

SEC Issues Targeted Regulatory Relief for Advisers and Registered Funds Affected by the Coronavirus Outbreak

March 16, 2020

On March 13, 2020, the Securities and Exchange Commission (“**SEC**”) issued exemptive orders providing temporary relief from certain filing and delivery obligations under the Investment Advisers Act of 1940, as amended (the “**Advisers Act**”), and the Investment Company Act of 1940, as amended (the “**Investment Company Act**”), to advisers, registered funds and BDCs whose operations have been affected by the coronavirus. According to the exemptive orders, the SEC is providing such relief in light of the quarantines and disruption to transportation affecting advisers’ and funds’ access to their personnel and third-party service providers, which have made timely compliance with such obligations more challenging.

Advisers Act Exemptive Order

Subject to the conditions noted below, the exemptive order under the Advisers Act provides the following temporary relief from certain filing and delivery obligations under the Advisers Act for which the original due date is on or after March 13, 2020 but on or prior to April 30, 2020:

- For registered investment advisers, an exemption from requirements under Rule 204-1 to file an amendment to Form ADV, and under Rule 204-3(b)(2) and (b)(4) to deliver Form ADV Part 2 (or a summary of material changes) to existing clients.
- For exempt reporting advisers, an exemption from requirements under Rule 204-4 to file reports on Form ADV.
- For registered investment advisers, an exemption from requirements under Section 204(b) and Rule 204(b)-1 to file Form PF.

The temporary exemptions under the Advisers Act exemptive order are subject to the following conditions being satisfied:

- The adviser is unable to meet a filing deadline or delivery obligation “due to circumstances related to current or potential effects of COVID-19;”
- With respect to the filing of Form ADV or delivery of a brochure, summary of material changes or brochure supplement, the adviser “promptly provides the [SEC] 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 of) the following information:
 - (1) that it is relying on this [o]rder;
 - (2) a brief description of the reasons why it could not file or deliver its [f]orm on a timely basis; and
 - (3) the estimated date by which it expects to file or deliver the [f]orm.”
- With respect to the filing of Form PF, the adviser “promptly notif[ies] the [SEC] via email at FormPF@sec.gov stating:
 - (1) that it is relying on this [o]rder;
 - (2) a brief description of the reasons why it could not file or deliver its [f]orm on a timely basis; and
 - (3) the estimated date by which it expects to file the [f]orm.”

- The adviser files or delivers the applicable form as soon as practicable, but not later than 45 days after the original due date for filing or delivery.

Investment Company Act Exemptive Order

Subject to the conditions noted below, the exemptive order under the Investment Company Act provides the following temporary relief:

- **In-Person Board Meeting Requirement** – From March 13, 2020 to June 15, 2020, an exemption for registered management investment companies, BDCs and their investment advisers and principal underwriters from the requirements under Section 15(c) and 32(a), and Rules 12b-1(b)(2) and 15a-4(b)(2)(ii), that the votes of the board to approve investment advisory contracts, principal underwriting contracts, 12b-1 plans and the selection of independent auditors be cast in person, provided that:
 - “(i) reliance on this [o]rder is 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.”
- **Forms N-CEN and N-PORT Filing Requirement** – An exemption from requirements to file Form N-CEN and Form N-PORT, for which the original due date is on or after March 13, 2020 but on or prior to April 30, 2020, provided that the following conditions are satisfied:
 - “(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 this [o]rder promptly notifies the [SEC] staff via email at IM-EmergencyRelief@sec.gov stating:
 - (1) that it is relying on this [o]rder;
 - (2) a brief description of the reasons why it could not file its report on a timely basis; and
 - (3) the estimated date by which it expects to file the report.
 - (c) Any registered fund relying on this [o]rder includes a statement on the applicable registered fund’s public website briefly stating that it is relying on this [o]rder and the reasons why it could not file its reports on a timely basis;
 - (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 this [o]rder must include a statement of the filer that it relied on this [o]rder and the reasons why it was unable to file such report on a timely basis.”
- **Annual and Semi-Annual Reports:** An exemption from requirements under Section 30(e) and Rules 30e-1 and 30e-2 to transmit to investors annual and semi-annual reports for which the original due date is on or after March 13, 2020 but on or prior to April 30, 2020, provided that the following conditions are satisfied:
 - “(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 this [o]rder promptly notifies the staff via email at IM-EmergencyRelief@sec.gov stating:

- (1) that it is relying on this [o]rder;
 - (2) a brief description of the reasons why it could not transmit its report on a timely basis; and
 - (3) the estimated due date by which it expects to transmit the report;
- (c) any registered fund relying on this [o]rder includes a statement on the applicable registered fund's public website briefly stating that it is relying on this [o]rder and the reasons why it could not prepare and transmit its reports on a timely basis; 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."
- Timing of Filing Form N-23C-2: From March 13, 2020 to June 15, 2020, an exemption for closed-end funds and BDCs ("**Companies**") from requirements under Sections 23(c) and 63, and Rule 23c-2, to file with the SEC notices of their intention to call or redeem securities at least 30 days in advance, so long as the relevant Company files a Form N-23C-2 ("**Notice**") prior to, including the same business day as, the Company's call or redemption of its securities, and the following additional conditions are satisfied:
 - (a) The Company:
 - "(1) promptly notifies the [SEC] staff via email at IM-EmergencyRelief@sec.gov stating:
 - a. that it is relying on this [o]rder; and
 - b. a brief description of the reasons why it needs to file a Notice fewer than 30 days in advance of the date set by the Company for calling or redeeming the securities of which it is the issuer;
 - (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;
 - (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."
 - SEC Statement Regarding Prospectus Delivery: The SEC stated in the order its position that a registered fund's failure to deliver a current prospectus to investors (for which delivery was originally required on or after March 13, 2020 but on or prior to April 30, 2020, due to circumstances related to COVID-19) would not provide a basis for an SEC enforcement action, provided that the sale of shares to the investor was not an initial purchase of the registered fund's shares by the investor, and the following conditions are satisfied:
 - "(1) The registered fund:
 - (a) Notifies the Division of Investment Management staff via email at IM-EmergencyRelief@sec.gov stating:
 - (1) that it is relying on this [SEC] position;
 - (2) a brief description of the reasons why it or any other person required could not deliver the prospectus to investors on a timely basis; and
 - (3) the estimated date by which it expects the prospectus to be delivered;
 - (b) Publishes on its public website that it intends to rely on the [SEC] position and briefly states the reasons why it could not deliver the prospectus on a timely basis;
 - (c) Publishes its current prospectus on its public website; and

(2) Delivery was originally required on or after [March 13, 2020] but on or prior to April 30, 2020, and the prospectus is delivered to investors as soon as practicable, but not later than 45 days after the date originally required.”

- [See a copy of the Advisers Act Exemptive Order](#)
- [See a copy of the Investment Company Act Exemptive Order](#)

If you have any questions regarding the matters covered in this publication, please contact any of the lawyers listed below or your usual Davis Polk contact.

Nora M. Jordan	212 450 4684	nora.jordan@davispolk.com
John G. Crowley	212 450 4550	john.crowley@davispolk.com
Leor Landa	212 450 6160	leor.landa@davispolk.com
Gregory S. Rowland	212 450 4930	gregory.rowland@davispolk.com
Michael S. Hong	212 450 4048	michael.hong@davispolk.com
Lee Hochbaum	212 450 4736	lee.hochbaum@davispolk.com
Sarah E. Kim	212 450 4408	sarah.e.kim@davispolk.com
Aaron Gilbride	202 962 7179	aaron.gilbride@davispolk.com

© 2020 Davis Polk & Wardwell LLP | 450 Lexington Avenue | New York, NY 10017

This communication, which we believe may be of interest to our clients and friends of the firm, is for general information only. It is not a full analysis of the matters presented and should not be relied upon as legal advice. This may be considered attorney advertising in some jurisdictions. Please refer to the firm's [privacy notice](#) for further details.