



## **Regulatory Response to COVID-19 Pandemic: Guidance and Relief**

The SEC, FINRA and the CFTC have issued guidance and regulatory relief for investment advisers, investment companies and broker-dealers due to the unprecedented operational disruptions caused by the COVID-19 pandemic. Reliance on the relief is permitted for limited periods of time, which may be extended as warranted. The SEC has announced that a firm's reliance on relief it has issued will not trigger an exam, but firms should be able to confirm and document that reliance is necessary or appropriate due to circumstances related to the current or potential effects of COVID-19. In addition, firms should consider the potential impact of COVID-19 on their business continuity plans, liquidity, counter-party arrangements, investment strategies, investor flows, and general market outlook. [SEC registrants should also note that the SEC has announced that it has moved to conducting examinations off-site through correspondence, unless they deem it "absolutely necessary" to be on-site.](#) We have summarized the relief to-date applicable to investment advisers, investment companies and broker-dealers, and welcome any questions. Please check this resource page on an ongoing basis for additional information and the latest updates on regulatory relief stemming from the COVID-19 pandemic.

### **Investment Advisers**

**Form ADV and Form PF Filing and Delivery Requirements - [On March 13, 2020, the SEC issued temporary regulatory relief for registered investment advisers](#)** (Advisers Act Order) that provides up to an additional 45 days for advisers to meet the requirements applicable to Form ADV Reports and annual amendment filings, Form ADV Part II client delivery obligations and Form PF filings. This relief is limited to filing or delivery obligations for original due dates between March 13, 2020 and April 30, 2020. The Advisers Act Order also requires that an adviser relying on the order promptly provide the SEC via email at [IARDLive@sec.gov](mailto:IARDLive@sec.gov) (with respect to the filing of Form ADV or delivery of its brochure, summary of material changes, or brochure supplement) or at [FormPF@sec.gov](mailto:FormPF@sec.gov) (with respect to filing Form PF) the following: (1) Notice that it is relying on the order, (2) a brief description of the reasons why it could not make the required filing or delivery, as applicable, on a timely basis, and (3) an estimated date by which the adviser expects to make the required filing or delivery, as applicable. In addition, an adviser relying on the Advisers Act Order with respect to Form ADV filings or Part II delivery must disclose this information on its public website (or if it does not have a public website, promptly notify clients and/or private fund investors).

**Form CRS** – The Investment Advisers Association has raised concerns with the SEC staff about the June 30, 2020 Form CRS filing deadline and members’ concerns relating to their ability to continue with effective preparations. The staff is currently considering whether to grant an extension.

**Custody Rule Implications** - [The SEC staff updated its Custody Rule FAQ II. 1](#) to note that if an adviser inadvertently receives funds or securities from clients at an office location that is temporarily closed due to the firm’s business continuity plan in response to COVID-19, the SEC staff would not consider the adviser to have received client assets until firm personnel are able to access the mail or deliveries at that office location.

In addition, Question V1.9 of the Custody Rule FAQ was updated to note that the Division of Investment Management would not recommend enforcement action for a violation of rule 206(4)-2 against an adviser that is relying on rule 206(4)-2(b)(4) and that reasonably believed that the pool’s audited financial statements would be distributed within the 120-day deadline, but failed to have them distributed in time under certain unforeseeable circumstances.

**Form ADV Item 1(f) (Place of Business)** - [The SEC staff issued a FAQ](#) indicating that advisers are not required to update either Item 1.F of Part 1A of Form ADV or Section 1.F of Schedule D to include temporary teleworking addresses of its employees, so long as the employees are temporarily teleworking as part of the firm’s business continuity plan due to COVID-19.

**Section 13G Filings** – [Pursuant to an Order under Section 36 of the Securities Exchange Act of 1934](#), filers that cannot meet the Schedule 13G filing deadline before April 30, 2020 due to COVID-19 have an additional 45 days to file. Any Schedule 13G filer relying on the order must disclose when it files the Schedule 13G that it relied on the order why it could not file the schedule on time.

## **Investment Companies**

[On May 13, 2020, the SEC issued temporary regulatory relief](#) (1940 Act Order) from in-person board meeting requirements, as well as the following filing or transmittal requirements:

**Annual and Semi-Annual Report Transmittal Deadlines** - The 1940 Act Order provides up to an additional 45 days for funds to send shareholder reports to investors for filings that were due to be transmitted on or before April 30, 2020. A registered fund relying on this relief must promptly provide to the SEC via e-mail: (1) notice that it is relying on the 1940 Act Order; (2) a brief description of the reasons why it could not make the required filing or transmittal, as applicable, on a timely basis; and (3) the estimated date by which it expects to make the required filing or transmittal, as applicable.

**Form N-23C-2 Filings** - The 1940 Act Order extends the deadline for Form N-23C-2 filings by closed-end funds to June 15, 2020. Registrants seeking to rely on this relief should make sure it is permitted under state law and applicable governing documents. In addition, relying funds must promptly provide to the SEC via email: (1) a statement that it is relying on the 1940 Act Order and (2) a brief description of the reasons why it needs to file a notice fewer than 30 days in advance of the date set for calling or redeeming the securities. In addition, relying funds must file a notice that contains all the information required by Rule 23c-2 prior to: (1) any call or redemption of existing securities, (2) the commencement of any offering of replacement securities, and (3) notification to the existing shareholders whose securities are being called or redeemed

**In-Person Board Meetings** - The SEC staff is permitting fund boards to forego in-person meetings until at least June 15. Boards can conduct phone/video approvals under 15(c) (adviser contracts), Rule 12b-1 (distribution agreements), Rule 15a-4(b)(2) (adviser contract assignments), and Section 32(a) (selection of independent accountant). Technically, the staff has extended the relief provided last year that allows boards to conduct telephonic or video conference board meetings due to “unforeseen or emergency circumstances” so long as the actions are ratified at the next in-person board meeting. The relief extends to the approval of new advisory contracts for a new fund or a new sub-adviser, which were not included in the original relief. Funds should document in board meeting minutes the rationale for relying on this relief.

**N-CEN and N-PORT Filings** - The 1940 Act Order also provides relief from the Form N-CEN and Form N-PORT filing deadline requirements for an additional 45 days when a fund is unable to meet a deadline due to COVID-19. The relief for Forms N-CEN and N-PORT applies to filing obligations for which the original due date is on or after March 13 but on or prior to April 30, 2020. A registered fund relying on this relief must promptly provide to the SEC via e-mail: (1) notice that it is relying on the 1940 Act Order; (2) a brief description of the reasons why it could not make the required filing or transmittal, as applicable, on a timely basis; and (3) the estimated date by which it expects to make the required filing or transmittal, as applicable.

**Prospectus and Shareholder Report Delivery** – In the 1940 Act Order, the SEC staff noted that it would not provide a basis for an enforcement action if a registered fund did not deliver a prospectus to an existing shareholder timely due to COVID-19. The relief is not applicable to prospectus delivery requirements to new investors. The relief applies when the original due date is on or after March 13 but on or prior to April 30, 2020, and permits transmittal no later than 45 days after the original due date. Relying funds must provide to the SEC via e-mail: (1) a statement that it is relying on this position, (2) a brief description of the reasons why it or any other required person could not deliver the prospectus to investors on a timely basis, and (3) the estimated date by which it expects the prospectus to be delivered. A relying fund must also include its current prospectus on its public

website and explain on the website that it intends to rely on the relief why it could not deliver the prospectus on a timely basis.

In addition to the 1940 Act Order, the SEC has issued the following guidance and relief:

**Annual Shareholder Meetings for Closed-End Funds** – [The SEC's Division of Investment Management and the Division of Corporate Finance has issued guidance permitting closed-end funds seeking to hold their annual meeting virtually or change the date, time or location of the annual meeting.](#)

**Money Market Fund Liquidity Facility** - [The Federal Reserve Board has announced a Money Market Mutual Fund Liquidity Facility \(MMLF\) that is intended to assist money market funds in meeting demands for redemptions.](#) Under the MMLF, the Federal Reserve Bank of Boston will lend to depository institutions and bank holding companies, taking as collateral assets purchased by the borrower from prime money market funds: (i) concurrently with the borrowing or (ii) on or after March 18, but before the opening of the facility.

**Shareholder Report Subsequent Event Disclosure** - [On February 19, 2020, SEC Chairman Jay Clayton issued a joint statement \(Statement\) with SEC Division of Corporation Finance Director Bill Hinman, SEC Chief Accountant Sagar Teotia and PCAOB Chairman William D. Duhnke III regarding their recent discussions with the largest U.S. audit firms about the impact of COVID-19 on financial reporting.](#) The Statement noted that the discussions related to potential limitations in audit firm access to information and company personnel. The Statement noted that registrants should consider potential disclosure of subsequent events in the notes to the financial statements in accordance with guidance included in Accounting Standards Codification 855, *Subsequent Events*.

### **Broker-Dealers**

[FINRA has issued Regulatory Notice 20-08 to provide member firms with information regarding business continuity planning, guidance and regulatory relief.](#)

The Notice provides a reminder to firms to include specific disclosure relating to pandemic vulnerabilities in their business continuity plan. In addition, it provides guidance and regulatory relief regarding the availability of extensions for filings, exam requests and licensing requirements. Guidance is also provided regarding relief from firms' obligations to supervise business activities and steps firms should take if they cannot communicate with customers or FINRA.

### **CFTC Registrants**

[The CFTC's Division of Swap Dealer and Intermediary Oversight and the Division of Market Oversight issued eight temporary no-action letters on March 17](#) that provide regulated entities with relief from certain requirements due to the growth

of the COVID-19 pandemic. In addition to certain relief applicable to swap execution facilities and floor brokers, the relief provide that futures commission merchants, introducing brokers and swap dealers have an additional 30 days to provide annual compliance reports and that regulated entities will be exempt until June 30, 2020 from recording oral communications related to voice trading and other telephonic communications and time stamping requirements, as applicable, when working remotely.