

COVID-19 (Coronavirus) Considerations for Private Lenders

We are conscious that the COVID-19 (Coronavirus) pandemic is top of mind for everyone these days, and our first hope is that all of our clients and their loved ones are healthy and safe. Many of our private lending clients have had questions regarding actions they should be taking in response to the pandemic and the effect voluntary and, in some cases mandated, “social distancing” measures are having on their businesses and the economy. For this reason, we are providing some reminders to ensure clients are keeping on track during this frantic time as well as some information that we hope will be helpful as everyone attempts to operate through the current uncertainty.

COVID-19 Securities Disclosures

Companies with active securities offerings (e.g., equity interests in a mortgage fund, trust deed investment offerings, etc.) should be mindful of the potential need for additional disclosures related to the Covid-19 epidemic. As the sponsor of a securities offering, you have an ongoing obligation to disclose all “material information” regarding the securities offered and to ensure the information provided is not misleading. For this purpose, information is considered “material” if it would be deemed important to a reasonable investor in determining whether to invest in the securities.

Given the present uncertainty regarding how long COVID-19 will continue to impact society and the economy, an accurate disclosure regarding the total impact COVID-19 will have on your offering is likely not possible at this time. Nonetheless, if the performance data and other information included in your current private placement memorandum or other disclosure document predates the COVID-19 crisis, a COVID-19 disclosure is material information and will, in most cases, be necessary to avoid disseminating misleading information to potential investors.

For this reason, we are advising clients to either: (i) terminate the offer and sale of their securities until accurate disclosures can be made; or (ii) immediately include a supplemental disclosure describing any known impacts related to COVID-19 and the potential for continued economic disruption as uncertainty with respect to the virus persists. If the offering is being made pursuant to a permit issued by the Department of Business



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Oversight ("DOB"), the additional disclosure must be submitted and approved by the DOB prior to use. Otherwise, a short one-page supplement can generally be prepared and included with your other documents without regulatory review.

2019 CFL Annual Report – Due March 15, 2020

As mentioned in prior client alerts, California finance lenders are required to submit their 2019 Annual Reports to the DBO by March 15, 2020. To date, no extension of this deadline has been granted for companies affected by the COVID-19 pandemic. Consequently, CFL licensees that did not file their reports by that date should do so immediately. Reports must be completed on-line at the DBO website (<https://docqnet.dbo.ca.gov/>).

Annual Updating Amendments to Form ADV – Due March 31, 2020

Annual updating amendments to Form ADV must be filed on or before March 31, 2020 by fund managers that: (i) rely on the “private fund exemption” from investment advisor certification in California (Regulation 260.204.9); and (ii) have a fiscal year end of December 31st. To date, no extension of this March 31st deadline has been granted for companies affected by the COVID-19 pandemic. Updates must be completed through the Investment Advisory Registration Depository (IARD) website (available here: <https://www.iard.com/>) which can be accessed by the Super Account Administrator appointed at the time of the advisor’s initial registration with IARD. Prior Funding of the advisor’s Flex Funding Account may also be required to pay annual fees.

Key Issues for Employers

As business owners, our clients have also had many questions regarding what they should be doing with respect to their business and employees, generally. For this reason, Hanson Bridgett’s Labor & Employment Group will be putting on a free webinar entitled “Coronavirus: Key Issues for Employers” on Thursday, March 19, 2020. Further information regarding this webinar and other Covid-19 issues are located on the [Hanson Bridgett COVID-19 Resource Center](#).

For more information, please contact:

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