

HOW COVID-19 WILL EFFECT WHITE COLLAR AND GOVERNMENT INVESTIGATIONS

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The impact of COVID-19 on white collar cases and investigations is unpredictable at best, although the new landscape is slowly coming more into focus. The effects of this pandemic will undoubtedly impact white collar targets, victims, defendants and the counsel with which they work. As with other areas of law, clarity will be gained with time, but for now a great deal of uncertainty and flux permeates the white collar defense world.

In the Northern District of Texas, the courts have suspended empaneling or continued operations of both jury trials and the grand jury until at least May with the possibility of continuation beyond that date. Many other districts have followed suit, but this has not been implemented uniformly throughout the federal system. The impact of these suspensions is that criminal jury trials — which are almost all federal criminal trials — are delayed at least through May and likely beyond. The only dates continued so far are the trial dates, leaving all other trial deadlines in place. However, given the public health considerations, the time period of the continuances is excluded under the Speedy Trial Act, 18 U.S.C. § 316(h)(7)(A). The Northern District of Texas has stated that the best interest of the public is served with these continuances. Similarly, pending investigations cannot be presented to the grand jury for indictment in the absence of grand jurors to hear them and vote. As a result, at least in the Northern District of Texas, federal criminal cases simply cannot be indicted for the foreseeable future and possibly beyond.

Federal prosecutors, investigators and regulators are also contending with the impact of the virus. The Securities and Exchange Commission (SEC) moved to working remotely throughout the organization. This will almost certainly reduce the staffs' productivity at a time when it was already at an all-time low. And

while investigative agencies, such as the Federal Bureau of Investigation, remain working, their willingness and ability to conduct interviews, deliver subpoenas, and take other investigative steps are undoubtedly hampered during this crisis and will remain so throughout its duration. And since federal white collar prosecutors indict only the cases worked up and presented to them by their investigators (and due to the suspension of jury trials and grand jury presentations), prosecutions will very likely be slowed substantially during this crisis.

This suspension does not mean that defendants, targets and their counsel should put down their pens. Our view is always to be proactive when the opportunity presents itself. In indicted cases, this investigative and prosecuting pause gives counsel and their clients an opportunity to prepare their defenses for trial. For known ongoing investigations, this period may also present the opportunity to engage with the government to see if, in a time of more limited resources, investigations can be shut down or resolved on more favorable terms. Lastly, corporate clients also can use this respite to undertake or complete internal investigations that are or may become the subject of government scrutiny.

In short, the government's spotlight will briefly shine less brightly until this crisis runs its course. But knowing that the crisis has a definite, yet unknown, end, white collar practitioners and their clients are well advised to use this period to their advantage.

If you have questions or would like to discuss further, please contact Jeff Ansley or Arianna Goodman.