USI ADVISORS, INC.

MARKET & LEGAL UPDATE
May 2020 REVIEW

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"Markets Remain Optimistic Despite Dismal Economic News"

Although economic conditions remain poor, markets held on to gains for a second straight month and the S&P 500 Index had its best two month stretch since 2009. On the health crisis front, the U.S. reached a tragic milestone in May, as the number of deaths from coronavirus crossed 100,000, however, the number of new infections and mortalities has fortunately been on a downward trend. The market gains have been forward-looking, with the economy slowly beginning to reopen as the virus trajectory flattens. Additionally, with larger and more widespread testing options in place and several vaccines showing promise, we may be better prepared if there is a resurgence of infections in the fall. Geopolitical tensions between China and the U.S. resurfaced due to China's ambitions to tighten its grip on Hong Kong. Further, protests that erupted on May 26th in Minneapolis over the death of George Floyd, quickly escalated and spread nationwide over the weekend.

After the fastest decline in bear market history between February 19th and March 23rd, the S&P 500 Index has marched higher, gaining about 40% over the last 10 weeks, making it the fastest gain of this magnitude since 1933. Over that same exact period, over 40 million Americans have lost their jobs, and the unemployment rate, which reached 14.7% at the end of April, is expected to climb higher. More dreadful economic data was released in May as retail sales plunged a record 16.4% in April from the previous month and first quarter GDP fell 5%, a bigger decline than the 4.8% drop first estimated a month ago. Pending home sales fell a steeper than expected 22% in April compared to March and were down 34% from last April, the largest decline since the National Association of Realtors started tracking the data in 2001. Existing home sales fell 17.8% and housing starts fell 30% in April from March, the biggest monthly decline on record. Chicago PMI hit the lowest level since the 1980s at 32.3 in May from April's 35.4 level (a reading below 50 indicates a contraction). Despite all this, the markets performed well in May, making many questions whether there is a disconnect between stocks and economic reality.

Market Return Indexes	May 2020	YTD 2020
Dow Jones Industrial Average	4.7%	-10.1%
S&P 500	4.8%	-5.0%
NASDAQ (price change)	6.8%	5.8%
MSCI Eur. Australasia Far East (EAFE)	4.4%	-14.3%
MSCI Emerging Markets	0.8%	-16.0%
Bloomberg Barclays High Yield	4.4%	-4.7%
Bloomberg Barclays Aggregate Bond	0.5%	5.5%
Yield Data	**May 2020**	**April 2020**
U.S. 10-Year Treasury Yield	0.65%	0.64%

One of the more powerful forces driving the markets has been the aggressive actions taken by the Federal Reserve and Congress that have spent trillions of dollars to aid the markets and hard-hit consumers, businesses and local governments. The Fed has taken a variety of steps to support the economy including cutting rates to near zero, introducing bond purchases and various emergency lending programs. In a recent virtual interview in May, Fed Chair Jerome Powell noted that the Fed had not exhausted all its options and it still has room to continue to introduce additional lending programs if further liquidity is needed. These decisions to pump massive amounts of liquidity will likely come at a cost over the long term as the Fed's balance sheet has expanded at an unprecedented rate since March. The terminal size will likely depend on the shape of the recovery and, according to JPMorgan, the size of the balance sheet could reach $10 trillion but a quicker recovery could limit the size to $8 trillion. The markets are focusing more on the benefits of the stimulus as opposed to any potential negative consequences.

The first quarter earnings season ended in May and out of the 490 companies (98% of S&P 500 companies) reporting first quarter results, 65% exceeded earnings expectations while 59% beat revenue expectations. The blended earnings decline for the quarter came in at -14.6%, representing the largest year-over-year decline since 2009. Corporate earnings reports are expected to be weak for the remainder of the year and we will continue to see dismal economic data in the next few months, but this is likely already priced into the market. Historically it has been common during recessions to see stocks rebound in advance of seeing the bottom in economic activity. Markets are forward-looking and investors are already focusing on the economy's reopening and medical progress on a coronavirus vaccine and looking ahead at the possibility of a rebound later in the year or into 2021.

Market participants were also eyeing tensions between the U.S. and China at the end of the month as President Trump warned of possible sanctions against China over its treatment of Hong Kong. Beijing has tightened its control over Hong Kong, implementing a new national-security law. For over 20 years, Hong Kong has enjoyed special privileges that differentiate it from the rest of China but on Friday, President Trump criticized China's recent anti-competitive and security efforts and said he would pursue ending the special trading relationship with the financial hub. Additionally, Trump announced that the U.S. would terminate its relationship with the WHO. No comments were made to weaken the Phase 1 agreement that was reached earlier in the year; therefore the announced measures were seen as less severe as feared.

Demonstrations erupted across dozens of cities in the U.S. and around the world over the past several days centered around the death of George Floyd in police custody. Protests grew increasingly violent over the weekend and 75 cities in the U.S. saw clashes between police and protesters, only days after streets were deserted due to the COVID-19 pandemic. National Guard troops have been deployed in 15 states and a number of major retailers have either temporarily closed hundreds of locations or adjusted store hours around citywide curfews and some retailers may delay reopening stores that were closed due to the pandemic. Social unrest coincides with an economic downturn which has left millions of Americans jobless from measures to contain the virus. The markets have continued to climb despite an unprecedented global pandemic, spiking tensions between the world's two largest economies and disruptions taking place across U.S. cities more recently. So far, investors seem content holding on to any accommodative language by the Fed and any progress that is made towards increasing testing capabilities and a vaccine. It remains to be seen if equity markets will display resilience in the face of troubling developments and new economic data expected to be released in the coming weeks.

LEGAL UPDATES

Department of Labor Issues Final Regulations on New Voluntary Electronic Disclosure Rules

On May 21, 2020, the Department of Labor ("DOL") issued final regulations to enhance the ability of retirement plan sponsors to furnish required disclosures electronically (e.g., via e-mail or through posting on a website) in order to reduce printing and mail expenses and to make such disclosures more readily accessible to plan participants. These final rules are substantially similar to the rules contained in the proposed regulations that were previously released on October 22, 2019. The final rules reflect modern internet technology, by providing a new voluntary safe harbor for employers who want to make retirement plan disclosures required under ERISA more widely available, by using electronic media as a default, rather than sending volumes of paper documents through the mail.

Prior Safe Harbor

In general, under the prior safe harbor for electronic delivery, which was adopted by the DOL in 2002, electronic delivery of ERISA required disclosures was only permissible as a method of delivery if the participant was required to access electronic information as an integral part of his or her job duties, or if the participant affirmatively consented to receive such disclosures through electronic means of delivery.

New Voluntary Safe Harbor

The final rules establish a new voluntary electronic delivery safe harbor for employers who want to make electronic delivery the default method of providing required disclosures to Covered Individuals. The new safe harbor permits the following two optional methods for electronic delivery:

1. **Website Posting** – Employers may post Covered Documents on a website if an appropriate notification of internet availability is transmitted to the electronic addresses of Covered Individuals.
2. **Email Delivery** – Alternatively, employers may send Covered Documents directly to the electronic addresses of Covered Individuals, with the Covered Documents either in the body of the email or as an attachment to the email.

Under the new safe harbor, employers can make electronic delivery the default notification method by complying with the following requirements:

- **Covered Individuals**: A plan administrator may use this safe harbor only for "Covered Individuals." A Covered Individual is a person who is entitled to receive "Covered Documents" (see below) under ERISA and who have a valid electronic address (e.g.,email address or mobile phone number). Covered Individuals include participants, beneficiaries, or other individuals who are entitled to receive Covered Documents.
- **Valid Electronic Address:** The electronic address must either be provided by the employer as part of the employee's regular course of employment duties or voluntarily provided by the participant. Neither the plan sponsor, plan administrator, nor any service provider may create an electronic address on behalf of the participant solely for the purpose of transmitting "Covered Documents". In addition, non-employee participants (spouses, beneficiaries, etc.) may not be assigned electronic addresses without their consent.
- **Covered Documents:** The safe harbor may only be used for retirement plan documents that are required to be furnished under Title I of ERISA that are regulated by the DOL. The rule does not apply to health and welfare documents.

- **Right to Paper Documents:** Covered Individuals must be allowed to globally opt-out of electronic delivery entirely, at any time, free of charge. In addition, plans may also provide other opt-out options such as document by document opt-out or one based on categories of Covered Documents.
- **Initial Notification:** Covered Individuals must be furnished with an initial notification, on paper, that explains the way that they currently receive retirement plan disclosures (such as through paper delivery in the US mail) is changing. The notice must inform them of the new electronic delivery method, the electronic address that will be used, their right to opt out, and directions to opt-out if they prefer paper disclosures, among other things. The notice must be given to them before the plan may use the new safe harbor.
- **Notification of Internet Availability:** Covered Individuals generally must be furnished a Notice of Internet Availability ("NOIA") each time that a new covered document is made available for review on the internet website, such as for quarterly benefit statements. The NOIA must briefly describe or identify the Covered Document that is being posted online, include an address or hyperlink to the website, and inform the Covered Individual of the right to request paper copies or to opt out of electronic delivery altogether, and provide directions on how to opt-out. The NOIA must be concise, understandable, and contain only specified information.
- **Annual Notification of Internet Availability:** To avoid "notice overload" the final rule permits an annual NOIA to include information about multiple Covered Documents once every plan year, with a 2 month grace period (i.e., 14 months) for any notice that is required annually, rather than upon the occurrence of a particular event, and which does not require action by the Covered Individual by a specific deadline (for example, Summary Annual Reports, annual funding notices, 404(a)(5)/404(c) disclosures, annual QDIA notices, etc. are permitted to be disclosed in a single annual NOIA).
- **Electronic Address Verification System:** Plan administrators must ensure that the electronic delivery system is designed to alert them if a participant's electronic address is invalid or inoperable. In that case, the administrator must attempt to promptly cure the problem, or treat the participant as opting out of electronic delivery. Additionally, upon an employee's termination of employment, the plan administrator must take measures to ensure the continued accuracy of the electronic delivery such as obtaining a new address that enables receipt of Covered Documents.
- **Website Retention:** Covered Documents must remain on an internet website until replaced by a more current version of the document, but in no event for less than one year.

Note: The final rule provides an additional electronic disclosure safe harbor method and still allows employers the option to use the prior safe harbor for electronic delivery.

Effective Dates – The new voluntary safe harbor is effective 60 days after its publication in the Federal Register. However, in light of COVID-19, the DOL will allow plan sponsors to rely on the new voluntary safe harbor immediately.

If you have any questions or would like additional information regarding these final regulations, please contact your USICG representative.

For previous market commentaries please click here.