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SEC Extends Exemptive Relief and Provides Additional Guidance for Advisers Affected by COVID-19

March 26, 2020

Upon further consideration and review of the impact of the coronavirus outbreak (COVID-19) on investment advisers, on March 25, 2020, the Securities and Exchange Commission (the “SEC”) extended with some modifications (the “Amended Order”) its previously issued exemptive relief from certain Form ADV and Form PF filing and reporting obligations under the Investment Advisers Act of 1940 (the “Advisers Act”).¹ A summary of the original order (the “Original Order” and, together with the Amended Order, the “Order”) is available on our website and through the link [here](#).² Of note, the Amended Order (i) extends the applicability of the Original Order to filing and delivery requirements that are due on or before June 30, 2020 (the Original Order applied to filing and delivery obligations due on or before April 30, 2020) and (ii) eliminates the requirement that an RIA provide a brief description of the reasons why it could not deliver Form ADV Part 2 or file Form PF on a timely basis and provide an estimated date for the delivery and/or filing.³

The Amended Order reiterates a reminder that, in considering whether an adviser should take advantage of the exemptive relief, advisers should “continue to evaluate their obligations, including their fiduciary duty, under the federal securities laws.” In a statement on March 23, 2020, however, the SEC’s Office of Compliance Inspections and

¹ 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 (Mar. 25, 2020), available [here](#).

² 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. 5463 (Mar. 13, 2020), available [here](#).

³ Simultaneously with both the Original Order and the Amended Order, the SEC also issued temporary exemptive relief (including modifications thereto) under the Investment Company Act of 1940 and the Securities Exchange Act of 1934 addressing various matters. This separate relief is beyond the scope of this Debrief.

Examinations (“OCIE”), noted that “reliance on [the Order] will not be a risk factor utilized in determining whether OCIE commences an examination” and otherwise encourages “registrants to utilize available regulatory relief as needed,” OCIE also stated 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.”⁴ As such, RIAs should consider using this opportunity to review their business continuity plans and ensure and confirm that operations are working as anticipated by those plans.

In addition to the exemptive relief, on March 16, 2020, the SEC updated Frequently Asked Questions on completing and amending Form ADV and Rule 206(4)-2 under the Advisers Act (the “Custody Rule”) to provide guidance related to the COVID-19 outbreak and associated disruptions. On Form ADV, the SEC has clarified that, so long as employees are working remotely as part of a firm’s business continuity plan due to circumstances related to COVID-19, the staff “would not recommend enforcement action if the firm does not update either Item 1.F of Part 1A[, requiring information about a firm’s principal office and place of business,] or Section 1.F of Schedule D[,requiring information about each office, other than a firm’s principal office and place of business, at which the firm conducts investment advisory business,] in order to list the temporary teleworking addresses.”⁵ On the Custody Rule, the SEC has clarified that, where “an adviser’s personnel may be unable to access mail or deliveries at an office location due to the firm’s business continuity plan in response to circumstances related to” COVID-19, the staff “would not consider the adviser to have received client assets at that office location until firm personnel are able to access the mail or deliveries at that office location.”⁶

As the COVID-19 outbreak further develops, the SEC and its staff continue to closely monitor and assess the impact of COVID-19 and may continue to provide exemptive relief and COVID-19-specific interpretive guidance. Advisers are encouraged to contact the SEC staff with further questions or matters of particular concern.

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For more information regarding the coronavirus, please visit our [Coronavirus Resource Center](#).

Please do not hesitate to contact us with any questions.

⁴ Announcement, OCIE Statement on Operations and Exams – Health, Safety, Investor Protection and Continued Operations are our Priorities (Mar. 23, 2020), available [here](#).

⁵ Using IARD, Form ADV: Item 1.F, available [here](#).

⁶ Staff Responses to Questions About the Custody Rule, Question II.1 (Definition of Custody; Scope of the Rule), available [here](#).



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