

CLIENT ALERT

SEC Division of Investment Management and Office of Compliance Inspections and Examinations Respond to COVID-19

MAY 4, 2020

The U.S. Securities and Exchange Commission (SEC) Division of Investment Management has provided guidance to investment advisers on numerous topics in response to COVID-19.¹ The SEC's Office of Compliance Inspections and Examinations (OCIE) has also announced its exam priorities related to COVID-19.² These issues are summarized below. In each case, please refer to the original SEC release or order (as referenced below) for the complete relief provided and any qualifications or limitations provided.

This client alert supplements our earlier client alerts addressing the timing for private fund advisers to distribute audited financial statements under the SEC Custody Rule³ and to comply with the new Form CRS/Form ADV Part 3 requirements.⁴

Division of Investment Management COVID-19 Guidance

SEC provides relief from certain filing or delivery obligation deadlines for registered investment advisers and exempt reporting advisers affected by COVID-19.⁵ The SEC provided temporary exemptive relief from several deadlines for which the original due date fell between March 13, 2020, and June 30, 2020. The filing or delivery obligation must be satisfied "as soon as practicable, but not later than 45 days after the original due date for filing or delivery, as applicable." This relief is available if the adviser (1) is unable to meet the deadline or delivery requirement "due to circumstances related to current or potential effects of COVID-19" and (2) promptly notifies the SEC via email and discloses its reliance on this exemptive order on the adviser's public website (or if it does not have a public website, promptly notifies its clients or investors).

The following deadlines were extended:

- Filing deadline for an amendment to Form ADV Parts 1 and 2 or Form ADV part 1A, for registered investment advisers and exempt reporting advisers;
- Requirements to deliver amended Form ADV Part 2 brochures, brochure supplements, or a summary of material changes to existing clients, for registered investment advisers; and
- Filing deadline for Form PF, for private fund advisers.

The SEC also adopted a temporary final rule to provide relief to certain filers from the Form ID notarization requirement.^[6] This relief is effective from March 30, 2020, through September 30, 2020, subject to certain conditions, including submitting a notarized Form ID within 90 days of submitting the original Form ID without notarization.

SEC provides guidance to SEC-registered investment advisers whose wrap fee sponsor is delayed in delivering its wrap fee program brochure. The SEC has outlined the process for an adviser that has contracted with a wrap fee program sponsor to deliver the Form ADV Part 2 or summary of material changes (Brochure) to clients of the wrap fee program, and the sponsor relies on the extension above to delay delivery of the Brochure. Again, the adviser should disclose the extension on its public website and inform SEC staff, and ensure delivery of the Brochure within the time frame noted above.

SEC provides guidance on Form ADV advisory address disclosure requirements and Custody Rule requirements for advisers affected by COVID-19. The SEC has provided several new and updated FAQs for advisers affected by COVID-19. For example, in response to Form ADV Item 1.F of Part 1A or Section 1.F of Schedule D (requesting information about the addresses where advisory business is conducted), advisers are not required to disclose the addresses of employees who are temporarily teleworking as part of the adviser’s business continuity plan.^[7] The SEC has also provided guidance on how to address several Custody Rule requirements that are disrupted due to teleworking or other COVID-19-related circumstances.

Advisers that receive Paycheck Protection Program loans must disclose the loans to clients. The Division noted that advisers should disclose “the nature, amounts and effects” of the loan, especially if it is used “to pay the salaries of your employees who are primarily responsible for performing advisory functions.” If an adviser “is experiencing conditions that are reasonably likely to impair its ability to meet contractual commitments to its clients,” it should disclose such conditions in Form ADV Part 2A Item 18 (Financial Information) or Part 2A, Appendix 1 (wrap fee program brochure).

OCIE Exam Priorities

OCIE announced its priorities for continued operations and investigations in response to COVID-19. OCIE noted that it “is fully aware of the regulatory relief that was provided to registrants in response to COVID-19.” OCIE emphasized that “reliance on regulatory relief will not be a risk factor utilized in determining whether OCIE commences an examination” and encouraged registrants to utilize available regulatory relief as needed.

OCIE will actively engage in ongoing outreach and other efforts with registrants to assess the impacts of COVID-19, including the challenges COVID-19 presents to operational resiliency. OCIE noted in particular that it “may discuss with registrants the implementation and effectiveness of registrants’ business continuity plans, particularly in the interests of protecting investors and the integrity of the markets.” Advisers should be prepared to discuss implementation of their business continuity plans, including any issues that arise due to the extended remote work period caused by COVID-19.

Additional Resources

The SEC has established a dedicated page on its website with information addressing the agency’s COVID-19 response.^[8]

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

^[6] See Division of Investment Management Coronavirus (COVID-19) Response FAQs, Part II. Investment Advisers, available [here](#).

^[7] See OCIE Statement on Operations and Exams – Health, Safety, Investor Protection and Continued Operations are our Priorities, available [here](#).

^[3] Private Fund Advisers Have Additional Time to Distribute Audited Financial Statements Under SEC Custody Rule (Apr. 30, 2020), available [here](#).

^[4] Registered Investment Advisers and Broker-Dealers Must Comply with Form CRS/Regulation BI by June 30, 2020 (Apr. 23, 2020), available [here](#).

^[5] Order Under Section 206A of the Investment Advisers Act of 1940 Granting Exemptions from Specified Provisions of the Investment Advisers Act and Certain Rules Thereunder, Release No. IA-5469, at 4 (Mar. 25, 2020), available [here](#).

^[6] Relief for Form ID Filers and Regulation Crowdfunding and Regulation A Issuers Related to Coronavirus Disease 2019 (COVID-19), Release No. 33-10768; 34-88492; 39-2531; IC-33832 (Mar. 26, 2020), available [here](#).

^[7] Form ADV: Item 1.F, available [here](#).

^[8] SEC Coronavirus (COVID-19) Response, available [here](#).

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