SULLIVAN & CROMWELL LLP

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# COVID-19 Risk Factor and Other Disclosure Considerations for Banking Institutions

## COVID-19-Related Risk Factor and Other Disclosure Considerations for Banking Institutions' First Quarter 2020 Form 10-Q Filings

### SUMMARY

Since March 13, 2020, the United States has been operating under a state of emergency declared by President Trump in response to the spread of COVID-19. COVID-19 and related governmental responses have affected economic and financial market conditions as well as the operations, results and prospects of companies across many industries. As banking institutions prepare their Form 10-Q filings for the first quarter of 2020, they should consider updates to risk factors in light of the significant developments that have occurred since filing their 2019 annual reports on Form 10-K, in many cases since the second half of February. Although any determination on risk factors must be fact-specific and tailored to the banking institution's circumstances, this memorandum highlights general categories of risks that banking institutions may consider.

This memorandum is a banking-focused supplement to our forthcoming memorandum to clients that will discuss general disclosure considerations in light of COVID-19.

### DISCUSSION

Form 10-Q requires issuers to include any material changes from risk factors previously disclosed in the issuer's annual report on Form 10-K. Any risk factor update can be accomplished by adding new risk factors specifically related to COVID-19, by updating risk factors that appeared in the Form 10-K or a combination of the two.

COVID-19 has many implications for banking institutions, which may result in the manifestation of a variety of risks already described in the banking institutions' annual reports on Form 10-K or exacerbate or materially change certain risks that are already disclosed. Banking institutions should evaluate whether COVID-19 presents heightened or new risks that existing risk factors do not adequately address, or that otherwise warrant further disclosure, as the implications of COVID-19 may represent the intersection of many risks, such as risks relating to economic and financial market conditions, borrower and counterparty creditworthiness, demand for financial services, and business continuity and operational resilience, as well as the banking institution's financial condition, results of operations and liquidity.

Banking institutions that are considering securities transactions, particularly issuances of securities, should consider risk factor updates prior to their Form 10-Q filings. For example, banking institutions may provide COVID-19-related risk factors in connection with first quarter earnings releases.

Recent SEC enforcement actions highlight the need for issuers to discuss the risks they face in specific terms and to describe accurately any actual incidents that have occurred or risks that have manifested. For example, the SEC brought an enforcement action against Mylan NV in late 2019 alleging that Mylan, among other things, disclosed in its risk factors that a governmental authority "may" take a contrary position regarding the classification of the EpiPen as a generic drug on Mylan's Medicaid submissions even though the authority had already informed Mylan that the drug had been misclassified.[1] This followed an enforcement action against Facebook earlier in 2019 alleging that Facebook described risk factors associated with the use of customer data as prospective and hypothetical even though those risks had already come to fruition.[2] Accordingly, any new or updated risk factors related to COVID-19 should not describe risks as purely hypothetical if they have actually affected a banking institution.

COVID-19 and governmental and other responses to COVID-19 continue to develop. The below categories of risks reflect considerations as of the date of this memorandum, but banking institutions should consider circumstances and related risks through the time of filing. To date, many COVID-19-related disclosures have stated that circumstances continue to change and, relatedly, that the extent of COVID-19's impact on the banking institution is unpredictable and depends on a number of factors outside the banking institution's control, such as the scope and duration of the pandemic (including the possibility of additional waves of outbreaks), the nature and scope of any selloff or resulting economic downturn, customer response and actions that governmental authorities may take in response to the pandemic. Banking institutions should consider whether disclosure along these lines is appropriate in any COVID-19 risk factors they include in their first quarter 2020 Form 10-Q filings.

### Types of Risks to Consider

The following is a list of the types of risks banking institutions may consider in drafting or updating risk factors for addressing the impact of COVID-19. The list is intended to assist banking institutions in drafting risk factors but not to imply any or all would apply to any particular banking institution. Any decision on updating risk factors should be tailored to the specific banking institution and how various risks have affected, or may affect, the institution and its operations.

As noted above, any risks that a banking institution does not adequately cover in existing risk factors may be addressed by creating a stand-alone risk factor regarding the impact of COVID-19 in the institution's Form 10-Q filing, by updating applicable Form 10-K risk factors or a combination of both approaches, and a complete revision of the institution's existing risk factor disclosure should not be necessary.

- ***Adverse Economic Conditions.*** It is customary for banking institutions to include in their Form 10-K filings a risk factor discussing generally risks associated with economic conditions and volatility in financial markets. Banking institutions should consider the adequacy of disclosure in light of the spread of COVID-19, including increased volatility in financial markets and the possibility of prolonged adverse economic conditions. These risk factors generally consider impacts due to changes in economic and financial market conditions such as decreases in demand for products, decreases in market value of loans and securities, impairments of intangible assets (such as goodwill), decreases in income due to interest rate declines and increases in customer delinquencies and defaults. Banking institutions should consider whether COVID-19 has caused or is expected to cause these type of losses or has negatively affected or is expected to affect growth and strategic plans, and supplement disclosure for any material changes or developments. Banking institutions should also consider financial and other risks if government programs to address the impacts of COVID-19, including additional lending facilities announced by the Federal Reserve, prove to be ineffective.
- ***Loan and Credit Losses.*** To combat the spread of COVID-19, and, in some cases, in response to governmental mandates to close non-essential businesses, many businesses have ceased or substantially reduced operations for an indeterminate period. In addition, individuals may have been laid off, furloughed or be unable to work as a result of reduced business operations. Banking institutions should analyze their loan portfolios to determine whether there has been a material change in the credit quality of their loan portfolios due to the impact of COVID-19.

  In addition, banking institutions should also consider risks related to customer concentrations.

  - ***Geographic Concentration.*** Many banking institutions operate on a community, regional or super-regional basis. COVID-19 has, to date, disproportionately affected certain geographic regions (*e.g.*, the New York City metropolitan area and Washington State) and, as the outbreak spreads, may in the future impact geographic regions that have been less affected to date. Similarly, for banking institutions with international exposure, the outbreak has been particularly severe in certain countries (such as Italy and Spain). Affected geographic areas have experienced the closing of defined non-essential businesses, partial or complete "stay-at-home" orders and prohibitions on gatherings of any size. Banking institutions should consider their geographic concentrations in light of COVID-19's impact to date (including exposure to densely populated urban areas, where the virus may spread more easily and rapidly), and analyze whether there is a material risk to the banking institution's business, financial condition or liquidity if COVID-19 were to have an increased or outsized impact on those regions.
  - ***Industry Concentration.*** Certain industries have been or are likely to be more impacted by COVID-19 than others. To date that has included the hospitality, entertainment and transportation industries, including airlines, cruise ships, restaurants, hotels, resorts and organizers of live events. In addition, other industries may be affected because of issues in their supply chains, such as a lack of freight as more airlines limit services or an inability to import goods from foreign countries due to governmental actions or COVID-19's impact in foreign countries (for example, industries that rely on the importing of supplies from China were affected by the outbreak in China during the first quarter). COVID-19 has also affected the energy industry, as demand for power has changed dramatically in regions subject to stay-at-home orders. Although not directly related to COVID-19, there have also been significant drops

in oil prices that have affected financial markets and investors with exposure to the energy sector. Banking institutions should consider their exposure to these and other affected industries, and analyze whether there is a material risk to the banking institution's business, financial condition or liquidity as a result.

- ***Small and Mid-Size Business Concentration.*** It is expected that small and mid-size businesses, many of which rely on continuing cash flow to fund day-to-day operations, may be particularly hard hit by forced closures and other preventative measures taken by federal, state or local governments. Although government programs have sought, and may further seek, to provide relief to these types of entities, there can be no assurance that these programs will succeed. Also, governments in affected areas have and may continue to adopt regulations or promulgate executive orders that restrict or limit banks' ability to take certain actions with these customers that they would otherwise take in the ordinary course—such as following standard collection and foreclosure procedures. At the same time, it may be the case that more customers are expected to draw on existing lines of credit or seek additional loans to help finance their business operations. Banking institutions should consider their exposure to small and mid-sized businesses and analyze whether there is a material risk to the banking institution's business or financial condition as a result.

- ***Capital and Liquidity.*** Market volatility and prolonged periods of economic stress may affect banking institutions' capital and liquidity. In addition, these factors may limit a banking institution's access to capital markets. Banking institutions should consider any risks to their capital and liquidity due to current and longer-term economic effects of COVID-19, particularly if stress testing or other models insufficiently predicted the potential impacts of a global pandemic event such as COVID-19. Banking institutions should also consider limitations on the ability of their banking subsidiaries to pay dividends. For example, risks to credit portfolios and/or increased draws on outstanding lines of credit could affect capital and liquidity at, and/or result in decreased income or increased losses for, bank subsidiaries, and this could in turn impede the bank's ability to pay dividends in light of applicable state and federal legal and regulatory requirements, such as those under the National Bank Act and Regulation H. If the situation deteriorates, regulators may also consider taking actions to limit a banking subsidiary's ability to pay dividends, such as the European Central Bank's recommendation for credit institutions to suspend dividends and other capital distributions in order to conserve capital and retain capacity "to support the economy in an environment of heightened uncertainty caused by COVID 19."[3] Banking institutions should also consider the regulatory impact of any changes to their own capital and liquidity, including the need to cease or reduce dividend payments (as occurred during the 2008 financial crisis), and any formal or informal actions regulators may take to address capital and liquidity concerns.

- ***Suspension of Share Repurchases and Other Capital Distributions.*** Many larger banking institutions have announced suspension of their share repurchase plans in response to COVID-19. Although these voluntary suspensions have generally been through the second quarter, there is no assurance they will not be extended. In addition, there has been a focus on share buybacks in Washington, particularly for issuers that have or will take government assistance. For example, the recently passed CARES Act restricts companies that receive government assistance under certain provisions of the CARES Act from paying dividends or making any other capital distributions, including share repurchases, with respect to their common stock. Further, banking institutions may decide to refrain from repurchases, paying dividends or making other capital distributions so as to not to risk precluding future assistance should it be needed.

- ***Interconnectedness of Financial Institutions.*** Many banking institutions disclose in their risk factors that negative publicity or other negative events at another financial institution or in the financial services industry more generally could lead to market-wide liquidity problems or losses or defaults by the banking institution. Banking institutions should consider whether the effects of COVID-19 materially increase any of these risks, or present other risks, such as a run on a bank potentially triggering runs on other banks.

- ***Suspension of Mortgage and Other Loan Payments and Foreclosures.*** Financial institution regulators in at least one state (New York) have required banks chartered in that state to suspend foreclosures and payments on residential mortgage loans for a 90-day period for borrowers experiencing financial hardship due to COVID-19.[4] In addition, California's governor reached an agreement with several large banks to suspend mortgage payments temporarily for borrowers affected by COVID-19 and to refrain from initiating foreclosure or eviction proceedings. Many banks and credit unions chartered in California have agreed to the same measures. The federal government has taken similar action under Title IV of the CARES Act, which was signed into law on March 27, 2020 and provides that individuals with single-family, federally backed mortgages may request a 180-day mortgage forbearance (which can be extended another 180 days) due to COVID-19-related difficulties.[5] It is possible that other states or federal regulators take similar measures. Banking institutions have also voluntarily taken such actions to support their customers. Banking institutions should consider the impact these measures, as well as public and/or governmental pressure to provide relief to borrowers, could have on their lending businesses and the overall impact to their results of operations. Banking institutions should also consider risks associated with similar legal and regulatory measures, such as New York's emergency restrictions on ATM, overdraft and interchange charges.

- ***Real Estate Market and Real Estate Lending*.** In addition to the actions described above, there is risk that COVID-19 significantly affects the U.S. commercial and residential real estate markets and, accordingly, banking institutions' real estate lending businesses in other ways, including through low U.S. mortgage rates (which reached an all-time low during the first quarter), decreasing property values (which, among other effects, may both increase the risk of defaults and reduce the value of real estate collateral, thereby diminishing recovery in the event of default), and reduced demand for commercial and multifamily real estate and increased vacancies if businesses fail or close locations. Although banking institutions frequently address similar risks in their Form 10-K filings, banking institutions should consider whether these risk factors adequately address the risks to real estate posed by COVID-19.

- ***Catastrophes, including Pandemics and Contagious Illnesses.*** Many banking institutions include risk factors regarding the impact of catastrophes, such as weather-related events and natural disasters, but may not specifically refer to pandemics. Each banking institution should analyze whether similar effects on its financial condition or results of operation result from pandemic events, and consider addressing in their risk factors the general impact of widespread outbreaks of contagious illnesses, including COVID-19. Considerations should include that the length of the COVID-19 outbreak is unknown and unpredictable and that there is a potential for additional waves of COVID-19 or new strains of coronavirus even after COVID-19 appears contained in an area.

- ***Inability of Key Personnel to Perform Their Duties.*** In response to COVID-19 and mandates from many states and local governments to close all non-essential businesses, many banking institutions have instituted work-from-home policies for much of their staff. Banking institutions should consider new risks this may create, such as potential loss of productivity and increased cybersecurity risk, as discussed in more detail below.

  In addition, certain age groups, which may include senior executive officers and members of a banking institution's board of directors, appear to be at higher risk for COVID-19's most serious health impacts. Banking institutions should consider the adequacy of contingency plans and any potential risks that key employees and/or members of the board of directors are incapacitated or otherwise unable to perform their duties for an extended period of time. If an issuer has a senior executive or director who has become incapacitated, general disclosure that this may happen will likely not suffice and banking institutions should consider updating the risk factor to reflect events that have occurred.

- ***Cybersecurity.*** Banking institutions face increased cybersecurity risks due to the number of employees that are working remotely in regions impacted by stay-at-home orders. Increased levels of remote access create additional opportunities for cybercriminals to exploit vulnerabilities, and employees may be more susceptible to phishing and social engineering attempts due to increased stress caused by the crisis and from balancing family and work responsibilities at home. Cybercriminals may also prey on fears about COVID-19, and take advantage of the current environment in which legitimate information regarding COVID-19 is being frequently and widely disseminated, such as by including malware in emails that appear to include documents providing legitimate information for protecting oneself from COVID-19. In addition, technological resources may be strained due to the number of remote users. Banking institutions should evaluate their cybersecurity risks in light of these issues and update their existing risk factors for any material changes or developments.[6]

- ***Changes in Consumer Behavior.*** Consumers affected by COVID-19 may continue to demonstrate changed behavior even after the crisis is over. For example, consumers may decrease discretionary spending on a permanent or long-term basis, certain industries may take longer to recover (particularly those that rely on travel or large gatherings) as consumers may be hesitant to return to full social interaction, and temporary closures of bank branches could result in consumers becoming more comfortable with technology and devaluing face-to-face interaction. Banking institutions should consider these residual effects and their exposures to industries in which there is the potential for continuing economic stress. Banking institutions should also consider whether changes to business practices will be necessary to accommodate changing consumer behaviors.
- ***Reliance on Vendors and Other Companies.*** Banking institutions frequently rely on vendors and other third parties to provide critical systems and services. Banking institutions should consider whether COVID-19 presents heightened or novel risks with respect to continuity of critical services. These risks include the possibility of closure or business interruption. In addition, although in most regions subject to a stay-at-home order the definition of essential services generally includes businesses that provide essential services to banks, the definitions vary by state and may result in some vendors not being able to work from their offices. Lock-downs in other countries may impose stricter requirements. For example, India has instituted a widespread mandate by which nearly all commercial and private establishments are required to close for a period of 21 days, which could have a significant impact on call centers and other services that banking institutions outsource to India. Banking institutions should consider their existing risk factors and whether they face heightened risks of business interruption that are not adequately disclosed.
- ***Changes to Interest Rates.*** In response to COVID-19, the Federal Reserve reduced the Federal Funds Rate to zero percent in March 2020. The outlook for the remainder of 2020 is uncertain, and there is a possibility that the Federal Reserve keeps interest rates low or even uses negative interest rates if economic conditions warrant. Banking institutions should consider the impact of the sudden decrease in interest rates and any risks associated with the possibility of an extended period of operations in a zero- or negative-rate environment, including the potential for significantly decreased profitability at banking institutions that have a significant portion of revenue tied to interest income.
- ***Fluctuations in Stock Price.*** Risk factors for many banking institutions generally note that stock prices may fluctuate and can be affected by a number of factors. Banking institutions should evaluate the impact of COVID-19 on the banking institution's stock price and whether risk factors adequately address significant and potentially precipitous changes in price. Decreases in stock prices could have other impacts that are often addressed in risk factors, such as loss of WKSI status, ability to meet listing requirements and susceptibility to activist activity or takeover offers.
- ***Other Impacts on Financial Condition.*** A prolonged pandemic event may have a number of effects on banking institutions' financial condition. Decreases in a banking institution's stock price and cash flow projections as a result of COVID-19 could result in goodwill impairment. Although banking institutions stress test for various events, their models may not fully take into account a global pandemic event of COVID-19's scope. In addition, a period of prolonged losses or decreased earnings could result in the expiration of deferred tax assets ("DTA") before the banking institution has the opportunity to use some or all of the benefit of the DTA. Changes in a banking institution's assessment of whether the full benefit of DTAs may be realized will also impact the institution's regulatory capital. Banking institutions may also be at risk of being required to recognize other-than-temporary impairments and/or reduce other comprehensive income. Banking institutions should consider the possible impact of COVID-19 on their goodwill, DTAs and other

aspects of their financial reporting and analyze whether there is any material risk that one or more of these items would be significantly affected.

- ***Business and Travel Disruptions.*** As noted above, many banking institutions have implemented work-from-home policies for a number of personnel, and have closed, or may close, branches and offices temporarily. Banking institutions have also suspended business travel. Banking institutions should address whether they have implemented, or may implement, these measures, and should consider the impact of such policies on business operations, including any increased costs and risks of prolonged or material business interruption.
- ***Business Interruption Insurance.*** Many banking institutions maintain business interruption coverage. Policies, however, may not cover interruptions caused by COVID-19. Banking institutions should consider the costs of potential business interruptions and whether some or all of the costs may be offset by the institution's insurance coverage. If policies would not cover interruptions caused by COVID-19 or otherwise would not adequately cover material losses, banking institutions should consider disclosing those facts in their risk factors.
- ***Impact to Investment Management Business Lines.*** Many banking institutions offer investment management and similar services. Volatile market conditions caused by COVID-19 could reduce the value of assets under management and/or cause clients to withdraw funds. Banking institutions should consider the impact on results of operations that could be caused by a reduction in assets under management due to the effects of COVID-19.
- ***LIBOR Transition Planning.*** Banking institutions have been planning for the transition away from LIBOR in advance of December 31, 2021, the date that LIBOR is generally expected to cease to exist, although the U.K. Financial Conduct Authority has expressed that it and the Bank of England are assessing the impacts of COVID-19 on progress to meet the expected deadline. It remains unclear, however, whether the cessation of LIBOR will be delayed due to COVID-19 or what form any delay may take, and there are no assurances that there will be a delay. It is also unclear what the duration and severity of COVID-19 will be, and whether this will impact LIBOR transition planning. COVID-19 may also slow regulators' and others' efforts to develop and implement alternative reference rates, which could make LIBOR transition planning more difficult, particularly if the cessation of LIBOR is not delayed but alternatives do not develop. Banking institutions should assess the risks associated with these and any other impacts on their LIBOR transition planning and consider updates to risk factors for any significant changes or developments.
- ***Credit Ratings.*** Credit rating agencies have mentioned COVID-19 as a factor in a number of cases where an issuer's credit rating was downgraded or placed on credit watch, including a number of banking institutions. Banking institutions should consider whether there is a material risk that COVID-19 and other factors could result in a credit downgrade and whether such risk is adequately disclosed in its risk factors.
- ***Pension Plan Assets.*** A prolonged negative impact on the value of stocks and other asset classes due to COVID-19 will also result in a significant reduction to pension plan asset values. This can impact banking institutions directly, to the extent they have defined benefit or certain types of cash balance pension plans, and/or indirectly through the impact on the banking institutions' customers. Banking institutions should consider both the direct and indirect impact of possible widespread reductions in pension plan asset values.
- ***Risks Related to Environmental, Social and Governance ("ESG") Issues and Reputational Risk.*** In recent years, investors have increased their focus on ESG matters and demanded more robust ESG practices from companies. Banking institutions should consider possible risks, including the potential for reputational harm if the banking institution is viewed as responding slowly or inappropriately to COVID-19, such as by failing to implement appropriate measures for employees or not adequately providing accommodations to customers.

## OTHER CONSIDERATIONS

Although the focus of this memorandum is on the types of risks banking institutions should consider when determining the scope of any COVID-19-related risk factors that are included in their upcoming Form 10-Q filings, there are important implications for the Form 10-Q disclosures more generally that banking institutions should also consider. We expect in the coming days to publish a memorandum describing these other implications for U.S. issuers, which are summarized below, in greater detail.

In particular, Form 10-Q requires issuers to include in management's discussion and analysis of financial condition ("MD&A"), among other items, a description of any unusual or infrequent events that materially affected the amount of reported income and any known trends or uncertainties that are reasonably expected to have a material impact on sales, revenue or income from continuing operations. Banking institutions should consider the impact of COVID-19 on first quarter results, as well as the expected impact in future quarters, including, among other things, impact on earnings and liquidity and capital resources, in crafting an appropriate MD&A section. Banking institutions should also consider subsequent event disclosure in the notes to their financial statements, including with respect to any material impact COVID-19 may have between the close of the first quarter of 2020 and the date the institution files its Form 10-Q.

Much of the risk factor and other disclosure relating to COVID-19 will include forward-looking information that is based, at least in part, on assumptions and expectations about COVID-19's continuing impact. Banking institutions should review forward-looking statement disclaimers and update language as necessary in order to satisfy the requirements of the forward-looking statement safe harbor.

In addition, the SEC Chief Accountant recently issued a statement that reiterates the need for high-quality financial reporting in light of COVID-19, and encouraged issuers to contact the SEC's Office of Chief Accountant ("OCA") with questions they encounter as a result of COVID-19.[7] The statement includes items that issuers should consider in preparing their Form 10-Q filings. In particular, the statement notes that the OCA recognizes that "accounting and financial reporting implications of COVID-19 may require companies to make significant judgments and estimates," which "can be challenging in an environment of uncertainty." OCA clarified that it will continue its pattern of not objecting to "well-reasoned judgments" that issuers make, and reiterated the importance of required disclosures of judgments and estimates. The statement also notes that the OCA "remains actively focused on independence matters in these unprecedented times." Banking institutions' management and boards of directors should continue to consider carefully any matter that could affect auditor independence.

Finally, issuers are required to maintain disclosure controls and procedures and internal controls over financial reporting, and the institution's principal executive officer and principal financial officer must provide certifications regarding the effectiveness of such controls and procedures. Banking institutions should consider COVID-19's impact with respect to these controls and procedures. In particular, banking institutions should assess accounting controls and procedures in light of the shift in work settings from business offices to homes to confirm that controls and procedures remain adequate. Any change to internal controls over financial reporting that has materially affected, or is likely to affect materially, the controls over financial reporting must be disclosed on Form 10-Q. Banking institutions should also consider any need to tailor or enhance disclosure controls and procedures. For example, disclosure committees may need to meet more frequently to consider rapid changes and additional governmental responses to COVID-19. In any event, individuals responsible for financial reporting should coordinate closely with individuals responsible for the banking institution's COVID-19 response so that management and other parties involved in the institution's disclosure process can be informed fully of COVID-19's impact.

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## ENDNOTES

1 *See* SEC, Mylan to Pay $30 Million for Disclosure and Accounting Failure Relating to EpiPen, *available at* https://www.sec.gov/news/press-release/2019-194.

2 *See* SEC, Facebook to Pay $100 Million for Misleading Investors About the Risks It Faced From Misuse of User Data, *available at* https://www.sec.gov/news/press-release/2019-140.

3 European Central Bank, Recommendation (ECB/2020/19), Dividend Distributions During the COVID-19 Pandemic and Repealing Recommendation (ECB/2020/1) (March 27, 2020), *available at* https://www.ecb.europa.eu/ecb/legal/pdf/ecb_2020_19_f_sign.pdf.

4 For additional information, see our memorandum to clients, NYDFS Superintendent Adopts Emergency Regulation to Implement Executive Order 202.9: NYDFS Superintendent Adopts Emergency Regulation to Implement Relief From Residential Mortgage Payments and Banking Fees for Individuals Experiencing Financial Hardship Due to COVID-19, dated March 25, 2020, *available at* https://www.sullcrom.com/files/upload/SC-Publication-NYDFS-Superintendent-Adopts-Emergency-Regulation-to-Implement-Executive-Order-202-9.pdf.

5 In connection with mortgage forbearance under the CARES Act, the federal banking agencies issued a joint policy statement that clarifies that the agencies do not intend to take supervisory or enforcement action against mortgage servicers for delays in sending certain early intervention and loss mitigation notices and taking certain actions relating to loss mitigation set out in Regulation X, as long as servicers are making good faith efforts to provide such notices and take such actions within a reasonable time. Joint Statement on Supervisory and Enforcement Practices Regarding the Mortgage Servicing Rules in Response to the COVID-19 Emergency and the CARES Act (April 3, 2020), *available at* https://www.federalreserve.gov/newsevents/pressreleases/files/bcreg20200403a1.pdf.

6 For a general discussion of heightened cybersecurity risks that may affect companies generally as a result of COVID-19, see our memorandum to clients, Heightened Cybersecurity Risks Resulting From COVID-19's Effects on Operations: Companies Should Be Alert to Cybercriminals Exploiting Remote Working Vulnerabilities and Interest in COVID-19, dated March 30, 2020, *available at* https://www.sullcrom.com/files/upload/SC-Publication-Heightened-Cybersecurity-Risks-Resulting-From-COVID-19.pdf.

7 SEC, Statement on the Importance of High-Quality Financial Reporting in Light of the Significant Impacts of COVID-19 (April 3, 2020), *available at* https://www.sec.gov/news/public-statement/statement-teotia-financial-reporting-covid-19-2020-04-03.

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