

## **Securities Regulation Daily Wrap Up, TOP STORY—Business not as usual: regulators and top attorneys provide guidance on COVID-19 related issues, (Mar. 13, 2020)**

Securities Regulation Daily Wrap Up

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By [Brad Rosen, J.D.](#)

Representatives from the NFA and FINRA, along with various Katten Muchin Rosenman area specialists, convened telephonically to provide a wealth of information and insights regarding regulatory responses to the COVID-19 crisis.

Long-time futures industry attorney Gary DeWaal recently moderated a webinar titled [Business Not as Usual: Practical and Regulatory Responses to COVID-19 for the US Financial Services Industry](#). DeWaal was joined by Carol Wooding, Senior Vice President, General Counsel National Futures Association (NFA) and Bill Wollman, Executive Vice President, Office of Financial and Operational Risk Policy, Financial Industry Regulatory Authority (FINRA), together with Katten Muchin Rosenman subject area specialists, Carl Kennedy (futures and derivatives), Susan Light (securities), and Julie Gottshall (labor and employment). The panel discussed and explored a number of timely and urgent issues related to the COVID-19 crisis and its impact on regulated companies.

**Looking back, looking forward.** DeWaal kicked off the webinar by sharing his own experiences and recollections of various crises gone by and their impacts on financial industry regulation. These included the 9/11 attacks of 2001, the SARs epidemic (2003), Hurricane Katrina (2005), and Superstorm Sandy (2012). DeWaal's point was an optimistic one. We survived all of those past calamities, and learned from them. The financial service industry will survive COVID-19 as well.

**Precautions and threats.** Katten partner Carl Kennedy noted that regulated firms are increasingly relying on remote work solutions, social distancing, and making further use of various technologies to accomplish these ends. He warned, however, that the increased reliance on technology has resulted in greater vulnerabilities to cyberattacks. NFA's Wooding noted that the association has become aware of a heightened number of phishing emails sent out to its members related to the Coronavirus. Wooding advised that members need to be ever vigilant and special attention should be paid to assure that employees are using equipment that is current with respect to updates, security patches and virus protection.

Wooding also observed that the Superstorm Sandy experience underscored the importance of backup sites and remote working capabilities. However, she noted in the current situation, the duration of the crisis remains unknown. Nonetheless, Wooding pointed out the importance of making sure connections work, determining minimum staff requirements, and making sure contact lists are up to date.

**Working remotely and supervisory issues.** Kennedy also queried Wooding about branch office registration requirements, and related supervisory obligations. Wooding acknowledged that working from a remote location could be deemed a branch office, and related technical requirements may be implicated given the dramatic relocation of workforces. Nonetheless, Wooding indicated that NFA will adopt a practical approach and not play "gotcha" with its membership on this score. Additionally, Wooding suggested that if a member departs from a regulatory requirement due to the crisis, they should document it and provide a rationale for their doing so. The NFA has also recently published additional guidance regarding its [branch office requirements](#). Wooding also noted that NFA is in ongoing dialogue and coordination with the CFTC's Division of Intermediary Oversight (DSIO) in connection with these issues.

**FINRA anticipates a flexible posture.** FINRA's Bill Wollman indicated that the regulator will be proceeding with understanding and flexibility in light of the circumstances related to the COVID-19 outbreak. He also pointed to FINRA's recent [Regulatory Notice 20-8](#) which reminds its member firms to consider whether their business continuity plans (BCPs) are sufficiently flexible to address a wide range of possible effects in the event of a pandemic in the United States. Wollman conceded that it is impossible for a firm to foresee all possible events in its BCP and acknowledged that firms will need to make continual adjustments. However, Wollman left the listening audience with this key take away: regardless of the COVID-19 crisis, supervisory obligations remain. He advised that members put reasonable supervisory systems in place in light of any changing circumstances.

**Regulatory exams and rules implementation.** In response to a query from Katten partner Susan Light, Wollman indicated that on-site examination of members in the near future would need to clear a very high bar. Wollman indicated that he could only see that happening if a very high-risk situation was in play. Wollman also noted that FINRA has increased its capacity to conduct many aspects of its exams remotely.

Light also raised the possibility that the implementation of Regulation BI (Best Interest) and Regulation CAT (Consolidated Audit Trail) may encounter delays due to the COVID-19 outbreak. She noted that the SEC has been approached by the SIFMA regarding these issues.

**Don't forget employee rights.** Katten employment law specialist, Julie Gottshall, reminded the listening audience that all employee protections and prohibitions will remain in place during the pendency of the crisis. She also advised employers to take a fresh look at their employee travel, remote working, and sick and personal leave policies.

De Waal questioned Gottshall whether an employer could send an employee who was coughing home. She responded that if an employee appeared ill, that employee could be sent home, but noted such inquiries are often very fact specific. Gottshall also noted that while an employer has a duty to provide a safe workplace, that employer also needs to be mindful of healthcare-related confidentiality obligations. Gottshall also observed that an employer could require an employee to work from home in an appropriate circumstance, but noted expense-reimbursement issues could also arise.

For further insights on these rapidly developing COVID-19 issues, *Securities Regulation Daily* [Senior Editor Mark Nelson](#) provides a comprehensive survey of the recent actions taken by a host of global regulators in a strategic perspective piece titled [COVID-19: U.S. and international securities regulators offer guidance, relief to firms](#).

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