

# FCPA Update

A Global Anti-Corruption Newsletter



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## White Collar Crime and COVID-19: Enforcement in a Rapidly Changing Landscape

Amidst the COVID-19 pandemic, the world is dealing with unprecedented business and financial disruption. Large amounts of money continue to be injected into the global economy in efforts to alleviate this crisis. Even before, there were growing concerns regarding the persistence of corruption and fraud, as evidenced, for example, by two-thirds of countries scoring below 50 on Transparency International's 2019 Corruption Perceptions Index. Now, there is likewise understandable concern that the significant public health and economic impacts of the pandemic, including in connection with the substantial governmental expenditures, will further fuel white collar offenses.

In the short term, while enforcement agencies prioritize safety and work remotely, at least certain aspects of white collar and regulatory investigations globally will slow. There is much anecdotal evidence that enforcement agencies have reduced the

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scale and pace of some investigations given current obstacles. For example, there will be inevitable delays as response times to subpoenas and investigative requests are extended due to difficulties in sourcing documents and information remotely. Further practical limitations – such as lack of remote access to investigation files and physical evidence due to information security protocols, court closures, difficulties with videoconference technology, and restrictions on in-person meetings and interviews – also have delayed investigations.<sup>1</sup>

In the medium-to-long term, however, enforcement agencies in the United States and Europe have stated that their objective is vigorously to prosecute violations of anti-fraud and anti-corruption laws, particularly in the context and aftermath of COVID-19. In this article, we discuss some of the likely enforcement priorities and associated challenges.

**Fraud and Corruption**

Warnings and predictions that the pandemic and government responses to it will provide fertile ground for dishonesty and profiteering have come from many quarters.<sup>2</sup> The Organization for Economic Cooperation and Development (“OECD”) noted that the COVID-19 pandemic and following economic disruption will create an environment that is ripe for corruption, highlighting the importance of countries remaining actively engaged and cooperative in global anti-corruption efforts.<sup>3</sup> A particular focus of the global white collar enforcement community is bribery and corruption in the healthcare sector (though such concerns of course are not limited to any particular sector). The scope for potential corruption is wide-ranging, including in procurement, product development, and dissemination, as well as medical fraud. This is exacerbated by the urgency of securing medication, ventilators, and PPE amidst global scarcity concerns. This combination of factors can lead to reduced scrutiny of bidders for government contracts and a less cost-focused approach, providing opportunities for corruption and profiteering.<sup>4</sup>

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1. In relation to the United Kingdom’s Serious Fraud Office, see, e.g., Kate Beioley and Matthew Vincent, “SFO Struggles to Process Evidence During Pandemic”, *Financial Times* (May 11, 2020), <https://www.ft.com/content/db77c26c-937d-4632-b5d6-b1fc491df895>. See also Kara Brockmeyer, Andrew M. Levine, and Philip Rohlik, “Tips for Handling Internal and Government Investigations When Everyone Is Working Remotely,” *FCPA Update*, Vol. 11, No. 9 (Apr. 2020), <https://www.debevoise.com/insights/publications/2020/04/fcpa-update-april-2020>.
  2. Kara Brockmeyer, Andrew M. Levine, and Philip Rohlik, “Safeguarding Corporate Compliance Programs During the COVID-19 Crisis,” *FCPA Update*, Vol. 11, No. 9 (Apr. 2020), <https://www.debevoise.com/insights/publications/2020/04/fcpa-update-april-2020>.
  3. OECD Statement, “The Global Response to the Coronavirus Pandemic Must Not Be Undermined by Bribery” (Apr. 22, 2020), <https://www.oecd.org/corruption/the-global-response-to-the-coronavirus-pandemic-must-not-be-undermined-by-bribery.htm>; see also OECD, “Policy measures to avoid corruption and bribery in the COVID-19 response and recovery” (May 26, 2020), [https://read.oecd-ilibrary.org/view/?ref=133\\_133216-hn3bqtlvk&title=Policy-measures-to-avoid-corruption-and-bribery-in-the-COVID-19-response-and-recovery](https://read.oecd-ilibrary.org/view/?ref=133_133216-hn3bqtlvk&title=Policy-measures-to-avoid-corruption-and-bribery-in-the-COVID-19-response-and-recovery).
  4. See, e.g., Luke Baker, “Virus Response Opens Way for Corruption: EU Chief Prosecutor,” *Reuters* (May 12, 2020), <https://www.reuters.com/article/us-health-coronavirus-eu-corruption-inte/virus-response-opens-way-for-corruption-eu-chief-prosecutor-idUSKBN22O1SG>.

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There are also concerns within the compliance community that the almost universal need for businesses to reduce costs will have a negative impact on compliance and internal investigations budgets. This would inevitably hamper the ability of companies to prevent and uncover potential violations. This circumstance may be made even more difficult by extended “work-from-home” arrangements.

The Council of Europe’s Group of States Against Corruption (“GRECO”) recently published guidelines that highlighted the increased risk of financial crime as a result of large amounts of money being infused into the economy generally, and the medical sector specifically. It recommended anti-corruption and governance tools, emphasizing the importance of transparency, oversight, and accountability.<sup>5</sup>

“There are also concerns within the compliance community that the almost universal need for businesses to reduce costs will have a negative impact on compliance and internal investigations budgets. This would inevitably hamper the ability of companies to prevent and uncover potential violations.”

GRECO also called on its member states to deter corruptors and maintain transparency by prohibiting procurement officials from being employed by any businesses that have contracted with the officials in question. Reinforcing this message, Interpol and the Financial Action Task Force (“FATF”) have both issued similar warnings.<sup>6</sup> Additionally, the U4 Anti-Corruption Resource Centre has released guidance on strengthening anti-corruption efforts during the pandemic, calling upon anti-corruption and criminal justice agencies to issue strong warnings against fraud and corruption in crisis response measures.<sup>7</sup>

Public expressions of concern about a potential rise in fraud and corruption have also come from the NGO community. A notable example is a joint letter published by Transparency International, Human Rights Watch, and Global Witness<sup>8</sup>

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5. Marin Mrcela, “Corruption Risks and Useful Legal References in the Context of Covid-19,” GRECO (Apr. 15, 2020), <https://rm.coe.int/corruption-risks-and-useful-legal-references-in-the-context-of-covid-1/16809e33e1>.
  6. Financial Action Task Force, “Covid-19 Related Money Laundering and Terrorist Financing Risks and Policy Responses,” <https://www.fatf-gafi.org/publications/fatfgeneral/documents/covid-19-ml-tf.html>.
  7. Monica Kirya, “Anti-Corruption in Covid-19 Preparedness and Response”, U4 Anti-Corruption Resource Centre, <https://www.u4.no/publications/anti-corruption-in-covid-19-preparedness-and-response>.
  8. Transparency International, Human Rights Watch and Global Witness, “Re: Urgent Need for Anti-Corruption Measures in IMF Response to Covid-19 Crisis” (Apr. 8, 2020), [https://www.transparency.org/files/content/feature/TI\\_HRW\\_GW\\_Letter\\_IMF\\_COVID19\\_Emergency\\_Funding.pdf](https://www.transparency.org/files/content/feature/TI_HRW_GW_Letter_IMF_COVID19_Emergency_Funding.pdf).



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recommending anti-corruption measures for the IMF to adopt when distributing funding in response to the COVID-19 crisis. The trio of prominent NGOs also called for greater transparency in public procurement, audits, and the implementation of existing anti-corruption and anti-money laundering frameworks.

Emerging media reports have confirmed these concerns. By way of example, in the United States, the Federal Bureau of Investigation issued alerts in which it described the rapidly emerging fraud schemes related to the procurement of medical equipment and other goods.<sup>9</sup> Elsewhere, the Slovenian government has allegedly approved tens of million of euros worth of bids for unspecified protective equipment under emergency measures, bypassing normal tender procedures and allegedly favoring a businessman with no experience in healthcare.<sup>10</sup>

More generally, reports are also starting to appear of various abuses of the governmental support packages to prop up the economy. In the United States, the Cybersecurity and Infrastructure Security Agency, Department of the Treasury, Internal Revenue Service, and Secret Service issued a joint alert that highlighted potential abuses of federal support programs.<sup>11</sup> In Austria, spot-checks carried out by the finance ministry reportedly found hundreds of violations of its jobs support scheme.<sup>12</sup>

These warnings obviously raise the questions of whether and how enforcement agencies will address such concerns. Many authorities have issued strongly worded warnings, promising an increased focus on investigating and prosecuting COVID-19 related fraud and corruption. Individuals and businesses alike are being encouraged to report such crime to the relevant agencies, and guidelines have been published to highlight fraud, money laundering, and banking scams related to COVID-19.

U.S. enforcement agencies appear to have taken a proactive approach. Both the SEC and DOJ have focused time and resources on pursuing frauds perpetrated under the guise of COVID-19.<sup>13</sup> Additionally, the Coronavirus Aid, Relief, and

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9. Federal Bureau of Investigation, "FBI Warns of Emerging Healthcare Fraud Schemes Related to COVID-19 Pandemic" (Apr. 13, 2020), <https://www.fbi.gov/news/pressrel/press-releases/fbi-warns-of-emerging-health-care-fraud-schemes-related-to-covid-19-pandemic>.
  10. Anuska Delic and Matej Zwitter, "Opaque Coronavirus Procurement Deal Hands Millions to Slovenian Gambling Mogul," Organized Crime and Corruption Reporting Project (Apr. 3, 2020), <https://www.occrp.org/en/coronavirus/opaque-coronavirus-procurement-deal-hands-millions-to-slovenian-gambling-mogul>.
  11. Cybersecurity & Infrastructure Security Agency, "Avoid scams related to economic payments, covid-19" (May 21, 2020), <https://www.cisa.gov/publication/avoid-scams-related-economic-payments-covid-19>.
  12. Michael Shields, "Some Austrian Companies Abusing Covid-19 Short-Hours Subsidies: Finance Ministry," Reuters (May 10, 2020), <https://www.reuters.com/article/us-health-coronavirus-austria/some-austrian-companies-abusing-covid-19-short-hours-subsidies-finance-ministry-idUSKBN22M0JH>.
  13. U.S. Department of Justice, "Memorandum for all United States Attorneys: COVID-19 – Department of Justice Priorities" (Mar. 15, 2020), <https://www.justice.gov/ag/page/file/1258676/download>.

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Economic Security Act 2020 (the “CARES Act”), which offers \$2 trillion in relief<sup>14</sup> to individuals, large corporations, healthcare providers and others,<sup>15</sup> created a new special inspector general position to monitor potential fraudulent conduct, and the federal government has made it clear that applications for funding under the CARES Act will be heavily scrutinized.

In the United Kingdom, the pandemic has further highlighted preexisting concerns about the effectiveness of fraud and corruption enforcement. The Serious Fraud Office (“SFO”) recently has come under renewed criticism for its low conviction rate, and its May 7 “COVID-19 update” does not address its enforcement priorities during or in the wake of the pandemic.<sup>16</sup> The UK’s Crown Prosecution Service (“CPS”) and the National Police Chiefs’ Council have issued a joint interim protocol<sup>17</sup> setting out how charging should be managed during the COVID-19 crisis. The strong inference from this document is that there may well be additional delays to progressing complex fraud cases out of a concern not to “clog up” an already struggling court system.

The situation for enforcement bodies across Europe varies. Interestingly, however, the nascent European Public Prosecutor’s Office (“EPPO”) is predicting that an increase in the disbursement of EU funds will lead to an increase in its already very heavy expected case load. The European Chief Prosecutor has recently reiterated concerns that the resources allocated to her office will be inadequate to deal with the cases under its jurisdiction, particularly at the level of the member states.<sup>18</sup>

**Abuse in Regulated Financial Markets**

The extreme market volatility that has accompanied the COVID-19 pandemic has prompted widespread warnings of an increase in various kinds of market abuse. Despite agencies having to physically close, many have seen their case loads increase as they take on new COVID-19 related cases. At the same time, while companies are still required to meet standard – and in some instances, additional – reporting obligations despite the current disruptions, agencies are trying to provide relief to hard-pressed businesses by deferring reporting deadlines.

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14. CARES Act, <https://www.congress.gov/bill/116th-congress/senate-bill/3548/text?q=product+update>; U.S. Department of the Treasury, “The Cares Act Works for All Americans,” <https://home.treasury.gov/policy-issues/cares>.
  15. Kelly Snell, “What’s Inside the Senate’s \$2 Trillion Coronavirus Aid Package” (Mar. 26, 2020), <https://www.npr.org/2020/03/26/821457551/whats-inside-the-senate-s-2-trillion-coronavirus-aid-package>.
  16. SFO Press Release, “Covid-19 Update,” Serious Fraud Office (May 7, 2020), <https://www.sfo.gov.uk/2020/05/07/covid-19-update/>.
  17. NPCC Press Release, “Interim CPS Charging Protocol – Covid-19 Crisis Response,” National Police Chiefs’ Council, [https://www.cps.gov.uk/sites/default/files/documents/legal\\_guidance/Interim-CPS-Charging-Protocol-Covid-19-crisis-response.pdf](https://www.cps.gov.uk/sites/default/files/documents/legal_guidance/Interim-CPS-Charging-Protocol-Covid-19-crisis-response.pdf).
  18. Radovan Geist and Zuzana Gabrizova, “Chief European Prosecutor: We’re Ready to Start at Full Speed, Safeguard Our Independence,” Euroactiv (May 8, 2020), <https://www.euractiv.com/section/politics/interview/chief-european-prosecutor-were-ready-to-start-at-full-speed-safeguard-our-independence/>.

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In the United States, COVID-19 appears not to have slowed down the SEC's activities. SEC attorneys have continued to pursue cases bought pre-COVID-19 and are still sending out, receiving, and processing document requests, scheduling meetings with clients, conducting voluntary interviews, and taking testimony.<sup>19</sup> The SEC also has taken advantage of the CARES Act's terms by delaying reporting requirements.<sup>20</sup>

In Europe, both the UK's Financial Conduct Authority ("FCA")<sup>21</sup> and the French Financial Markets Authority ("AMF") have reminded regulated entities with employees are working from home that they are still expected to comply with their usual regulatory obligations, in particular the continuation of voice recordings, often critical to investigations of market abuse.<sup>22</sup> Both agencies also have reiterated that issuers must continue to disclose any inside information that directly concerns them as soon as possible.<sup>23</sup>

While it has temporarily discontinued on-site inspections,<sup>24</sup> the German Federal Financial Supervisory Authority ("BaFin") has nevertheless made clear that it takes the risks associated with the current situation very seriously, focusing in particular on money laundering.<sup>25</sup> Like its global peers, BaFin has made changes to its supervisory requirements, noting that breaches of business and disclosure obligations arising from investment services conducted by staff working from home will not be investigated until further notice, as long as customers are kept informed.<sup>26</sup> It has

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19. U.S. Securities and Exchange Commission, "SEC Coronavirus (COVID-19) Response" (Apr. 22, 2020), <https://www.sec.gov/sec-coronavirus-covid-19-response>.
  20. U.S. Securities and Exchange Commission, "Order Under Section 36 of the Securities Exchange Act of 1934 Modifying Exemptions From the Reporting and Proxy Delivery Requirements for Public Companies," Release No. 34-88465 (Mar. 25, 2020), <https://www.sec.gov/rules/exorders/2020/34-88465.pdf> (*superseding* U.S. Securities and Exchange Commission, "Order Under Section 36 of the Securities Exchange Act of 1934 Granting Exemptions From Specified Provisions of the Exchange Act and Certain Rules Thereunder," Release No. 34-88318 (Mar. 4, 2020), <https://www.sec.gov/rules/other/2020/34-88318.pdf>).
  21. Financial Conduct Authority, "Statement on Covid-19 (Coronavirus)" (Mar. 6, 2020), <https://www.fca.org.uk/news/statements/covid-19-coronavirus>.
  22. AMF Statement, "Continuité des activités de marché en période de Covid-19 : L'AMF précise ses attentes" (Apr. 2, 2020), <https://www.amf-france.org/fr/actualites-publications/actualites/continuite-des-activites-de-marche-en-periode-de-covid-19-lamf-precise-ses-attentes>.
  23. See FCA Market Watch No. 63 (May 27, 2020), <https://www.fca.org.uk/publication/newsletters/market-watch-63.pdf>.
  24. BaFin, "Covid-19 situation: BaFin information on new developments and key points" (updated Apr. 22, 2020), [https://www.bafin.de/EN/Aufsicht/CoronaVirus/CoronaVirus\\_node\\_en.html?cms\\_gtp=13849786\\_list%253D3](https://www.bafin.de/EN/Aufsicht/CoronaVirus/CoronaVirus_node_en.html?cms_gtp=13849786_list%253D3).
  25. BaFin, "Covid-19 situation: BaFin information on new developments and key points" (updated Apr. 22, 2020), [https://www.bafin.de/EN/Aufsicht/CoronaVirus/CoronaVirus\\_node\\_en.html](https://www.bafin.de/EN/Aufsicht/CoronaVirus/CoronaVirus_node_en.html); BaFin News, "Corona-Virus: FIU warnt vor Betrugs- und Geldwäscheaktivitäten im Zusammenhang mit COVID-19" (Apr. 9, 2020), [https://www.bafin.de/SharedDocs/Veroeffentlichungen/DE/Meldung/2020\\_Corona\\_andereBehoerden/meldung\\_2020\\_04\\_09\\_corona\\_virus41\\_fiu.html](https://www.bafin.de/SharedDocs/Veroeffentlichungen/DE/Meldung/2020_Corona_andereBehoerden/meldung_2020_04_09_corona_virus41_fiu.html).
  26. BaFin, "24 March 2020, Coronavirus crisis: BaFin outlines changes to supervisory requirements" (Apr. 1, 2020), [https://www.bafin.de/SharedDocs/Veroeffentlichungen/EN/Pressemitteilung/2020/pm\\_200324\\_corona-krise\\_aufsichtliche\\_anforderungen\\_en.html](https://www.bafin.de/SharedDocs/Veroeffentlichungen/EN/Pressemitteilung/2020/pm_200324_corona-krise_aufsichtliche_anforderungen_en.html).

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also stated that, as long as suspicious transaction and order reports are made within a reasonable period of time, account will be taken of the impact of COVID-19.<sup>27</sup>

A particular concern is insider abuse of confidential information or disinformation, mainly related to the financial health of companies, but also to a lesser extent to accelerated awards of government contracts or the launch of new products to address the emergency. The FCA has pointed out that issuers need to be mindful that “coronavirus and public policy responses to it may alter the nature of information that is material to a business’s prospects, and that is material in the context of its recapitalisation.”<sup>28</sup>

**“[I]n line with experience from previous economic crises, economic and financial crime likely will increase in the wake of the pandemic as will the likelihood of associated investigations as the crisis recedes.”**

The SEC appears to be taking an approach of suspend-now-investigate-later to behavior that it suspects is fraudulent or might compromise the stock market. It already has suspended trading for more than 20 companies between March and May, in an attempt to crack down on what it perceives to be securities fraud and stock manipulation.<sup>29</sup> In a clear indication of the exposure of the medical sector, many of the companies affected are active in the health and biotech fields.

In the United Kingdom, the FCA warned that it will continue to investigate insider traders during the pandemic, noting that it was still able to process electronic data and conduct interviews via technology,<sup>30</sup> a point also made by the European Securities and Markets Authority (“ESMA”).<sup>31</sup>

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27. BaFin, “Corona-Virus, Market Abuse Regulation: allowance to be made for the current situation when fulfilling the reporting requirements” (Apr. 3, 2020), [https://www.bafin.de/SharedDocs/Veroeffentlichungen/EN/Meldung/2020\\_Corona/meldung\\_2020\\_04\\_03\\_corona\\_virus8\\_MAR\\_en.html](https://www.bafin.de/SharedDocs/Veroeffentlichungen/EN/Meldung/2020_Corona/meldung_2020_04_03_corona_virus8_MAR_en.html).
  28. See FCA Market Watch No. 63 (May 27, 2020), <https://www.fca.org.uk/publication/newsletters/market-watch-63.pdf>.
  29. Jacob Frenkel, “SEC Aggressively Suspends Trading of 17 COVID-19 Solutions Suspected as Fraudulent,” *Forbes* (Apr. 21, 2020), <https://www.forbes.com/sites/jacobfrenkel/2020/04/21/sec-aggressively-suspends-trading-of-17-covid-19-solutions-suspected-as-fraudulent/#53fa5ead2f25>.
  30. Lucy McNulty, “FCA’s Stark Warning: Insider Traders Will Be Caught During Covid-19 Crisis,” *Financial News London* (May 4, 2020), <https://www.fnlondon.com/articles/fcas-stark-warning-insider-traders-will-be-caught-during-covid-19-crisis-20200504>.
  31. European Securities and Markets Authority, “Covid-19,” <https://www.esma.europa.eu/about-esma/covid-19>.

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Alive to the risks to retail investors in the current environment, the FCA<sup>32</sup> and the UK's National Crime Agency ("NCA")<sup>33</sup> have both published statements warning individuals of COVID-19 scams and providing advice on how to protect against them. The statements illustrate a number of examples of fraud, including the sale of fake medical supplies, fraudulent government correspondence, and investment fraud. A similar approach is taken by the U.S. Treasury Department, which has sent out a number of warnings regarding COVID-19 related fraud and investment scams.<sup>34</sup>

**Anti-Competitive Conduct**

Anti-competitive behavior is also being closely monitored by agencies – again with a particular focus on the healthcare sector. Across the United States and Europe, both individuals and companies are being encouraged to report anti-competitive conduct.

In the United States, a joint antitrust statement from the Antitrust Division of DOJ and the Bureau of Competition of the Federal Trade Commission makes clear that the current situation requires cooperation between the government and businesses.<sup>35</sup> It notes that both agencies will aim to respond expeditiously to COVID-19-related requests and provide guidance where necessary. It also notes that it will “not hesitate to seek to hold accountable” those who try to subvert competition laws during the pandemic, including prosecuting criminal violations of anti-trust laws.

The UK's Competition and Markets Authority (“CMA”) has published a number of updates since the COVID-19 outbreak, including on its approach to business cooperation<sup>36</sup> and sales and pricing practices.<sup>37</sup> It also has launched a COVID-19 task force that will scrutinize market developments and act if there is evidence

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32. Financial Conduct Authority, “Avoid Coronavirus Scams” (May 1, 2020), <https://www.fca.org.uk/news/news-stories/avoid-coronavirus-scams?wb48617274=YWNvd2VsbDtERUJFVk9JU0UuTkVUOzEwLjcuNDYuMjAzOzE1ODgyNjExNDY7BPMj6FhtMhT1uu15wNLicXI1vCPPIJm vf/gOxEOfFEq6/AxZ8nVn48w2TJR2xF8liuHUAzQuoxDCwQmkxqlVHruaAgPXauc/sW6o9+bvEktnKC0U/mGpxvO6OWujrofzG+kpPjnV9n1NO+Fr2FYyL7TvFun3jaPcNokZFLD1VNg=>.
  33. National Crime Agency, “Beware Fraud and Scams During Covid-19 Pandemic Fraud” (Mar. 26, 2020), <https://nationalcrimeagency.gov.uk/news/fraud-scams-covid19>.
  34. U.S. Department of the Treasury, Treasury Inspector General for Tax Administration, “IRS-Related Coronavirus Scam” (Apr. 24, 2020), <https://www.treasury.gov/tigta/coronavirus.shtml>. U.S. Department of Justice, “Combating COVID-19 Fraud: Fraud Alert” (Apr. 30, 2020), <https://www.justice.gov/coronavirus/combatingfraud>.
  35. U.S. Department of Justice, U.S. Federal Trade Commission, “Joint Antitrust Statement Regarding COVID-19” (May 1, 2020), <https://www.justice.gov/atr/joint-antitrust-statement-regarding-covid-19>.
  36. Competition & Markets Authority, “CMA Approach to Business Cooperation in Response to Covid-19” (Mar. 25, 2020), [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/875468/COVID-19\\_guidance\\_-\\_pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/875468/COVID-19_guidance_-_pdf).
  37. Competition & Markets Authority, “Covid-19: Sales and Pricing Practices During Coronavirus Outbreak” (Mar. 5, 2020), <https://www.gov.uk/government/news/covid-19-sales-and-pricing-practices-during-coronavirus-outbreak>.



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that firms may have breached competition or consumer protection laws.<sup>38</sup> Of note, however, is the CMA's recent request for additional, emergency powers to be able to take action against price-gouging from retailers of goods subject to demand spikes as a result of the pandemic. The CMA argued that current legislation left it with no powers to address such conduct.<sup>39</sup>

The French Competition Authority similarly has announced an effort to prevent companies from taking advantage of the crisis to increase the price of goods, including essential goods. While noting that temporary cooperation initiatives that companies put in place to combat the pandemic's impacts are unlikely to qualify as anti-competitive practices, it nonetheless encourages the reporting of misconduct that could violate anti-competition laws.<sup>40</sup>

In Germany, the Bundeskartellamt (Federal Cartel Office) likewise remains vigilant with respect to anti-competitive conduct. This is evident in the ICN Steering Group Statement, which reaffirms the relevance of anti-competition laws and urges member agencies to remain focused on anti-competitive conduct.<sup>41</sup>

### Conclusion

COVID-19 will undoubtedly continue to affect enforcement agencies' practical ability to investigate and prosecute white collar crime and regulatory misconduct in the near to medium term. However, in line with experience from previous economic crises, economic and financial crime likely will increase in the wake of the pandemic<sup>42</sup> as will the likelihood of associated investigations as the crisis recedes.

Many enforcement agencies – particularly in the United States – are using strong rhetoric, promising to focus on prosecuting COVID-19 related crime. However, preexisting concerns – particularly in Europe – remain regarding to what extent enforcement agencies have adequate resources to address effectively large-scale economic and financial criminality. Such concerns are exacerbated by the significant

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38. Competition & Markets Authority, "CMA Launches Covid019 Taskforce" (Mar. 20, 2020), <https://www.gov.uk/government/news/cma-launches-covid-19-taskforce>.
  39. Kate Beioley and Jim Pickard, "UK Watchdog Seeks Powers to Tackle Coronavirus Profiteering," Financial Times (May 18, 2020), <https://www.ft.com/content/6af426bc-bfa3-4acb-86e0-c72eb0333e7e>.
  40. Autorité de la Concurrence, "L'action de l'Autorité pendant l'épidémie du Coronavirus Covid-19" (Mar. 23, 2020), <https://www.autoritedelaconcurrence.fr/fr/page-riche/covid-19>.
  41. Bundeskartellamt Press Release, "ICN Steering Group Statement: Competition during and after the COVID-19 Pandemic," (Apr. 19, 2020), [https://www.bundeskartellamt.de/SharedDocs/Meldung/EN/Pressemitteilungen/2020/09\\_04\\_2020\\_ICN-Corona.html](https://www.bundeskartellamt.de/SharedDocs/Meldung/EN/Pressemitteilungen/2020/09_04_2020_ICN-Corona.html); International Competition Network, "ICN Steering Group Statement: Competition during and after the COVID-19 Pandemic", (Apr. 2020), <https://www.internationalcompetitionnetwork.org/wp-content/uploads/2020/04/SG-Covid19Statement-April2020.pdf>.
  42. See, e.g., Europol, "Beyond the Pandemic: How Covid-19 will shape the serious and organised crime landscape in the EU" (Apr. 30, 2020).

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stresses of the pandemic, including potential budgetary impacts on governments (as well as companies).<sup>43</sup> In any event, the disruption and related imperatives stemming from COVID-19 underscore the importance of preventing, detecting, and remediating potential misconduct that poses significant criminal, compliance, and other risks.

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43. The Network of Corruption Prevention Authorities (“NCPA”) has highlighted the need for both regulators and economic actors to strengthen their corruption prevention frameworks in response to Covid-19. See NCPA, “Covid-19 Pandemie Mondiale, Prevenir La Corruption En Situation D’Urgence Sanitaire” (May 11, 2020), <https://www.agence-francaise-anticorruption.gouv.fr/fr/covid-19-pandemie-mondiale-prevenir-corruption-en-situation-durgence-sanitaire>.

# FCPA Update

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