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The information contained herein is based on a summary of legal principles. It is not to be construed as legal advice. Individuals should consult with legal counsel before taking any action based on these principles to ensure their applicability in a given situation.

SEC Extends Regulatory Relief for Funds and Advisers Impacted by Coronavirus

On March 13, 2020, the SEC announced in two separate orders the following actions for investment companies and investment advisers that may be impacted by the coronavirus (COVID-19) due to restrictions on travel, access to facilities, limited availability of personnel or similar disruptions.

Relief for Registered Investment Companies

- ***In-Person Board Meetings.*** The SEC granted temporary exemptive relief to registered investment companies from requirements that certain agreements and plans, such as investment advisory agreements, distribution agreements and Rule 12b-1 plans, be approved by the company's board of directors by an in-person vote due to current or potential effects of COVID-19. The following conditions apply:
 1. Reliance on the relief is necessary or appropriate due to circumstances related to current or potential effects of COVID-19;
 2. 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
 3. The board of directors, including a majority of the independent directors, ratifies the action at the next in-person board meeting.
 - *Time Period for Relief:* through June 15, 2020.
 - Please note that this relief is similar to the previously announced SEC staff relief issued on March 4, 2020, pursuant to which the SEC staff extended the no-action position expressed in the Independent Directors Council 2019 letter with respect to unforeseen or emergency circumstances to cover all approvals and renewals (including material changes) of contracts, plans or arrangements under Section 15(c) or Rules 12b-1 or 15a-4(b)(2) under the Investment Company Act. As with the most recent relief, the board must ratify the actions at the next in-person board meeting.
- ***SEC Filings and Shareholder Reports.*** Registered investment companies were granted exemptive relief from Form N-CEN and N-PORT filing deadlines, as well as annual and semi-annual shareholder report transmittal deadlines. The following conditions apply:
 1. The fund is unable to meet a filing deadline or unable to prepare or transmit a report due to circumstances related to current or potential effects of COVID-19;

2. The fund promptly notifies the SEC staff via email at IM-EmergencyRelief@sec.gov with prescribed information;
 3. The fund includes a statement on its public website regarding reliance on the order and other information;
 4. Form N-CEN or Form N-PORT is filed, or the shareholder report is transmitted, as soon as practicable, but not later than 45 days after the original due date and in the case of shareholder reports, is filed within 10 days of its transmission to shareholders; and
 5. Form N-CEN or Form N-PORT filed pursuant to the order must include a statement regarding reliance on the order and other information.
 - *Time Period for Relief*: the relief is limited to filing or transmittal obligations, as applicable, for which the original due date is on or after March 13, 2020, but on or prior to April 30, 2020.
- *Prospectus Delivery*. The SEC will not seek enforcement action if a fund does not deliver to investors a current prospectus where the prospectus is not able to be timely delivered because of circumstances related to COVID-19, subject to the following conditions:
 1. The sale of shares to the investor was not an initial purchase by the investor of shares of the fund;
 2. The fund notifies the SEC staff via email at IM-EmergencyRelief@sec.gov with prescribed information;
 3. The fund includes a statement on its public website regarding reliance on the order and other information;
 4. The fund publishes its current prospectus on its public website; and
 5. The prospectus is delivered to investors as soon as practicable, but not later than 45 days after the date originally required.
 - *Time Period for Relief*: the relief is available for delivery that was originally required on or after March 13, 2020, but on or prior to April 30, 2020.
 - Please note that this relief currently does not extend to post-effective amendment filings to fund registration statements.

Relief for Investment Advisers and Exempt Reporting Advisers

- *Form ADV Filings and Brochure Delivery*. Advisers affected by COVID-19 were granted temporary exemptive relief from Form ADV filing requirements, including the annual updating amendment to Form ADV, as well as the requirements to deliver amended brochures, brochure supplements or summary of material changes to clients if timely delivery is not possible due to COVID-19.
- *Form PF*. Private fund advisers impacted by COVID-19 were granted relief from Form PF filing requirements.

The relief is subject to the following conditions:

1. The adviser is unable to meet a filing deadline or delivery requirement due to circumstances related to current or potential effects of COVID-19;
2. The adviser promptly provides the SEC notice via email at IARDLive@sec.gov and discloses on its public website that it is relying on the order and other prescribed information (or if it does not have a public website, promptly notifies its clients and/or private fund investors);
3. Any adviser relying on the order with respect to filing Form PF must promptly notify the SEC via email at FormPF@sec.gov with prescribed information; and
4. The adviser files the Form ADV or Form PF, as applicable, and delivers the brochure (or summary of material changes) and brochure supplements as soon as practicable, but not later than 45 days after the original due

date for filing or delivery, as applicable.

- *Time Period for Relief.* The relief specified in the order is limited to filing or delivery obligations, as applicable, for which the original due date is on or after March 13, 2020, but on or prior to April 30, 2020.

The investment adviser order reminds advisers to continue to consider their obligations under federal securities laws, including their fiduciary duty. For example, they may have an obligation to inform clients of material developments regarding their business during the current pandemic.

The orders note that the SEC will continue to assess the impacts related to COVID-19 and will consider additional relief from other regulatory requirements as well as extending the time period for relief.

Please contact your Godfrey & Kahn investment management team attorney if we can be of assistance.

Sources: SEC Takes Targeted Action to Assist Funds and Advisers, Permits Virtual Board Meetings and Provides Conditional Relief from Certain Filing Procedures, SEC Press Release 2020-63 (March 13, 2020), available [here](#); Order Granting Exemptions from Specified Provisions of the Investment Company Act and Certain Rules Thereunder; Commission Statement Regarding Prospectus Delivery, Release IC-33817 (March 13, 2020), available [here](#); Order Granting Exemptions from Specified Provisions of the Investment Advisers Act and Certain Rules Thereunder, Release IA-5463 (March 13, 2020), available [here](#).