

CLIENT ALERT

## Private Fund Advisers Have Additional Time to Distribute Audited Financial Statements Under SEC Custody Rule

APRIL 30, 2020

Advisers to private funds that rely on the audited pool exception to avoid a surprise audit have been provided additional time to meet the delivery requirement for audited financial statements.

On April 27, 2020, the U.S. Securities and Exchange Commission Division of Investment Management indicated it would not recommend enforcement action for a violation of Rule 206(4)-2 (the Custody Rule)<sup>[1]</sup> against an adviser that relies on Rule 206(4)-2(b)(4) (the Audited Pool Exception)<sup>[2]</sup> for failure to distribute its audited financial statements within the required timeframe if certain conditions are met.<sup>[3]</sup> Specifically, the adviser to a pooled investment vehicle must have (1) “reasonably believed” that the pool’s audited financial statements would be distributed by the applicable deadline (120 days, 180 days for funds of funds, or 260 days for “top tier” pooled investment vehicles that invest in one or more funds of funds), and (2) failed to have the audited financial statements distributed in time due to “certain unforeseeable circumstances.”

Advisers that intend to avail themselves of this relief should understand that “certain unforeseeable circumstances” should be viewed as relating to the current public health crisis and should be documented internally in that way. Advisers that commenced their audit process late, encountered issues with valuations matters, or suffered other “foreseeable” audit-related problems, are likely ineligible to rely on this relief.

View all of our COVID-19 perspectives [here](#). Contact a member of our COVID-19 Legal Task Force [here](#).

<sup>[1]</sup> 17 CFR § 275.206(4)-2.

<sup>[2]</sup> 17 CFR § 275.206(4)-2(b)(4).

<sup>[3]</sup> Staff Responses to Questions About the Custody Rule, Question VI.9, available [here](#).

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