

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 firms relying on the relief will not be a trigger for an exam, and the [SEC's Office of Compliance and Inspections has announced that examinations will moved or initiated offsite through correspondence unless it is "absolutely necessary" to be onsite.](#) 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 and liquidity programs, counter-party arrangements, investment strategies, investor flows, and general market outlook. We have summarized the relief to-date available 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temporary regulatory relief for registered investment advisers and exempt reporting advisers, which was extended and superseded on March 25, 2020](#) (Advisers Act Order) that provides up to an additional 45 days for advisers to meet the requirements applicable to Form ADV Reports and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 2A 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 June 30, 2020.

Relying advisers must also meet the following conditions: (a) the registered investment adviser or exempt reporting adviser must be unable to meet a filing deadline or delivery requirement due to circumstances related to current or potential effects of COVID-19; (b) the investment adviser relying on the Advisers Act Order with respect to the filing of Form ADV or delivery of its brochure, summary of material changes, or brochure supplement required by Rule 204-3(b)(2) or (b)(4), promptly notifies the SEC staff via email at IARDLive@sec.gov and discloses on its public website (or if it does not have a public website, promptly notifies its clients and/or private fund investors) that it is relying on the Advisers Act Order; and (c) any investment adviser relying on the Advisers Act Order with respect to filing Form PF required by Rule 204(b)-1 must promptly notify the SEC

staff via email at FormPF@sec.gov stating that it is relying on the Advisers Act Order.

Form CRS – [On April 2, 2020, SEC Chairman Jay Clayton issued a statement](#) noting that the SEC would not extend the June 30, 2020 Form CRS filing deadline. [The SEC has issued a FAQ regarding Form CRS](#) On April 7, 2020, the SEC’s Office of Compliance Inspections and Examinations (OCIE) issued a Risk Alert to SEC-registered broker-dealers and investment advisers regarding the scope and content of examinations for Form CRS, almost three months before it needs to be filed.

The Form CRS Risk Alert states that any SEC examinations conducted after June 30, 2020, “may include an assessment relating to Form CRS.” The alert includes a comprehensive list of what SEC staff may review in an examination, which includes:

- Delivery and filing to both existing and new retail investors;
- Whether a firm’s Form CRS includes all required information;
- Whether or not it omits any material facts;
- Whether the Form CRS is formatted as required;
- Policies and procedures for updating filing and distributing updates and how changes are highlighted; and
- How a firm makes and keeps records with its Form CRS, its filing, distribution, and updates.

EDGAR Signature Requirements – [The SEC staff has issued a statement that it would not pursue enforcement action under Rule 302\(b\) of Reg. S-T](#) if registrants have difficulty obtaining the manual signatures that are required prior to electronic filings with the SEC due to COVID-19 circumstances. Filers should comply with the following conditions: a signatory retains a manually signed signature page or other document authenticating, acknowledging, or otherwise adopting his or her signature that appears in typed form within the electronic filing and provides such document, as promptly as reasonably practicable, to the filer for retention in the ordinary course pursuant to Rule 302(b); such document indicates the date and time when the signature was executed; and the filer establishes and maintains policies and procedures governing this process. The signatory may also provide to the filer an electronic record (such as a photograph or pdf) of such document when it is signed.

Custody Rule Implications

[Custody Definition/Condition of Holding by Qualified Custodian - 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. Custody Rule FAQ VII.4 was also updated to provide guidance that, if five conditions are met as set forth in the FAQ, advisers do not have to maintain physical certificates with qualified custodians if such custodians are unable to do so due to COVID-19.

Audited Financial Statements for Pooled Vehicles - 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.

Surprise Examinations - Similarly, Question IV.7 of the Custody Rule FAQ was updated to note that if surprise examinations are delayed due to logistical disruptions to firms or their independent public accountants caused by COVID-19, the Division of Investment Management would not recommend enforcement action as long as the independent public accountant files such report as soon as practicable, but not later than 45 days after the original due date.

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.

Form 13 F and Section 13G Filings – [Pursuant to an Order under Section 36 of the Securities Exchange Act of 1934, which was amended and superseded on March 25, 2020](#), filers that cannot meet the Form 13F or Schedule 13G filing deadline before July 1, 2020 due to COVID-19 have an additional 45 days to file. Any Form 13F or Schedule 13G filer relying on the order must disclose in its filing that it is relying on the Order and state the reasons why it could not file such report, schedule or form on a timely basis.

Investment Companies and BDCs

[On March 13, 2020, the SEC issued temporary regulatory relief](#), which [was extended and superseded on March 25, 2020](#) (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 June 30, 2020. Relying funds must meet the following conditions: (a) the registered fund must be unable to prepare or transmit the report due to circumstances related to current or potential effects of COVID-19; (b) any registered fund relying on the 1940 Act Order must promptly notify the SEC staff via email at IM-EmergencyRelief@sec.gov stating that it is relying on the 1940 Act Order; (c) any registered fund relying on the 1940 Act Order must include a statement on the applicable registered fund's public website briefly stating that it is relying on the 1940 Act Order; and d) the registered fund must transmit the reports to shareholders as soon as practicable, but not later than 45 days after the original due date and files the report within 10 days of its transmission to shareholders.

Form N-23C-2 Filings - The 1940 Act Order extends the deadline for Form N-23C-2 filings by closed-end funds and BDCs to August 15, 2020. Relying funds adhere to the following conditions: (1) promptly notifies SEC staff via email at IM-EmergencyRelief@sec.gov stating that it is relying on the 1940 Act Order; (2) ensures that the filing of the Notice on an abbreviated time frame is permitted under relevant state law and the company's governing documents; and (3) files a Notice that contains all the information required by Rule 23c-2 prior to: (a) any call or redemption of existing securities; (b) the commencement of any offering of replacement securities; and (c) providing notification to the existing shareholders whose securities are being called or redeemed.

In-Person Board Meetings - The SEC staff is permitting fund boards of registered funds or business development companies (BDCs) to forego in-person meetings until at least August 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.

Registered funds and their advisers, sub-advisers or principal underwriters may rely on the 1940 Act Order if the following requirements are met: (i) reliance on the 1940 Act Order is deemed necessary or appropriate due to circumstances related to current or potential effects of COVID-19; (ii) the votes required to be cast at an in-person meeting are instead cast at a meeting in which directors may participate by any means of communication that allows all directors participating to hear each other simultaneously during the meeting; and (iii) the board of directors, including a majority of the directors who are not interested persons of the registered management investment company or BDC, ratifies the action taken pursuant to this exemption by vote cast at the next in-person meeting.

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 June 30, 2020.

A registered fund may rely on this relief if the following conditions are met: (a) the registered fund is unable to meet a filing deadline due to circumstances related to current or potential effects of COVID-19; (b) any registered fund relying on the 1940 Act Order promptly notifies the SEC staff via email at IM-EmergencyRelief@sec.gov stating that it is relying on the 1940 Act Order; (c) any registered fund relying on the 1940 Act Order includes a statement on the applicable registered fund's public website briefly stating that it is relying on the 1940 Act Order; (d) the registered fund required to file such Form N-CEN or Form N-PORT files such report as soon as practicable, but not later than 45 days after the original due date; and (e) any Form N-CEN or Form N-PORT filed pursuant to the 1940 Act Order must include a statement of the filer that it relied on the 1940 Act Order and the reasons why it was unable to file such report on a timely basis.

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 June 30, 2020 and permits transmittal no later than 45 days after the original due date.

Funds may rely on the shareholder report delivery relief if the following conditions are met: (a) the registered fund is unable to prepare or transmit the report due to circumstances related to current or potential effects of COVID-19; (b) any registered fund relying on the 1940 Act Order promptly notifies the SEC staff via email at IM-EmergencyRelief@sec.gov stating that it is relying on the 1940 Act Order; (c) any registered fund relying on the 1940 Act Order includes a statement on the applicable registered fund's public website briefly stating that it is relying on the 1940 Act Order; and (d) the registered fund transmits the reports to shareholders as soon as practicable, but not later than 45 days after the original due date and files the report within 10 days of its transmission to shareholders.

Funds may rely on the prospectus delivery relief (the "SEC Position") if the following conditions are met: (a) the fund notifies the SEC staff via email at IMEmergencyRelief@sec.gov stating that it is relying on the SEC Position; (b) the fund publishes on its public website that it intends to rely on the SEC Position; and (c) the fund publishes its current prospectus on its public website

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.](#)

BDC Flexibility to Issue and Sell Senior Securities and Engage in Joint Transactions - On April 8, 2020, the SEC issued an [order providing additional temporary flexibility for BDCs to issue and sell senior securities and participate in certain joint enterprises or other joint arrangements that would otherwise be prohibited by Section 57\(a\)\(4\) of the Investment Company Act and Rule 17d-1 thereunder.](#) Subject to the conditions in the order, it provides the following temporary relief:

- Exemptive relief from certain asset coverage requirements under Sections 18(a)(1)(A) and 18(a)(2)(A) of the Investment Company Act, as modified for BDCs by Sections 61(a)(1) and 61(a)(2), and the requirement of Section 18(b) of the Investment Company Act to permit the calculation of asset coverage ratio to be adjusted using asset values generated prior to the current COVID-19 crisis, subject to certain conditions.
- Expanded relief from Sections 17(d) and 57(a)(4) of the Investment Company Act and Rule 17d-1 thereunder for BDCs that have existing co-investment exemptive relief.

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.

N-LIQUID Questions for SEC Staff Regarding COVID-19 Impact may be directed to: IM-N-LIQUID@sec.gov and also contact: Tim Husson, Associate Director, at (202) 551-6803 and Jon Hertzke, Assistant Director, at (202) 551-6247.

Open-End Funds May Borrow From Affiliates to Meet Redemptions and Sell Debt Securities to Affiliates – [The SEC has provided relief to open-end funds to allow otherwise impermissible borrowings through June 30, 2020 to respond to the coronavirus epidemic.](#) Open-end registered funds may borrow from affiliates to meet redemption requests so long as the independent directors approve the borrowing and the fund sponsor notifies the SEC by email at IM-EmergencyRelief@sec.gov. Registered funds may also enter into interfund lending arrangements and deviate from fundamental policies so long as they meet approval and notification requirements.

[In addition, in a March 26, 2020 no-action letter](#) to the Investment Company Institute, the SEC staff stated that it would not recommend enforcement action against a fund (other than an ETF or money market fund) or its affiliate if the affiliate purchased a debt security from the fund (Affiliate Purchaser). Rule 17a-9 under the 1940 Act already permits an Affiliate Purchaser of a money market fund to purchase certain securities from the money market fund. This relief is temporary and requires funds, within one day of such a purchase, to publicly post on their website and email the SEC staff at IM-EmergencyRelief@sec.gov stating the name of the fund, the name of the Affiliate Purchaser, the security(s) purchased (including a legal identifier if available), the amount purchased and the purchase price(s) paid.

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*.

N-2 Registration Statement Amendments Triggered by 10% NAV Drop - Item 34.1 of Form N-2 requires closed-end funds to suspend their offering if fund NAV declines more than 10% from the NAV disclosed as of the effective date of the registration statement unless a prospectus amendment is filed. [The SEC has issued guidance that registrants may file a prospectus supplement under Rule 497 rather than filing a prospectus amendment.](#) The guidance includes proposed disclosure for such supplements.

Broker-Dealers

Reg BI Risk Alert - [On April 7, 2020, OCIE issued a Risk Alert to SEC-registered broker-dealers regarding the scope and content of examinations for Reg BI](#) following the June 30 compliance date (see content above for Form CRS Risk Alert information). Initial examinations for Reg BI will focus on assessing whether broker-dealers have made a good faith effort to implement policies and procedures reasonably designed to comply with Reg BI, including the operational effectiveness of broker-dealers' policies and procedures.

[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.

[SEC Facilitates Broker-Dealer Cash Sweep Programs - The staff of the SEC's Division of Trading and Markets will allow broker-dealers to operate cash sweep programs without an unnecessary hit to net capital.](#) In most cash sweep programs, where clients may have free credit balances swept to an FDIC bank, the BD may experience a one day lag to receive the funds from the bank. This lag creates a receivable that counts against net capital, thereby serving as an unnecessary regulatory drag on cash sweep programs. The no-action relief allows the BD to count the bank receivable as an allowable asset under Rule 15c3-1 to avoid the deduction from net capital.

CFTC/NFA Members

[NFA Branch Office Requirements – The NFA issued an interpretive notice](#) that it will not pursue a disciplinary action against a member that permits its associated persons (APs) to temporarily work from locations not listed as a branch office and without a branch manager. Relying members must: (a) implement alternative supervisory procedures to adequately supervise APs and meet member's recordkeeping requirements; (b) document supervisory procedures; and (c) APs are expected to return to the member's main office or listed branch location once the firm is no longer operating under contingencies pursuant to its business continuity plan.

[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, 2020](#) 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 provides 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. Filing extensions include the following:

- **Form CPO-PQR/NFA Form PQR.** Small and mid-size filers must file their annual Form CPO-PQR by **May 15, 2020**. Large filers may file their Q1 2020 Form CPO-PQR by **July 15, 2020**. The NFA has extended the due date for the Dec. 31, 2019 NFA Form PQR to **May 15, 2020** and the due date for the March 31, 2020 NFA Form PQR to **July 15, 2020**.

- **NFA Form PR.** Registered CTAs must file their March 31, 2020 NFA Form PR by **June 30, 2020**.
- **Pool Annual Reports Under CFTC Rule 4.7(b)(3) and 4.22(c) and NFA Compliance Rule 2-13.** Annual reports originally due on or before April 30, 2020 may be delivered to the NFA and pool participants **no later than 45 days after the original due date**. CPOs will also be permitted to seek additional time to file (up to 180 days from fiscal year end) under the “hardship” provisions of Rule 4.22(f).
- **Pool Periodic Account Statements Under Commission Regulations 4.7(b)(2) or 4.22(b) and NFA Compliance Rule 2-13.** Monthly or quarterly account statements for reporting periods ending on or before April 30, 2020 may be delivered to pool participants **within 45 days after the end of the reporting period**.