

WEDNESDAY, APRIL 15, 2020

Rowing together: Jenner & Block helps clients prepare for a new reality

By Nicole Tyau

Daily Journal Staff Writer

Attorneys at Jenner & Block are helping clients comply with mandates from state attorneys general, and one of the most pressing challenges is monitoring online price gouging.

“The major online retail — that maybe is a third-party platform and doesn’t control all of the pricing and product itself — state AGs are looking to them to become watchdogs for all the activity actually engaged in by these third parties that are selling on their platform,” explained Brian Hauck, co-chair of Jenner’s state enforcement and regulation practice.

“These online platforms are being challenged by state AGs to come up with the systems, oversee the systems and monitor that activity on their site,” he said.

Hauck said he’s advising clients trying to adhere to these directives to employ compliance basics: monitor the historic price data and track changes. However, Thomas J. Perrelli, firm chair and co-chair of the state enforcement and regulation practice, said part of their work has been managing the expectations of state attorneys general about what these online retailers can do.

“I had a client where state authority came and sought a bunch of information to get at price gouging, and the reality was we could tell the state authority where the product went, and we could tell the state authority whether a particular retailer was buying larger quantities than usual,” Perrelli explained. “But we don’t have visibility on where that product went



HAUCK

and what its ultimate price was. You’re trying to help, obviously, the authorities that are trying to get at the issues of price gouging, but you’ve got to work with them to help them understand the limitations of what you can do.”

Compliance of that nature is ultimately part of a larger effort to help clients stay away from enforcement actions and litigation, Perrelli said. One important piece of that, and one Jenner has particular expertise in, is making sure any stimulus money being put into businesses is used correctly and tracked accurately.

“The challenge is the pace at which, and the size of, the money that’s going into the economy, and the need to deploy it quickly,” Perrelli said, noting the stimulus money has not been distributed to businesses yet. “So it’s to get prepared now with the idea of having systems in place, obviously, to be eligible for that money, to get that money, to then track it with the idea that there’s going to be an audit on the other end.”

Perrelli pointed to Jenner & Block partner Neil M. Barofsky,



PERRELLI

who previously oversaw the \$700 billion Troubled Asset Relief Program (TARP) during the 2008 economic crisis as special inspector general. Barofsky has been actively speaking about the lessons learned from the TARP program and using that information to help clients prepare, Perrelli said.

“We know from past large government programs that there will be investigative activity that will follow, and we work closely with our investigations, compliance and defense practice, ... to help clients on the compliance end now and obviously be prepared for whatever might come,” Perrelli said.

Hauck also mentioned many of the businesses receiving stimulus support aren’t used to complying with government controls on how money is used. He said these kinds of businesses don’t always have systems in place to keep track of the money for a possible future audit.

“If you’re Boeing, if you’re General Dynamics, you have a lot of government contracts, and you are very familiar with the regulations that govern how you keep

‘We know from past large government programs that there will be investigative activity that will follow, and we work closely with our investigations, compliance and defense practice ... to help clients on the compliance end now and obviously be prepared for whatever might come.’

— Thomas J. Perrelli, Jenner & Block

track of the funding that you’re getting,” Hauck said. “So much of the money now is obviously targeted at small businesses, which don’t always come to Jenner, but also industries that aren’t used to receiving this kind of money.”

States are moving quickly, and businesses have to respond just as quickly, Hauck said. Businesses must ask themselves what they want to advocate for and what will have a meaningful impact in a post-COVID world, Hauck said.

“On a long term basis, they just don’t know whether someone’s going to show up on their doorstep in six months and say, ‘You could have done better on how you implemented the lockdown order with respect to your business, so we’re going to take whatever action,’” Perrelli said. “I think everyone hopes that as long as we as a society are all rowing our oars together and really working collaboratively to try to get through this public health crisis, that folks will be understanding if folks didn’t get it perfect all the way through.”

nicole_tyau@dailyjournal.com