

COVID-19's Impact on the M&A Market: Measures and Precautions, Daily Business Review

By Perry Sofferman, partner at Kaufman Dolowich & Voluck in Florida and Chair of the KD Corporate and Intellectual Property Practice Group and Andrew L. Burnstine - published July 10, 2020.

Whether parties are moving forward with their agreements, placing them on the backburner until the markets stabilize, or initiating deals during the COVID-19 pandemic, both parties should prudently review deal terms and contemplate what must be revised to properly account both for the existing crisis and for the possibility of similar epidemics or pandemics in the future.

Although it is uncertain what impact the COVID-19 pandemic will have on the M&A market over the medium- and long-term, the severity of the short-term effects that COVID-19 is having on the M&A market is readily apparent. Whether parties are moving forward with their agreements, placing them on the backburner until the markets stabilize, or initiating deals during the COVID-19 pandemic, both parties should prudently review deal terms and contemplate what must be revised to properly account both for the existing crisis and for the possibility of similar epidemics or pandemics in the future.

In the context of M&A agreements entered into prior to the pandemic, there may be situations under which a court, considering all the factors, might find, in light of the global market implications surrounding the COVID-19 pandemic, that a "material adverse change" (MAC) or "material adverse effect" (MAE) occurred when it would not have done so under ordinary conditions. (Interchangeably MAC and MAE).