SEC Provides Temporary Additional Flexibility for Registered Funds Affected by the Coronavirus Outbreak to Obtain Short-Term Funding

March 24, 2020

The Securities and Exchange Commission ("**SEC**") provided additional temporary relief to help registered funds manage potential liquidity issues in the current market environment that may be caused by the COVID-19 outbreak. The temporary relief, as outlined below, includes an exemptive order with respect to certain borrowing and lending arrangements, and a no-action letter permitting money market funds to sell securities to affiliates under certain circumstances.

Exemptive Order Relief

On March 23, 2020, the SEC issued a temporary exemptive order (the "**Order**") that would allow greater flexibility for registered open-end management investment companies other than money market funds ("**open-end funds**") and insurance company separate accounts registered as unit investment trusts ("**separate accounts**") to borrow from certain affiliates and enter into certain lending arrangements. According to the Order, the SEC is providing such relief "to provide funds with additional tools to manage their portfolios for the benefit of all shareholders as investors may seek to rebalance their investments." The relief provided in the Order will be in effect from March 23, 2020 to a date specified in a public notice from the SEC staff, which date will be no earlier than June 30, 2020 and will be at least two weeks from the date of the public notice.

The Order provides the following temporary relief:

Borrowing from Certain Affiliates

- Exemption from Section 12(d)(3) of the Investment Company Act of 1940, as amended ("**Investment Company Act**"), for open-end funds and separate accounts to the extent necessary to borrow from an affiliated person, or an affiliated person of such affiliated person, that is not itself a registered investment company.
- Exemption from Section 17(a) of the Investment Company Act for an affiliated person of an open-end fund or separate account, or an affiliated person of such affiliated person, to the extent necessary to make collateralized loans to such open-end fund or separate account.
- Exemption from Section 18(f)(1) of the Investment Company Act for open-end funds to the extent necessary to borrow from an affiliated person, or an affiliated person of such affiliated person, that is not a bank or registered investment company.
- Subject to the following conditions:
  - Board of directors of the open-end fund, including a majority of directors who are not interested persons of the open-end fund, or of the insurance company on behalf of the separate account, reasonably determines that the borrowing:
    - (a) is in the best interests of the registered investment company and its shareholders or unit holders; and
    - (b) will be for the purpose of satisfying shareholder redemptions.

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  - Prior to relying on the relief in the Order for the first time, the open-end fund or separate account notifies the SEC staff that it is relying on the Order via email to **IM-EmergencyRelief@sec.gov**.

Registered Investment Companies with Existing Interfund Lending Orders

- Permission for a registered investment company with an existing SEC exemptive order that allows for an interfund lending and borrowing facility ("**existing IFL order**") to:
  - Make loans through the facility in an aggregate amount that does not exceed 25% of its current net assets at the time of the loan, notwithstanding a lower limit in its existing IFL order;
  - Borrow (if permitted to be a borrower under its existing IFL order) or make loans through the facility for any term notwithstanding any term limits in its existing IFL order, provided that: (a) the term of such interfund loan does not extend beyond the expiration of the temporary relief provided in the Order, (b) the board of directors, including a majority of directors who are not interested persons of the registered investment company, reasonably determines that the maximum term of interfund loans made in reliance on the Order is appropriate, and (c) the interfund loans are callable and subject to early repayment on the terms described in its existing IFL order; and
  - Rely on the relief below with respect to deviations from relevant policies stated in its registration statement, notwithstanding any condition of its existing IFL order that incorporates limits in its fundamental restrictions, limitations or non-fundamental policies.
- Subject to the following conditions:
  - Loans under the facility are otherwise made in accordance with the terms and conditions of its existing IFL order.
  - Prior to relying on the relief in the Order for the first time, the registered investment company notifies the SEC staff that it is relying on the Order via email to **IM-EmergencyRelief@sec.gov**.
  - Prior to relying on the relief in the Order for the first time, the registered investment company discloses on its public website that it is relying on the Order to modify the terms of its existing IFL order.

Registered Investment Companies without Existing Interfund Lending Orders

- Permission for a registered investment company without an existing IFL order to establish an interfund lending and borrowing facility in accordance with an exemptive order issued by the SEC within the 12-month period preceding March 24, 2020 ("**recent IFL precedent**").
- Subject to the following conditions:
  - The registered investment company satisfies the terms and conditions of the recent IFL precedent, except that: (a) it may rely on the relief provided in the Order with respect to existing IFL orders, (b) it need not satisfy the condition in the recent IFL precedent requiring prior disclosure in its registration statement or shareholder report, and (c) money market funds may not participate as borrowers in the interfund facility.
  - Prior to relying on the relief in the Order for the first time, the registered investment company notifies the SEC staff that it is relying on the Order, and identifies the recent IFL precedent it is relying on, via email to **IM-EmergencyRelief@sec.gov**.

- Prior to relying on the relief in the Order for the first time, the registered investment company discloses on its public website that it is relying on the Order to utilize an interfund lending and borrowing facility.
- To the extent the registered investment company files a prospectus supplement, or a new or amended registration statement or shareholder report, while relying on the Order, it updates its disclosure regarding its participation in the facility.

Deviations from Fundamental Policies Regarding Lending or Borrowing

- Exemption from Section 13(a)(2) and (3) of the Investment Company Act for an open-end fund, to the extent necessary to enter into otherwise lawful lending or borrowing transactions that deviate from any relevant policy stated in its registration statement, without prior shareholder approval.
- Subject to the following conditions:
  - Board of directors of the open-end fund, including a majority of directors who are not interested persons of the open-end fund, reasonably determines that the lending or borrowing is in the best interests of the open-end fund and its shareholders.
  - The open-end fund promptly notifies its shareholders of the deviation by filing a prospectus supplement and including a statement on its public website.
  - Prior to relying on the relief in the Order for the first time, the open-end fund notifies the SEC staff that it is relying on the Order via email to **IM-EmergencyRelief@sec.gov**.

See a copy of the Order

No-Action Relief for Money Market Funds

On March 19, 2020, the SEC staff issued a temporary no-action letter to the Investment Company Institute to permit registered money market funds regulated under Rule 2a-7 (“**Money Market Funds**”) to sell securities under certain circumstances to their affiliated persons (or affiliated persons of such persons) that are subject to Sections 23A and 23B of the Federal Reserve Act (“**Affiliated Purchasers**”). Without such no-action relief, Affiliated Purchasers may be unable to purchase securities from their affiliated Money Market Funds because they are subject to banking regulations that may conflict with the requirements of Rule 17a-9 under the Investment Company Act. In light of liquidity issues that may be caused by the short-term dislocation in the market due to the COVID-19 outbreak, the SEC staff issued the no-action letter to permit Money Market Funds to sell securities to Affiliated Purchasers subject to the following conditions:

- The purchase price for the security would be its fair market value as determined by a reliable third-party pricing service;
- The purchase transaction satisfies the conditions of Rule 17a-9 except to the extent the terms of such purchase transaction would otherwise conflict with (a) applicable banking regulations or (b) the exemption issued by the Board of Governors of the Federal Reserve System on March 17, 2020 defining “covered transaction” for purposes of Section 23A of the Federal Reserve Act to not include the purchase of assets from an affiliated Money Market Fund; and
- The Money Market Fund timely files Form N-CR reporting such transaction in Part C and reporting in Part H that such transaction was conducted in reliance on the no-action letter.

See a copy of the No-Action Letter

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