

Advisers Act Temporary Exemptive Relief Related to COVID-19 (Form ADV and Form PF)

MARCH 20, 2020

On Friday, March 13, 2020, the Securities and Exchange Commission (the “SEC”) issued an order (the “Order”)¹ providing temporary exemptive relief to registered investment advisers and exempt reporting advisers relating to their obligations to file and deliver Form ADV amendments and, to the extent applicable, file Form PF. The relief is available for filing and delivery obligations due on or prior to April 30, 2020 (unless extended).

The Order notes that this temporary relief may be necessary to assist filers that may have experienced, or may continue to be experiencing, disruptions due to the almost unprecedented COVID-19 global pandemic, including disruptions relating to access to facilities, personnel, and third-party service providers. The SEC issued the Order pursuant to its authority granted under Section 206A of the Investment Advisers Act of 1940, as amended (the “Advisers Act”), which provides that the SEC may “conditionally or unconditionally exempt any person or transaction, or any class or classes of persons or transactions, from any provision or provisions of the Advisers Act, or any rule or regulation thereunder, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Advisers Act.

Temporary Exemptive Relief

Subject to certain conditions further described below, the Order provides the following temporary exemptive relief:

1. A registered investment adviser is exempt from the requirement to file an amendment to Form ADV under Rule 204-1 of the Advisers Act.
2. A registered investment adviser is exempt from the requirement to deliver Form ADV Part 2 (or a summary of material changes) to existing clients under Rule 204-3(b)(2) and (b)(4) of the Advisers Act.
3. An exempt reporting adviser is exempt from the requirement to file a report on Form ADV under Rule 204-4 under the Advisers Act.
4. To the extent required, a registered investment adviser is exempt from the requirement to file Form PF under Section 204(b) of and Rule 204(b)-1 under the Advisers Act.

Conditions to Temporary Exemptive Relief

The temporary exemptive relief granted under the Order **is not self-executing**. Registered investment advisers and exempt reporting advisers wishing to avail themselves of the temporary exemptive relief must meet the following conditions, to the extent applicable:

1. A 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.
2. An investment adviser relying on the Order with respect to the filing of Form ADV or delivery of its brochure, summary of material changes, or brochure supplement must promptly provide the SEC with,^[2] and disclose on its public website^[3], the following information:
 - a. a statement that it is relying on the Order;
 - b. a brief description of the reasons why it could not file or deliver its Form on a timely basis; and
 - c. the estimated date by which it expects to file or deliver the Form.
3. A registered investment adviser relying on the Order with respect to filing Form PF must promptly provide the following information to the SEC^[4]
 - a. a statement that it is relying on the Order;
 - b. a brief description of the reasons why it could not file its Form on a timely basis; and
 - c. the estimated date by which it expects to file the Form.
4. The investment adviser or exempt reporting adviser must file the Form ADV and, to the extent applicable, Form PF, and deliver its brochure (or summary of material changes) and brochure supplement, to the extent required, as soon as practicable, but no later than 45 days after the original due date for filing or delivery, as applicable.

The Order asks investment advisers relying on the temporary exemptive relief to evaluate their obligations, including their fiduciary duty, under the federal securities laws. In other words, the SEC's relief is not an open invitation to delay filing and delivery obligations.

Additionally, business continuity planning has been an area of focus for the SEC in the past. In 2016, the SEC proposed rules that would have required certain investment advisers to adopt formal business continuity and transition plans, but those rules have not been adopted. We expect that industry participants should expect further guidance, and perhaps definitive rulemaking activity, in this area once the COVID-19 crisis is over.

Unless further extended, the relief provided under the Order is limited to those filing or delivery obligations under the Advisers Act for which the original due date is on or after the date of the Order but on or prior to April 30, 2020.

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For more information on the topics included herein, please contact a member of Winston & Strawn's Investment Management or Private Investment Funds group.

View all of our COVID-19 perspectives here. Contact a member of our COVID-19 Legal Task Force here.

^[1] The SEC's order is available at <https://www.sec.gov/rules/other/2020/ia-5463.pdf>. Last accessed March 18, 2020.

^[2] The information must be e-mailed to the SEC at IARDLive@sec.gov.

^[3] If the registered investment adviser does not have a public website, it must promptly notify its clients and/or private fund investors of the information.

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