

## Gap Year: COVID-19's Impact on White-Collar Crime Enforcement and Defense

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For college-bound seniors, a “gap year” is time to reflect, to get it together, to prepare for the journey ahead. The COVID-19 gap is different. At some point, we will look back on this pandemic and see the various gaps that COVID-19 has created. Gaps in sales and revenues will cause companies to miss their financial targets; COVID-related travel restrictions and office closures will create gaps in internal investigations and related remediation; and shifting priorities will create gaps in white-collar enforcement. However, as the crisis abates, we already see a concerted effort to “catch up” and fill these gaps through massive, unprecedented funding and through the prioritization of fighting COVID-related fraud.

### COVID-19's Impact on White-Collar Enforcement

The coronavirus pandemic has imposed practical limitations on traditional white-collar enforcement. Access to courts has diminished with shelter-in-place and social distancing restrictions. Department of Justice (DOJ) policies have foreclosed certain standard investigative techniques that prosecutors and agents rely on. And existing investigatory resources have been diverted, in large part, to deal with COVID-related fraud. At the same time, new oversight resources have been created to deal with COVID-related fraud, especially wrongdoing related to the Coronavirus Aid, Relief, and Economic Security (CARES) Act and other relief programs. If history is any guide, the authority of these new enforcers will be broad in scope and duration.

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## Restricted Operations

COVID-19's impact on enforcement is far-reaching, hamstringing all stages of the process from investigation to prosecution. On March 17, the Executive Office of the President mandated that all agencies "immediately adjust operations and services to minimize face-to-face interactions, especially at those offices or sites where people may be gathering in close proximity or where highly vulnerable populations obtain services." Memorandum from Exec. Off. of the President to the Heads of Dep'ts & Agencies (Mar. 17, 2020), <https://tinyurl.com/face-to-face>. Subsequent memoranda provided guidelines on gradual reopening as conditions permit. Memorandum from Exec. Off. of the President to the Heads of Dep'ts & Agencies (Apr. 20, 2020), <https://tinyurl.com/Opening-up-again>. States have also had varying degrees of social distancing orders in effect.

Federal courthouses across the nation, particularly those in regions hit hardest by the pandemic, have considerably curtailed operations, at times allowing only emergency matters to proceed. Courts have been prioritizing criminal cases that implicate constitutional timing issues and incarcerated defendants who are not typically seen in white-collar fraud prosecutions. The Southern District of New York—once the epicenter of the pandemic and one of the most active districts for white-collar cases—was almost entirely locked down for months. The Thurgood Marshall Courthouse had been closed and the Daniel Patrick Moynihan Courthouse was only hearing urgent criminal matters by special arrangement. For guilty pleas and sentencing hearings, pursuant to new expanded authorization under the CARES Act, courts were conducting remote audio/videoconferencing in which the judge may or may not be physically present. While the Southern District of New York reopened to the public on July 6, 2020, most proceedings are still being held remotely. All jury trials remain suspended until further notice.

The Eastern District of New York has likewise implemented the CARES Act videoconferencing provisions. The chief judge had extended the deadline between initial appearances and preliminary hearings (from 14 days for defendants in custody and 21 days if not) to 60 days, tolled the 30-day period between arrest and indictment until July 13, 2020, and excluded time from April 27, 2020, to September 14, 2020, under the Speedy Trial Act. All jury selections and jury trials, and all new grand jury selections, scheduled before September 14, 2020 have been continued. The Northern District of Illinois has made similar modifications, excluding time through July 15, 2020 under the Speedy Trial Act and extending the CARES Act videoconferencing and teleconferencing provisions until November 16, 2020. Jury trials will not resume until at least October 1, 2020.

One of the most significant impacts of court closures on white-collar matters is that many grand juries have not been convened and prosecutors have been unable to return indictments (albeit with statutory deadlines tolled). Cases that were moving through the pipeline have been effectively halted.

## Investigative Challenges

The ability to get new matters off the ground has been similarly stunted. Companies have been less able to conduct internal investigations, which means reduced or delayed self-reporting. The FBI, similarly, has been working with a severely limited toolbox. Agents have been able to conduct fewer knock and talk interviews—one of the most effective investigative tools in developing cooperating witnesses and eliciting admissions from targets—without violating social distancing guidelines and the president's order. They have been likewise less able to effectuate on-site search warrants to gather documents and data.

While law enforcement can still utilize subpoenas for documents to build white-collar cases, response time has been severely impacted by the pandemic. Work-from-home restrictions, employee furloughs, and dwindling resources continue to strain the capacity of companies to comply. Under these circumstances, prosecutors are hard pressed to deny extensions—even long-term extensions—to responses.

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Even in cases that are further along, agents and prosecutors are less able to conduct in-person interviews with witnesses, subjects, or targets. In white-collar cases, these are often document-heavy encounters that make videoconferencing highly impracticable, if not altogether unproductive. Some agents and prosecutors are unwilling to settle for video interviews, which make it harder to evaluate credibility, and counsel may insist, justifiably, on being physically present with clients for these high-stakes sessions, which is now virtually impossible. Companies, too, are unwilling to disclose confidential financial information over platforms that may not be secure. Working with detained individuals represents added difficulties as the Bureau of Prisons has restricted prison visitations. Finally, as cases head to resolution, companies reeling from the economic impact of COVID-19 will need time to process the financial implications of the pandemic before they can seriously discuss penalties or consider settlements.

The greatest impact on white-collar enforcement may well be in the international sphere. In light of the broad-based travel restrictions and quarantine conditions in many countries, investigation into offshore misconduct has slowed precipitously. Agents and prosecutors are unable to conduct on-site interviews or depositions, and they may be unable to gain access to records stored abroad as multilateral access treaty (MLAT) requests become a lesser priority.

These operational and investigative challenges are expected to be temporary. And as restrictions ease up, law enforcement will be eager to make up for lost time. In their haste to clear the backlog, prosecutors might make mistakes and oversight might be lacking. Defense counsel must take care to be vigilant and use this time to prepare for the inevitable onslaught.

### **New White-Collar Enforcement Tools and New Enforcers**

While some traditional white-collar enforcement takes a back seat, government agencies are focusing on investigating and prosecuting criminal conduct related to COVID-19. This shift has led to the creation of new positions within DOJ and to the formation of new entities to oversee the disbursement of CARES Act funds. If past is prologue, these new oversight bodies will impact criminal enforcement long after the pandemic abates.

Following the Attorney General's directive to "prioritize the detection, investigation and prosecution of all criminal conduct" related to the pandemic, on March 19, 2020, Deputy Attorney General (DAG) Jeffrey Rosen directed every US Attorney to appoint a Coronavirus Fraud Coordinator to, among other duties, "direct the prosecution of coronavirus-related crimes." On March 24, the DAG circulated a memorandum outlining categories of criminal conduct that had already been flagged, including cyber scams, prescription drug schemes, and false Medicare claims. The specific statutory provisions implicated by COVID-19 fraud include mail fraud, wire fraud, computer fraud, healthcare fraud, conspiracy, fraud in connection with major disasters and emergencies (18 U.S.C. § 1040), as well as violations of the Food Drug Cosmetic Act, terrorism statutes (due to COVID-19 meeting the statutory definition of biological agent), and the Defense Production Act.

The Attorney General has also encouraged prosecutors to partner with other federal agencies, state attorneys general, and local authorities to root out criminal behavior related to the pandemic. Prosecutions for fraud in connection with the applications for the receipt of CARES Act funds reflect these cross-jurisdictional efforts.

The DOJ has also formed the COVID-19 Hoarding and Price Gouging Task Force to combat hoarding and price gouging of high-demand, personal protective equipment (PPE) such as N-95 respirators, surgical masks, face shields, outerwear, and gloves, as well as other critical medical supplies. Under the leadership of US Attorney for New Jersey Craig Carpenito, the Task Force has already charged multiple individuals.

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### **CARES Act Oversight Bodies**

The CARES Act itself sets forth a series of mechanisms to monitor fraud and abuse and has allocated a significant sum to support them. The Act provides for a tripartite oversight structure, largely borrowed from provisions in the Troubled Asset Relief Program (TARP) enacted in the aftermath of the 2008 financial crisis. This includes a Special Inspector General for Pandemic Recovery (SIGPR), a Pandemic Response Accountability Committee (PRAC) comprised of inspectors general from other agencies that will support the SIGPR, and a Congressional Oversight Commission. The CARES Act has appropriated \$190 million to support these oversight efforts—far more than TARP did.

The SIGPR is tasked with overseeing the Treasury Department’s disbursement of relief funds and is modeled after the Special Inspector General for the Troubled Asset Relief Program (SIGTARP). The SIGPR’s mandate, like that of the SIGTARP, is to “conduct, supervise, and coordinate audits and investigations of the making, purchase, management, and sale of loans, loan guarantees and other investments” by the Treasury Department under the Act. While the statute appears narrowly tailored, the SIGTARP relied on similarly phrased jurisdiction to investigate TARP fund recipients for conduct unrelated to the financial crisis. If the SIGPR follows in the footsteps of the SIGTARP, he will investigate broadly, thoroughly, and aggressively. He will be a significant driver of criminal referrals and enforcement actions for years to come.

The CARES Act also established the PRAC to “prevent and detect fraud, waste, abuse, and mismanagement [and] mitigate major risks that cut across program and agency boundaries.” It is housed within the Council of the Inspectors General on Integrity and Efficiency (CIGIE) and is comprised of inspectors general for many other departments and agencies. *PRAC Members*, Pandemic Response Accountability Comm., <https://tinyurl.com/PRAC-Members>. The PRAC has independent subpoena power. It is authorized to direct inspectors general from other agencies to initiate investigations and to conduct investigations of its own. The PRAC can also route cases to the SIGPR or make direct referrals to the DOJ.

Finally, the Congressional Oversight Commission oversees the recipients of relief funds and ensures that they comply with the requirements of the CARES Act. The Commission consists of five members of Congress selected by the majority and minority leadership from the House and Senate. The Commission can interview witnesses (and administer oaths), hold hearings, take testimony, and receive evidence in the pursuit of perceived wrongdoing. If the Commission is anything like its TARP counterpart, it too will be active.

These new oversight bodies—and the SIGPR in particular—will drive investigations that are broad in scope and duration, and will lead to many criminal referrals long after the pandemic abates.

### **Combatting Novel White-Collar Criminal Schemes**

Fraud, scams, and outright theft have long been features of major disasters. Yet the nature and scale of the COVID-19 pandemic provide fraudsters with opportunities on a magnitude never before seen. The magnitude and variety of white-collar criminal activity observed to date is staggering. The DOJ has already targeted offers of sham treatments (Press Release, U.S. Dep’t of Justice, Georgia Resident Arrested for Selling Illegal Products Claiming to Protect Against Viruses (Apr. 9, 2020), <https://tinyurl.com/products-against-viruses>) and vaccines (Press Release, U.S. Dep’t of Justice, Justice Department Files Its First Enforcement Action Against COVID-19 Fraud (Mar. 22, 2020), <https://tinyurl.com/DOJ-covid-19-vaccine>), and bogus attempts to sell personal protective equipment (Press Release, E. Dist. of N.Y., U.S. Dep’t of Justice, Two Individuals Arrested for Conspiring to Defraud Purported Purchasers of Personal Protective Equipment (Apr. 27, 2020), <https://tinyurl.com/DOJ-PPE-Fraud>), among other schemes.

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Cybercrime, too, has been on the rise, with hackers using COVID-19 as a cover for deploying extensive phishing campaigns and for implanting malicious code, including ransomware.

The implementation of the \$2 trillion CARES Act provides further opportunities for fraudsters to misappropriate the much-needed financial support either by creating sham businesses to collect the funds (Press Release, U.S. Dep't of Justice, Two Charged in Rhode Island with Stimulus Fraud (May 5, 2020), <https://tinyurl.com/stimulus-fraud>) or by utilizing the funds for personal expenses rather than their intended use (Press Release, U.S. Dep't of Justice, Hollywood Film Producer Charged with \$1.7 Million COVID-Relief Fraud (May 22, 2020), <https://tinyurl.com/covid-relief-fraud>). Regulatory provisions promulgated under the CARES Act directly identify a variety of criminal laws—with punishments including steep fines and imprisonment of up to 30 years—for false statements on the loan application. Felony mail, wire, and bank fraud charges and money laundering charges should be added to that list as potential vehicles for prosecution of CARES Act–related fraud.

Alongside this COVID-specific criminal activity, law enforcers and regulators have set their sights on fraudulent activity spurred by COVID's market and supply chain disruptions, including the following.

#### *Trading Activity*

The current unprecedented market volatility, drastic economic events, and routine market disruptions all mean that material nonpublic information (MNPI) “may hold even greater value than under normal circumstances” and that a “greater number of people may have access to [MNPI] than in less challenging times.” Press Release, Stephanie Avakian & Steven Peikin, Div. of Enf't, U.S. Sec. & Exch. Comm'n, Statement Regarding Market Integrity (Mar. 23, 2020), <https://tinyurl.com/SEC-market-integrity>. This atmosphere may also bring about riskier behavior by insiders, particularly as some of them do not usually have access to MNPI and do not know how to handle it properly. Securing MNPI while working remotely is also a new challenge, with family members and others having access to common working spaces. The co-directors of the SEC Enforcement Division have already issued a cautionary statement stressing “the importance of maintaining market integrity and following corporate controls and procedures” during the crisis. *Id.* And DOJ is still investigating stock sales by Sen. Richard Burr of North Carolina ahead of late February's COVID-fueled share price drops. Notably, while passive investment schemes such as Rule 10b5-1 trading plans can offer a defense to insider trading allegations, their value might be limited under current, highly volatile circumstances, especially if plans are excessively modified or limited in duration.

The spike in volatility and volume driven by COVID-19 could also embolden traders with bad intentions looking to “hide amongst the noise.” During times of strenuous market conditions, market manipulators can take advantage of the chaos and attempt to hide spoofing activity assuming that their behavior will go unnoticed. Fraudsters may also use the latest news developments to make claims that a company's product or service can help stop the virus. These positive, but false claims may be part of fraudulent “pump-and-dump” schemes. Microcap stocks are particularly vulnerable to these market manipulation schemes, as there is often limited publicly available information about these companies' management, products, services, and finances. As of August 25, 2020, the SEC has issued 35 trading suspensions in connection with COVID-19, mostly targeting microcap companies. Press Release, U.S. Sec. & Exch. Comm'n, Look Out for Coronavirus-Related Investment Scams—Investor Alert (August 25, 2020), <https://tinyurl.com/SEC-coronavirus>. Executives with the Financial Industry Regulatory Authority (FINRA) reported a 200 percent increase in alerts related to best execution, pricing issues, and “micromanipulation” of markets, including wash sales, spoofing, and layering. Letters and notices from FINRA are forthcoming as they look to keep abuses in check.

#### *Securities Fraud*

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As COVID-19 ravages the performance of numerous issuers, executives may be tempted to soften the blow by improperly managing their earnings or by not disclosing known risks to their supply chains, distributors, customers, costs, or revenue base. Understating or misstating the impact of the crisis could lead to enforcement problems. Conversely, some companies may attempt to disguise previously undisclosed problems or weaknesses as coronavirus-related. The SEC and DOJ will be looking for anomalies and inconsistencies in corporate filings. As early as January 30, 2020, SEC Chairman Jay Clayton announced that the SEC staff would monitor and, to the extent necessary, provide guidance regarding disclosures “related to the potential effects of the coronavirus.” In February, the SEC assembled a cross-division working group to monitor “the real and potential effects of COVID-19 on public companies, including with respect to potential reporting challenges” and public disclosures. So far, the SEC has “actively monitor[ed]” “markets for frauds, illicit schemes and other misconduct affecting investors relating to COVID-19.” On May 12, 2020, former SEC Co-Director of Enforcement Steven Peikin outlined the responsibilities of the Enforcement Division’s Coronavirus Steering Committee, which was created to respond to COVID-19-related enforcement issues, including microcap fraud, insider trading, accounting or other disclosure improprieties, and market-moving announcements by issuers in industries particularly impacted by the COVID-19 pandemic. Steven Peikin, Co-Director, Div. of Enf’t, U.S. Sec. & Exch. Comm’n, Keynote Address, Securities Enforcement Forum West 2020 (May 12, 2020), <https://tinyurl.com/SEC-Peikin>. The Coronavirus Steering Committee “developed a systematic process to review public filings from issuers in highly-impacted industries, with a focus on identifying disclosures that appear to be significantly out of step with others in the same industry.” It has been reported that the SEC’s enforcement division has sent letters to certain companies that received funding from the Small Business Administration’s Paycheck Protection Program, asking for information about how the funds were being used and for copies of loan applications. Investigators may be focusing on companies whose most recent financial disclosures communicated healthy conditions, but who nevertheless applied for and received PPP funding.

#### *Money Laundering, Sanctions, and Export Controls*

COVID-19 is making it harder for governments and financial institutions to implement their anti-money laundering (AML) obligations. Many AML government and private sector employees are now working from home, have been redeployed to COVID-19 responses, or are not working at all. In certain countries, AML resources have been diverted to other areas, such as financial stability, and humanitarian and economic recovery efforts. For example, in many cases, AML onsite inspections have been postponed or substituted with desk-based inspections (some using videoconferencing). Some jurisdictions reported a pause in new AML policy and legislative initiatives. The Financial Crimes Enforcement Network (FinCEN) has stated that financial institutions are expected to continue following a risk-based approach, and to adhere to their Bank Secrecy Act obligations, but recognized “that certain regulatory timing requirements with regard to Bank Secrecy Act filings may be challenging during the COVID-19 pandemic and that there may be some reasonable delays in compliance.” Press Release, Fin. Crimes Enf’t Network, U.S. Dep’t of Treasury, The Financial Crimes Enforcement Network Provides Further Information to Financial Institutions in Response to the Coronavirus Disease 2019 (COVID-19) Pandemic (Apr. 3, 2020), <https://tinyurl.com/FinCEN-COVID-19>.

COVID-19 is also being exploited by wrongdoers to forge new and expanded ways to launder illicit proceeds. Criminals are reportedly bypassing existing customer due diligence measures by exploiting remote customer onboarding and verification processes; online financial services and virtual assets are used to move and conceal illicit funds; insolvency schemes are used to conceal and launder illicit proceeds; and, as money moves out of the banking system due to financial instability, the use of unregulated financial services increases, creating opportunities for criminals to launder illicit funds. FinCEN has begun publishing a series of advisories highlighting specific crime typologies relating to the pandemic to

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encourage better defenses and reporting, with three advisories published so far. FinCEN, *Coronavirus Updates*, <https://www.fincen.gov/coronavirus>.

The COVID-19 pandemic may also impact companies' and financial institutions' ability to comply with the extensive US economic sanctions regime. In an April 20, 2020, announcement, the US Treasury Department's Office of Foreign Assets Control (OFAC) encouraged individuals and entities affected by COVID-19 to communicate to OFAC "as soon as practicable" any delays they may experience in meeting deadlines related to OFAC's regulatory requirements, including blocking and reject reports, responses to administrative subpoenas, and reports required by general or specific licenses. OFAC also expressed a limited willingness to take the circumstances of the pandemic into account when considering enforcement. *The Office of Foreign Assets Control (OFAC) Encourages Persons to Communicate OFAC Compliance Concerns Related to the Coronavirus Disease 2-19 (COVID-19)*, Resource Ctr., U.S. Dep't of Treasury (Apr. 20, 2020), <https://tinyurl.com/OFAC-COVID>. The April 20 announcement followed OFAC's publication of a fact sheet on April 16, 2020, that gathered into one place, with commentary and links, the existing exemptions and authorizations that facilitate the provision of COVID-19-related medicine, medical devices, agricultural exports, and humanitarian assistance by US persons to Cuba, Iran, North Korea, Syria, the Crimea region of Ukraine, and Venezuela. Even when an exemption is not available, OFAC indicated that it will consider license requests on a case-by-case basis and that it will prioritize applications, compliance questions, and other requests related to humanitarian support. *Publication of a Fact Sheet on the Provision of Humanitarian Assistance and Trade to Combat COVID-19*, Resource Ctr., U.S. Dep't of Treasury (Apr. 16, 2020), <https://tinyurl.com/OFAC-Fact-Sheet>.

Finally, on April 7, 2020, the Federal Emergency Management Agency (FEMA) issued new prohibitions on the export from the United States to foreign countries of certain personal protective equipment designated by the Department of Health and Human Services as "scarce or threatened materials." *Prioritization and Allocation of Certain Scarce or Threatened Health and Medical Resources for Domestic Use*, 85 Fed. Reg. 20,195 (Apr. 10, 2020), <https://tinyurl.com/FEMA-Export>. This includes N-95 and other identified filtering components, respirators, and certain surgical masks and gloves. The prohibitions were extended on August 10, 2020 and are now in effect until December 31, 2020.

### *Corruption*

Pressure to fill revenue gaps and a dwindling compliance framework will spawn corrupt behavior. Corruption that impacts governmental responses to COVID-19, in particular, will be targeted by enforcement agencies in the United States and abroad. Government officials are likely to get more involved in supply chains and procurement activity, and the greater the number of government interactions, the greater the likelihood that corrupt payments will take place. This is especially the case where the pandemic has disrupted existing supply chains, and bribes may be seen as a way to expedite shipments once the pandemic subsides and consumption ramps up. Certain foreign officials may attempt to use these circumstances to extract corrupt payments so that goods can be released and required export licenses granted.

### *Anticompetitive Behavior*

Protecting the health, safety, and well-being of Americans during the COVID-19 crisis will require unprecedented cooperation among governmental and private sector entities. Enforcement authorities are remaining watchful, however, for anticompetitive behavior. On March 9, 2020, DOJ announced its intention to hold accountable violators of federal antitrust laws in connection with the manufacture, distribution, or sale of public health products such as face masks, respirators, and diagnostics. Press Release, U.S. Dep't of Justice, *Justice Department Cautions Business Community Against Violating Antitrust Laws in the Manufacturing, Distribution, and Sale of Public Health Products* (Mar. 9, 2020),

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<https://tinyurl.com/DOJ-Antitrust>. The Procurement Collusion Strike Force is also on high alert for collusive practices in the sale of public health products to federal, state, and local agencies. On April 13, 2020, the Antitrust Division and the Federal Trade Commission jointly cautioned companies that these agencies will vigorously prosecute anticompetitive conduct that harms workers, particularly those medical professionals, first responders, and other essential workers operating in the COVID-19 front lines. While praising companies and individuals that have “demonstrated extraordinary compassion and flexibility in responding to COVID-19,” the agencies stated that they “will not hesitate to hold accountable” those that “may use [the crisis] to prey on American workers by subverting competition in labor markets.” U.S. Dep’t of Justice & Fed. Trade Comm’n, Joint Antitrust Statement Regarding COVID-19 and Competition in Labor Markets (Apr. 2020), <https://tinyurl.com/DOJ-Antitrust-Labor>.

In their joint statement, the Antitrust Division and FTC indicated that they will be monitoring whether employers, staffing agencies, and recruiters engage in anticompetitive employment practices—including naked wage-fixing and no-poach agreements—that harm workers during the COVID-19 crisis. The agencies stated that they are particularly concerned about agreements among employers to lower the compensation, benefits, or hours worked for healthcare professionals and those who work in grocery stores, pharmacies, delivery and distribution networks, warehouses, and other essential sectors.

### **COVID-19 Impact on Internal Investigations**

Travel restrictions, work-from-home requirements, and social distancing rules will make effective internal investigations extremely difficult. Companies must therefore decide whether, and how, they can address allegations of misconduct at this time.

To begin with, companies facing economic pressures from decreased revenue are deciding whether to halt, delay, or proceed with investigations. These decisions apply both to investigations already in motion and to investigations into new allegations of wrongdoing. To the extent possible, any such decision should be risk-based and programmatic, and set priorities based on the limitations imposed by the pandemic. Under this programmatic view, existing investigations may not always take precedence. Instead, the company would do well to prioritize misconduct that puts the company’s assets or functions at risk or misconduct that carries significant reputational and legal exposure.

Whether deciding to halt, delay, initiate, or continue an investigation, efforts must nevertheless be made to preserve all potentially relevant information in the company’s possession, custody, or control. This may include interviewing employees that are about to depart, especially if agreements for post-employment cooperation are not feasible or advisable. Future government inquiries may be sympathetic to investigation delays caused by the pandemic, but law enforcers will not tolerate loss of data that could have been preserved. While collection and review could be performed at a later time, the company should seek to use available internal and external resources to preserve relevant data. Current technology allows for most preservation to be done remotely, often with significant cost savings. Attention should also be given to personal devices that may now be used more frequently for business purposes as employees work from home on their personal networks.

If a decision is made to proceed with an investigation, careful planning is in order to establish not just the goals of the inquiry, but also the unique steps that must now be taken to preserve, collect, review, and analyze all relevant data, and to interview employees of interest. Remote efforts may not always be possible, especially in cross-border investigations, and additional time should be built in to complete these processes as compared with normal circumstances. Remote efforts may also present novel data security issues, especially as more third parties such as forensic analysts, translators, and document reviewers are forced to work from home.

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Remote interviews present their own unique set of challenges. First, an effective face-to-face interview is always more than just a fact-finding vehicle as it allows for credibility assessments, essential to every investigation. Phone, and even video-based, interviews are a pale understudy in that regard. Remote interviews are inherently awkward and complicate the presentation of documents to the witness, a necessary component of virtually every interview. And the simple reality is that just as people are less likely to say out loud some of the incredible things they write in emails and texts, they are also less inhibited about saying something untrue on video than they would be in person. Finally, remote interviews may frustrate efforts to build a rapport with the witness and maximize her cooperation.

As with other aspects of our work, we are fortunate that technology now allows companies to continue and investigate allegations of misconduct despite the severe limitations imposed by the pandemic. Technology, however, is a tool, not a panacea; its drawbacks and benefits must be considered as companies endeavor to incorporate investigations into their new normal, even if on a temporary basis.