



# CONSTELLATION

ADVISERS, LLC

## REGULATORY NOTICE: 20-06:

### OCIE BCP EXAM PREPARATION QUESTIONS

The Office of Compliance Inspections and Examinations (“OCIE”) of the U.S. Securities and Exchange Commission (“SEC”) has begun contacting investment advisers to conduct limited scope exams regarding the advisers’ Business Continuity Plans (“BCP”). Constellation has gained insights from supporting clients during the limited scope BCP exams being conducted by the SEC during this targeted review. In Constellation’s experience, the areas under review fall into 7 main areas:

- Operational Continuity and Elements of the BCP;
- Declaration of a Significant Disruption Event;
- Effectiveness and Limitations of the BCP;
- Communication;
- Due Diligence on Third-Party BCPs;
- Financial Impact of COVID-19; and
- Other Items.

Below are the questions that Constellation advises investment advisers prepare to answer in each of these categories.

#### **Operational Continuity and Elements of the BCP**

- Does the Firm have a contingency plan if key personnel are incapacitated?
- Does the Firm’s contingency plan apply to all personnel or essential personnel?
- Have you designated a limited number of personnel roles as essential?
- Does the Firm have a written BCP?
- Does the BCP specifically cover the term “pandemic”?
- Does the BCP contemplate persons working separately at remote sites (i.e., working from home)?

#### **Declaration of a Significant Disruption Event**

- Has the Firm implemented its BCP in response to COVID-19?
- Has the Firm fully implemented its BCP or only certain aspects of it?

- Has the Firm instituted working remotely?
- Does the Firm have any site critical personnel still entering the building?
- Has the Firm implemented travel restrictions?
- Has the Firm instituted meetings by video?
- Has the Firm put procedures in place to isolate groups?

## **Effectiveness and Limitations of the BCP**

- Has the Firm identified any weaknesses or unforeseen issues while implementing the BCP?
- Are there any business operations of the Firm that cannot be performed remotely?
- Is the Firm setup to operate at multiple remote locations or in its current manner for several weeks or months?
- Has the Firm accounted for any limitations in its abilities considering employees are working remotely?
- Has working remotely affected the Firm's oversight of its critical service providers?

## **Communication**

- Is the Firm providing employees with status updates?
- Have clients and customers been contacted?

## **Due Diligence on Third-Party BCPs**

- Does the Firm's BCP contemplate review and oversight of BCPs of vendors and critical service providers/third parties?
- Are you reaching out to ask about service providers' BCPs?

## **Financial Impact of COVID-19 on Firms**

- Has COVID-19 created financial hardship for the Firm?
- Has the Firm considered the impact of COVID-19 on its business and operations?

## **Other Items**

- Have any auditors communicated that audits would not be completed within the required time frame due to COVID-19?
- What other issues or concerns does the Firm want to share with the SEC (*open-ended question*)?

**TAKE ACTION!**

## Clients Should:

- Review BCPs to verify that they cover the items identified above.<sup>[1]</sup>
- Consider taking steps to ensure operational continuity in case key personnel become incapacitated.
- Document any determination to declare a Significant Disruption Event and that the Firm has followed its procedures since that declaration.
- If applicable, a Firm should obtain and review the effectiveness of third-party service providers' BCPs.
- Determine whether to notify advisory clients.
- Determine if COVID-19 will create a financial hardship for the firm and how to address.

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[1] In this Client Alert, Constellation is providing its observations, advice, and recommendations. Constellation did not and does not provide legal advice regarding its services nor did it or does it provide any assurance regarding the outcome of any future audit or regulatory examination or other regulatory action. It is further understood that recipients of this Client Alert have responsibility for, among other things, identifying and confirming compliance with laws and regulations applicable to their activities, and for establishing and maintaining effective internal controls to confirm such compliance.

***If you have any questions, please contact a member of Constellation's Compliance team for assistance at [compliance@constellationadvisers.com](mailto:compliance@constellationadvisers.com).***

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