

SEC Extends Form ADV and Form PF Deadlines for Advisers Affected by COVID-19

March 16, 2020

On March 13, 2020, the Securities and Exchange Commission (the “SEC”), recognizing that disruptions caused by the coronavirus outbreak (COVID-19) may limit investment advisers’ “access to facilities, personnel, and third party service providers,” issued temporary exemptive relief (the “Order”) from Form ADV and Form PF filing and reporting obligations under the Investment Advisers Act of 1940 (the “Advisers Act”). The Order extends the relevant filing and delivery deadlines by 45 days.¹ The relief applies to registered investment advisers (“RIAs”) and exempt reporting advisers (“ERAs”). While the SEC is closely monitoring and assessing the impact of COVID-19 and may consider additional relief from other regulatory requirements, the Order is limited to Form ADV and Form PF obligations at this time and does not extend to other compliance obligations like the completion of an annual audit for private funds or the delivery of the financial statements.²

Applicable Reporting or Filing Obligations. For RIAs, the Order applies to (i) filing an amendment to Form ADV under Rule 204-1 of the Advisers Act, (ii) delivering Form ADV Part 2 (or a summary of material changes) to existing clients under Rule 204-3(b)(2) and (b)(4), and (iii) filing Form PF if so required by Section 204(b) of and Rule 206(b)-1 of the Advisers Act.

For ERAs, the Order applies to filing reports on Form ADV under Rule 204-2 of the Advisers Act.

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

² The SEC also issued temporary exemptive relief (the “Investment Company Act Order”) under the Investment Company Act of 1940 (the “Investment Company Act”). The Investment Company Act Order allows votes required to be cast during in-person board meetings under sections 15(c) and 32(a) and rules 12b-1(b)(2) and 15a-4(b)(2)(ii) from March 13, 2020 to June 15, 2020 to be instead cast at a meeting in which directors may participate by any means of communication. The Investment Company Act Order also provides temporary relief to registered management investment companies and unit investment trusts affected by COVID-19 from N-CEN, N-PORT, Form N-32C-2 and other annual and semi-annual report transmittal and filing deadlines. Order Under Section 6(c) and Section 38(a) of the Investment Company Act of 1940 Granting Exemptions from Specified Provisions of the Investment Company Act and Certain Rules Thereunder; Commission Statement Regarding Prospectus Delivery, Release No. 33817 (Mar. 13, 2020), available [here](#).

Conditions for Exemptive Relief. The Order provides an extension of up to 45 days to the filing and delivery obligations noted above with an original due date between March 13, 2020 and April 30, 2020 if the following conditions are met:

- The RIA or ERA is unable to meet the filing or delivery deadline due to circumstances related to current or potential effects of COVID-19.
- An RIA otherwise required to deliver Form ADV Part 2 (or a summary of material changes):
 - promptly notifies the SEC via email at IARDLive@sec.gov that it will be relying on this Order, and
 - (i) promptly discloses on its public website (or, if it does not have a public website, promptly notifies its clients and/or private fund investors) that it is relying on the Order and (ii) provides a brief description of the reasons why it could not comply with the delivery obligation on a timely basis and provides an estimated date for the delivery of its Form ADV Part 2.³
- An RIA otherwise required to file Form PF promptly notifies the SEC via email at FormPF@sec.gov stating:
 - that it is relying on the Order,
 - a brief description of the reasons why it could not file its Form PF on a timely basis, and
 - the estimated date by which it expects to file the Form PF.
- The RIA or ERA files Form ADV or Form PF or delivers Form ADV Part 2 (in each case, as applicable) as soon as practical, but no later than 45 days after the original due date.

Considerations. The SEC reminds advisers that wish to rely on the Order to “evaluate their obligations, including their fiduciary duty, under the federal securities laws.” This may be intended as a subtle reminder that the SEC expects RIAs to have business continuity plans designed to address operational and other risks related to significant business disruptions in the adviser’s operations which may be caused by natural disasters, acts of terrorism, cyber-attacks, equipment or system failures, or the

³ It is unclear why the Order requires that this disclosure be provided to private fund investors since they are not technically required to receive a brochure.

unexpected loss of a service provider, facilities or key personnel. RIAs may want to revisit these plans once they have had an opportunity to evaluate their effectiveness during the COVID-19 disruption.

Please do not hesitate to contact us with any questions.



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