

Pandemic Planning: Preparing Your Firm to Respond to COVID-19

By Amber Allen

Businesses across the globe and here in the United States are navigating uncharted territory amid a health crisis disrupting macroeconomic and social activity. The chief compliance officer is typically a critical member of the team leading business continuity response efforts for investment advisers and broker-dealers. While many compliance professionals are well versed in deploying business continuity plans, responding to a pandemic presents unique issues that may not be fully addressed under existing policies and procedures.

As firms implement plans to respond to COVID-19, investment advisers and broker-dealers must ensure appropriate measures are in place to maintain their supervisory framework and ongoing monitoring and supervision of the firm's activities. Maintaining this level of oversight requires detailed planning before the need to work remotely arises. Regardless of where your firm is in this planning process, the considerations below are helpful for firms to evaluate now, and on an ongoing basis, to minimize the potentially prolonged disruptions caused by COVID-19.

1. Assemble your response team.

The response team should include key personnel, such as the firm's principals and department heads of compliance, legal, operations, human resources, and IT. The response team is responsible for monitoring the situation through credible news sources, implementing the plan, and communicating with employees and external parties, including clients and regulatory bodies. Given the fluidity of COVID-19, the team should communicate regularly as the situation evolves to determine if any changes in the firm's approach are required. The team should be equipped to meet remotely and have backup personnel available in the event a member of the response team is unable to oversee his or her duties.

2. Ensure you have a written plan tailored to address a pandemic.

This pandemic may last for a prolonged period, so it is important to have a written plan. Work with your compliance partner or legal counsel to draft a pandemic plan if you do not already have one in place. The plan should address the current situation but also have enough breadth to enable the firm to efficiently respond as the situation evolves. Firms should be prepared to respond to requests for policies the firm has adopted to address pandemics received from regulatory bodies, including the SEC.

3. Review other policies and procedures that may also come into play.

In evaluating existing policies, consider the impact of increased remote work arrangements and the potential strain on information security programs and your IT group in general.

Business Continuity – Confirm that key person risk is addressed and that backup personnel are available to step in, whether it be in-person or remotely. Reviewing IT systems, critical infrastructure, and cybersecurity risk due to employees working at home. Ensure a plan is in place to address workflow issues that may arise with extended remote work and that there is adequate oversight for any required federal and state regulatory filings.

Employment Handbooks – Review your policies for sick leave and remote work arrangements and determine if any changes are needed. Ensure managers are aware of applicable legal requirements and privacy concerns related to COVID-19.

Incident Response – It is critical for the firm's Incident Response Plan to be current given the heightened risks associated with a pandemic, including more remote workers and increased cybersecurity threats that may be exploited by cyber criminals while resources are strained.

About the Author

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Data Security and Privacy Policies – With more employees working remotely, policies and procedures may need to be amended to address data security and privacy in a remote environment. These policies should require employees to have sound security in place for any devices used to conduct business remotely, including up-to-date malware protection and fire walls in place. Additionally, any printouts containing confidential or personally identifiable data should be shredded.

4. Assess potential impact on critical operations.

Review your firm's day-to-day operations and determine any necessary action to verify that critical operations can continue if the firm experiences increased absenteeism or if employees are required to work remotely for an extended period. Determine if certain groups, like trading, may be impacted more than others.

Compliance: With regulatory deadlines, like those associated with the Form ADV annual amendment, Form CRS, and Form PF approaching, ensure that the person primarily responsible for completing regulatory filings has access to the information needed to complete the filing, remote working capabilities, and a backup person to assist if needed. The SEC issued relief for form filings, including ADV, that is available to advisers experiencing hardship related to COVID-19 if certain requirements are met. However, firms should still plan to adhere to the normal filing deadlines unless an unexpected hardship prevents the firm from filing.

Verify the CCO has access to all data and information needed to oversee the firm's compliance program. Identify items requiring CCO review and approval and whether adjustments are required to enable the CCO to operate remotely. Consider day-to-day compliance activities and whether access to hardcopy documents stored or mailed directly to the office (such as duplicate statements) will be needed if the firm is required to operate remotely. Firms should be prepared to distribute code of ethics, and potentially other attestations, electronically if they do not already do so. Certain broker-dealer filings require the CEO's signature. Firms should evaluate federal and regulatory relief and determine if such relief is available to the firm.

Trading: Consider cross-training employees for redundancy. If your employees are already working remotely and you were unable to cross-train beforehand, training can be conducted remotely through webinars. If employees are still reporting to the office, ensure employees, including traders are separated as much as possible. Plan for potential delays in trading capabilities due to strained counterparties and establish backup trading mechanisms.

Portfolio Management: Plan for continued market volatility. Review accounts or models that are particularly susceptible to risks presented by the pandemic. Establish procedures for enhancing research and due diligence on at-risk sectors, such as retail and travel. Determine if any additional risk disclosures are warranted.

Given the volatile market conditions, mutual fund advisers and sub-advisers must closely monitor liquidity risk, even if the fund is highly liquid. Namely, identify and monitor the potential for special situations that could require the fund's liquidity risk program administrator (or liquidity risk committee) to take ad hoc action.

Billing and Finance: Employees responsible for billing and finance should be equipped to work remotely and have access to any critical software applications. Review your processes for billing clients and coordinating payment of third-party invoices and employee payroll. Consider whether mail will need to be forwarded to ensure bills are paid if the office is closed for an extended period. Review valuation policies to determine the potential impact from market volatility and whether policy updates are needed.

5. Communicate, communicate, communicate.

Consistent communication from the response team is key. Assign a member of the response team to oversee communication and have legal and / or human resources review the communication.

Employee communication: Notify employees that you have implemented your pandemic plan and provide regular updates as the situation evolves or your plan changes.

Client communication: Notify clients of your plan to respond to the pandemic. Review client contracts to determine any additional notification requirements. Notify clients of any office closures or meeting cancellations.

Vendor communication: Check with your vendors and subadvisors to confirm they have a plan to continue business throughout the pandemic. Consider asking:

- Does the firm expect to continue providing the same level of services throughout the pandemic?
- Has the firm adopted a pandemic plan or policy to address business continuity during a pandemic? If so, does it address quarantine?
- Does the firm have a call tree in place or hotline that you could use if your primary contact is not available?
- Has the firm contacted its key vendors?
- Can the vendor provide additional support upon request?

Regulatory communication: The SEC has started conducting remote examinations, which may include requests for information regarding steps the firm has taken to respond to COVID-19. If you are under a regulatory examination, determine who will be involved and purchase any necessary equipment, such as web cameras, hotspots, or equipment to enable remote work connectivity.

6. Travel and In-Person Meetings

Most firms have cancelled non-essential travel. If your firm permits business travel, assign a member of the response team to closely monitor travel restrictions and notify employees of any changes.

7. Remote Work Considerations.

Ensure employees are required to follow data security policies and procedures at home. Firms should also educate employees on security best practices for working from home, including changing the default administrator password on their wireless network, updating their devices to have the latest software, and letting family know that they cannot use the employee's work equipment.

Broker-dealers should consider the net capital exemptions and remind employees to avoid accepting checks at home. If a broker-dealer plans to route trades through a single person or small group, ensure those people are registered in all 50 states (or as many as where they are clients). Additionally, broker-dealers must file the D3P/17a-4 attestation with FINRA as soon as possible if they need to store data electronically on a new vendor.

8. Review insurance policies.

Evaluate potential claims and, if additional coverage is needed, consider potential disruptions to your supply chains and client services. Identify your notification obligations to make a claim.

9. Train, prepare, and test.

Even though COVID-19 has already reached global pandemic status, firms should provide training materials, such as videos or informational summaries, to increase employee awareness on the firm's response plan and assist employees who are unaccustomed to working remotely. Review all remote access arrangements and determine if additional access or equipment is needed. Conduct tabletop exercises with the response team to evaluate how the firm would respond to various scenarios, including prolonged office closure.

As more firms begin to require employees to work remotely, pressure on supply chains and infrastructure will likely become increasingly strained. Firms are encouraged to continue monitoring the Centers for Disease Control and Prevention website and other credible sources. Firms will be faced with many new regulatory and legal challenges as COVID-19 evolves. Contact your trusted compliance consultant or legal counsel to provide guidance if you are uncertain on how to respond to a situation.