

Bates Compliance Roundtable:

Highlights from Bates' Zoom Call on Business Continuity Planning

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On July 15, 2020, Bates Compliance held a roundtable discussion with Bates experts and guests on business continuity plans (BCPs), pandemic-related remote working issues and other possible business disruptions. A power point presentation accompanying the teleconference provided additional detail on elements of the discussion including employee safety, key personnel considerations, COVID-19 reopening protocols and best practices.

The panel included:

[Hank Sanchez](#), Managing Director, Bates Compliance (Moderator)

[Linda Shirkey](#), Managing Director, Bates Compliance

[Rory O'Connor](#), Director, Bates Compliance.

With guests:

[Rob Guldner](#), CCO Investment Advisor Division, Advisor Group,

[Sandra Grannum](#), Esq., Partner at Faegre, Drinker, Biddle & Reath,

Here are the highlights:

Overview

- Even for the biggest and most-prepared companies, COVID-19 presented surprises (unexpected system constraints, lack of laptops, surges in call volumes, e.g., on trade orders) that require modifications and adjustments to BCPs.
- At the heart of effective BCPs lies strong communication with customers, employees and authorities.
 - Going forward, regulators expect that a BCP plan is in place (and includes all the elements under FINRA rules and/or SEC guidance.) The plan must be customized to the business, fully documented and include adequate training, testing, communication and dissemination protocols.

- the BCP is being constantly updated as new information becomes available and new lessons are learned. (“Expect the regulators to ask what did and did not work, how did it work, and what are you adding to the plan based on your latest experience.”)

On BCP Priorities

- BCP priorities are intended to protect the company, but to be effective, BCP practices and protocols should align with how individuals prioritize during crises. This means, they must take into consideration: family, employees, clients and community.
- Effective communication with customers, employees and authorities should speak to these priorities.
- Preparedness is key to responding, helping others and getting it right. In a non-crisis environment, companies should be conducting exercises around various scenarios. Such “tabletop exercises” shed light on specific responses in specific emergencies.

Best Practices

- **Good Guidance:** As detailed in the presentation, there is both direct FINRA guidance (Rule 4370 on BCP required elements and Notice 20-08 on pandemic planning) for broker dealers, and 2016 SEC guidance (IM 2016-04) for IAs. The panelists encouraged both broker dealers and IAs to review the FINRA requirements as a clear marker for developing BCPs.
- **Communications:** BCPs should prioritize protocols on communicating with clients during a crisis. During such a time, clients are particularly concerned with access to their funds (prompt access is required under FINRA rules,) and ensuring effective communication is a high priority. To best prepare:
 - assessments should be made that include what kind of media are available if internet and/or phones are down;
 - BCPs should include instructions on relevant disclosures on contacts for clients.
- **Remote Working:** The pandemic highlighted “remote access” issues (i.e., “do employees have what they need to work?”). Firms should be reviewing processes concerning:
 - encryption and VPNs, password authentication and bandwidth;
 - proper control authorization levels on different users;
 - remote inspections and privacy (FINRA gave certain registration relief, but facts and circumstances dictate registration requirements on remote working locations.);

- books and records requirements (FINRA gave registration relief but facts and circumstances dictate registration); and
- remote technology and security (sometimes referred to as “second level BCP,” or, “what happens if the home power goes out?”).
- **Cybersecurity:** The SEC has been highlighting cybersecurity enforcement while FINRA focuses on client privacy issues.
 - Both regulators maintain topic pages which are important to review. These pages advise on how to build out a program, what to do in case of a breach or attack, compliance tools, and citations to proper authorities. [\[SEC\]](#) [\[FINRA\]](#)
 - “Know your Vendor” – Now is the time to perform due diligence and reevaluate the working relationship with outside vendors to determine whether they maintain adequate security protocols for your business.
- **Personnel:** BCPs should detail critical functions, assess risk and inventory who is responsible:
 - Personnel procedures must be documented, addressed in training and tested (preferably in a controlled manner when not in crisis.)
 - Management should consider outsourcing critical functions (e.g. compliance, technology) in their BCP plans.
 - Succession planning is important. (*Note:* “BCP’s should provide a mechanism for someone to step into the business immediately and transition effectively. This is not about succession but continuity. The focus should be to take care of clients and staff.)
- **Financial and Credit Risk:** Emergencies can affect compliance with SEC net capital requirements and the SEC’s alternative maximum debt to equity capital rule. During the pandemic, PPP loan activity must be accounted for and properly disclosed.
- **Reopening:** For the pandemic, firms should:
 - Understand and be up to speed on municipal or local rules or requirements and incorporate state and federal guidelines into protocols.
 - Build procedures for a positive COVID-19 employee experience, including training to deal with, for example, when to where a mask and the use of PPE.
 - Know if some of the employees are at high risk: how they are getting to work, how effectively they are working from home, and whether reopening exposes them to unnecessary risk.
 - Employee pandemic protocol guides should be drafted to maintain compliance with HIPPA or other human resource (Privacy/confidentiality) legal strictures and must be in conformance with local rules.



Summary

During this time, firms should be working to identify gaps in their BCPs; reviewing and incorporating new regulatory guidance and requirements on operational, cybersecurity and third-party management risks and controls; testing, training and sharing best practices.

Update: On August 12, 2020, the SEC Office of Compliance Inspections and Examinations (OCIE) staff [alerted](#) broker-dealers and investment advisers to additional COVID-19 compliance risks (see Bates coverage [here](#).) The OCIE recommended, among other things, that firms review their business continuity plans to address their “ability to operate critical business functions during emergency events.” Consistent with the above recommendations, OCIE suggested reviewing supervisory and compliance policies as well as security and resource support for protracted remote operations.

To learn more about Bates Compliance’s practice and services, please visit [Bates Compliance](#) online or contact [Hank Sanchez](#), Bates Compliance Managing Director, or [Linda Shirkey](#), Bates Compliance Managing Director.