WHO



World Health Organization



Dear Sir,

Go through the attached document on safety measures regarding the spreading of corona virus.

Click on the button below to download

Safety measures

Symptoms common symptoms include fever, cough, shortness of breath and breathing difficulties.

Regards,


Dr. Stella Chungong
Specialist wuhan-virus-advisory

FAKE

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<https://www.consumer.ftc.gov/blog/2020/03/ftc-coronavirus-scams-part-2>
<https://www.consumer.ftc.gov/blog/2020/02/coronavirus-scammers-follow-headlines>

Increased Threats



Investor Alerts and Bulletins

Look Out for Coronavirus-Related Investment Scams - Investor Alert

Feb. 4, 2020

The SEC's Office of Investor Education and Advocacy is issuing this Investor Alert to warn investors about investment frauds involving claims that a company's products or services will be used to help stop the coronavirus outbreak.

Fraudsters often use the latest news developments to lure investors into scams. We have become aware of a number of Internet promotions, including on social media, claiming that the products or services of publicly-traded companies can prevent, detect, or cure coronavirus, and that the stock of these companies will dramatically increase in value as a result. The promotions often take the form of so-called "research reports" and make predictions of a specific "target price." **We urge investors to be wary of these promotions, and to be aware of the substantial potential for fraud at this time.**

- Be cautious of claims that a company's products or services can help stop the coronavirus, especially claims that involve microcap stocks. These claims may be made as part of fraudulent "pump-and-dump" schemes.
- You may lose significant amounts of money if you invest in a company that makes inaccurate or unreliable claims. You may not be able to sell your shares if trading in the company is suspended.
- Submissions of tips, complaints, or referrals relating to suspected securities fraud or wrongdoing can be made online at <https://www.sec.gov/tcr>.

FOR IMMEDIATE RELEASE

Thursday, March 19, 2020

U.S. Attorneys, Florida AG Issue Warning Against COVID-19 Scam Artists

TALLAHASSEE, FLORIDA – Florida's three United States Attorneys today joined with Florida Attorney General Ashley Moody to warn scam artists that they will vigorously pursue anyone trying to capitalize on the coronavirus pandemic by cheating Florida consumers, especially the state's vulnerable elders. The federal law enforcement team is now actively collaborating and cooperating with the state's top prosecutor team in a concerted effort to stop the scams relating to coronavirus.

The state's top prosecutors at the federal and state levels vowed that their offices are committed to

- **Fake cures** for COVID-19 online;
- **Phishing emails** sent from entities posing as the World Health Organization ("WHO") or the Centers for Disease Control and Prevention ("CDC"); and
- **Malware** being inserted onto mobile phones by apps pretending to track the spread of the virus.

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https://www.sec.gov/oiea/investor-alerts-and-bulletins/ia_coronavirus#

<https://www.justice.gov/usao-ndfl/pr/us-attorneys-florida-ag-issue-warning-against-covid-19-scam-artists>

Determine Security Objectives

- **Confidentiality**

- Ensure that remote access communications and stored user data cannot be read by unauthorized parties

- **Integrity**

- Detect any intentional or unintentional changes to remote access communications that occur in transit

- **Availability**

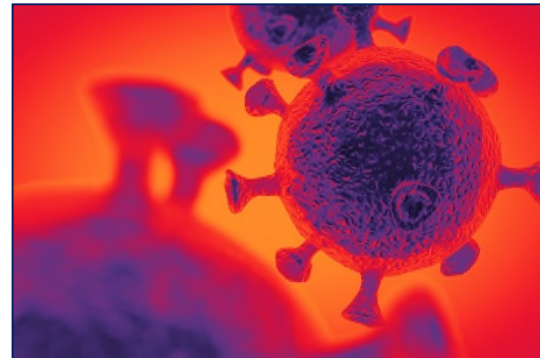
- Ensure that users can access resources through remote access whenever needed

Guide to Enterprise Telework, Remote Access, and Bring Your Own Device (BYOD) Security, NIST Special Publication 800-46 v.2

Various New Vulnerabilities

- Unsecure connections and networks
- Access controls
 - Authentication
 - Weak password security
- Unencrypted devices and data
- Loss of data
- Lost devices
- External access to internal resources
- Lack of physical security controls

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Key Security Issues

- **Secure Connections**

- No public wi-fi or open internet connections
- VPN / Encrypted connections
- Password-protected connections
- Multi-Factor Authentication (MFA)

- **Secure End Points (Data At Rest)**

- Encryption
- Endpoint Protection Platforms
- Endpoint Detection and Response

- **BYOD**

- Layers of control on access to data
- Mobile device management

- **Strong Passwords**

- Computers, devices
- Network access

- **Secure Documents**

- Secure, locked storage
- Return for cross-shredding

- **Protecting Trade Secrets and Confidential Information**

- Reasonable measures
- Layers of security

- **Training**

- Alert and aware to new risks
- Promote culture of cybersecurity

- **Company Policies**

- Telework Security Policy
- Company Confidential Information Policy
- BYOD (Bring Your Own Device to Work) Policy

- **Test Incident Response Plan**

- Are you prepared for an incident?
- Emergency contact information
- Business continuity issues

“Heightened State of Cybersecurity”

Alert (AA20-073A)

Enterprise VPN Security

Original release date: March 13, 2020



[More Alerts](#)

Summary

As organizations prepare for possible impacts of Coronavirus Disease 2019 (COVID-19), many may consider alternate workplace options for their employees. Remote work options—or telework—require an enterprise virtual private network (VPN) solution to connect employees to an organization’s information technology (IT) network. As organizations elect to implement telework, the Cybersecurity and Infrastructure Security Agency (CISA) encourages organizations to adopt a [heightened state of cybersecurity](#).

Technical Details

The following are cybersecurity considerations regarding telework.

- As organizations use VPNs for telework, more vulnerabilities are being found and targeted by malicious cyber actors.
- As VPNs are 24/7, organizations are less likely to keep them updated with the latest security updates and patches.
- Malicious cyber actors may increase phishing emails targeting teleworkers to steal their usernames and passwords.
- Organizations that do not use multi-factor authentication (MFA) for remote access are more susceptible to phishing attacks.
- Organizations may have a limited number of VPN connections, after which point no other employee can telework. With decreased availability, critical business operations may suffer, including IT security personnel’s ability to perform cybersecurity tasks.

Morgan Lewis <https://www.us-cert.gov/ncas/alerts/aa20-073a>

QUESTIONS?

BIOGRAPHIES

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Robert W. Dickey advises US and non-US based companies with respect to their most important mergers, acquisitions, divestitures, and other strategic transactions. He also counsels executives, in house counsel, and boards of directors on a wide range of critical corporate matters, including fiduciary duties, corporate governance, and securities law compliance.

Rob has represented a large number of companies in the media and technology industries, and also has significant experience in the chemical, food and beverage, industrial, life sciences, and risk management industries.

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David A. Sirignano focuses on international and domestic corporate finance, mergers and acquisitions (M&A), and US Securities and Exchange Commission (SEC) and Financial Industry Regulatory Authority (FINRA) regulation. David represents foreign and domestic public companies, broker-dealers, underwriting syndicates, investment managers, and private funds with respect to issues arising under US federal securities laws, including SEC and FINRA registration and reporting obligations, disclosure issues, and insider trading and trading practice regulation.

Before joining Morgan Lewis, David was associate director for international corporate finance in the Division of Corporation Finance at the SEC. In that position, he developed SEC policy on cross-border offerings, acquisitions, and listings, which included offshore Internet offerings, international disclosure and accounting standards, and international corporate governance guidelines. David also advised the SEC and its Division of Enforcement on financial fraud cases and cross-border offering abuses. Earlier, he served as senior legal advisor to the SEC's director of the Division of Corporation Finance, and as staff director of the Advisory Committee on Capital Formation and Regulatory Processes.

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Litigation Partner, Privacy and Cybersecurity and Antitrust practices

- More than 20 years' experience litigating and handling cybersecurity cases and issues
- Advises clients on mitigating and addressing cyber risks, developing cybersecurity protection plans, responding to a data breach or misappropriation of trade secrets, conducting confidential cybersecurity investigations, responding to regulatory investigations, and coordinating with law enforcement on cybercrime issues.
- Variety of complex and novel cyber investigations and cases
- At DOJ, prosecuted and investigated nearly every type of international and domestic computer intrusion, cybercrime, economic espionage, and criminal intellectual property cases.
- Served as the national coordinator for the Computer Hacking and Intellectual Property (CHIP) Program in the DOJ's Criminal Division, in addition to other DOJ leadership positions, and as a cybercrime prosecutor in Silicon Valley.

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Kathryn T. McGuigan provides advice and counsel and litigation defense to companies in all aspects of employment law. She represents employers in US state and federal trial and appellate courts, and before federal and state administrative agencies. She focuses on wage and hour class and collective actions as well as single-plaintiff wrongful termination and discrimination claims. Kate's counseling includes all areas of human resources management. She also speaks regularly on a wide range of employment topics.

Not only does Kate defend employers in employment disputes, clients turn to her for help in avoiding litigation, for counseling and training, and for help in drafting, implementing, and administering policies and procedures.

Kate has a broad background in corporate administration and human resources. Before pursuing her law degree, she enjoyed an extensive career in the food service industry where she was instrumental in the development and startup of a national mall-based, multiconcept restaurant company. Kate also served as vice president of administration for an international restaurant chain. Her experience includes managing all administrative functions, including human resources, employment and customer claims, litigation, customer service and training, crisis management, risk management, and a Bermuda subsidiary.

Our Global Reach

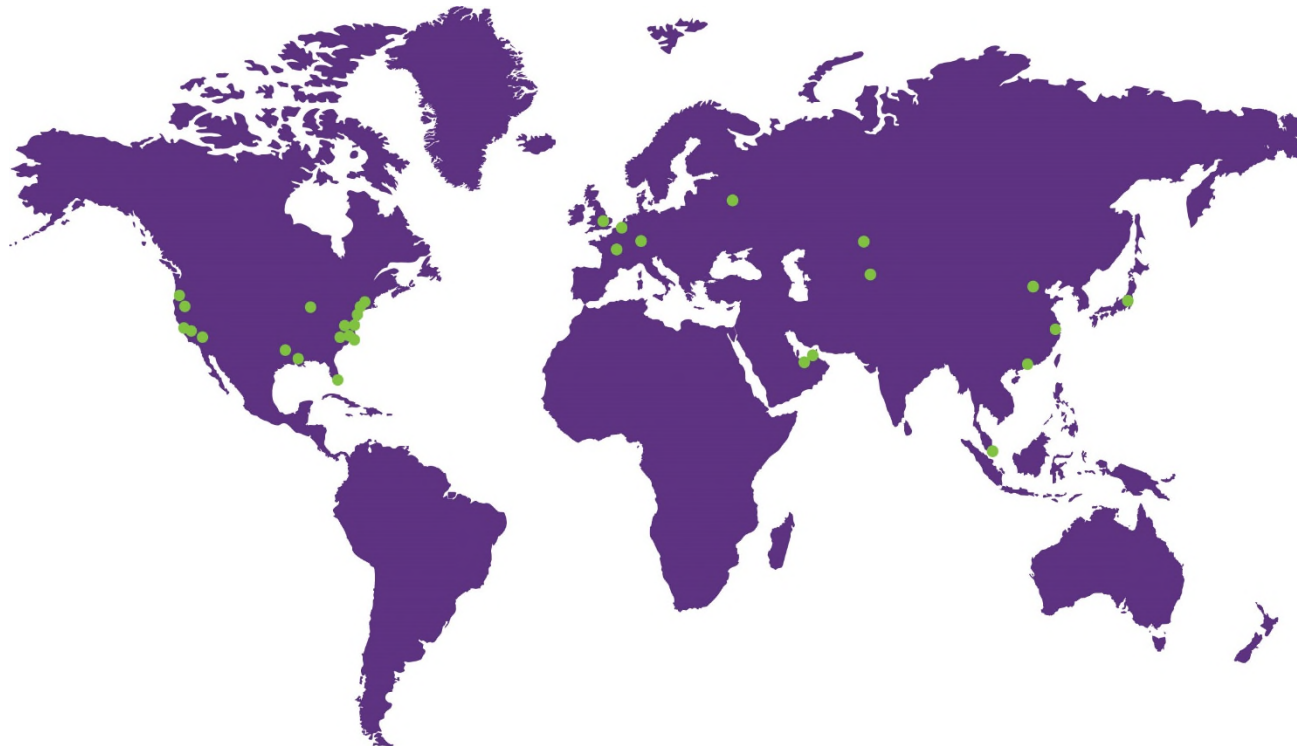
Africa
Asia Pacific
Europe

Latin America
Middle East
North America

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