

CORONAVIRUS

INFORMATION & UPDATES

March 15, 2020

SEC Provides Conditional Relief from In-Person Fund Board Meeting Requirements, Select 1940 Act (Forms N-CEN, N-PORT, N-23C-2) and Advisers Act (Forms ADV and PF) Filing Deadlines and Prospectus Delivery Requirements

On March 13, 2020, the SEC issued a [1940 Act exemptive order](#) and an [Advisers Act exemptive order](#) providing relief for funds and investment advisers whose operations may be affected by the COVID-19 virus. In its related [press release](#), the SEC acknowledged that the impacts of COVID-19 may delay or prevent funds and advisers operating in affected areas from meeting certain regulatory obligations due to restrictions on large gatherings, travel and access to facilities, the potential limited availability of personnel and similar disruptions. The SEC indicated that the relief provided by the orders is designed to enable funds and advisers to meet their regulatory obligations and to continue their operations, while recognizing that there may be temporary disruptions outside of their control.

The relief provided by each order is summarized below.

THE 1940 ACT EXEMPTIVE ORDER (the “1940 Act order”)

In-Person Board Meeting Requirements for Funds and BDCs

Through June 15, 2020, a registered management investment company (“fund”) or business development company (“BDC”), and any investment adviser of or principal underwriter for such fund or BDC, will be exempt from the requirements imposed under Sections 15(c) (approval of advisory contracts) and 32(a) (selection of accountant) of the 1940 Act and Rules 12b-1(b)(2) and 15a-4(b)(2)(ii) under the 1940 Act that votes of the board of directors of either the fund or BDC must be cast in person, provided that:

1. reliance on the 1940 Act order 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 directors who are not interested persons of the fund 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 Requirements

With respect to any 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, a fund that is required to file Form N-CEN pursuant to Rule 30a-1, or Form N-PORT pursuant to Rule 30b1-9, is temporarily exempt from such form filing requirements, provided that:

1. The fund is unable to meet a filing deadline due to circumstances related to current or potential effects of COVID-19;
2. Any fund relying on this portion of the 1940 Act order promptly notifies the SEC staff via email at IM-EmergencyRelief@sec.gov stating:

CORONAVIRUS

INFORMATION & UPDATES

- a. that it is relying on the 1940 Act order;
 - b. a brief description of the reasons why it could not file its report on a timely basis; and
 - c. the estimated date by which it expects to file the report.
3. Any fund relying on this portion of the 1940 Act order includes a statement on the applicable fund's public website briefly stating that it is relying on the 1940 Act order and the reasons why it could not file its reports on a timely basis;
 4. The 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
 5. Any Form N-CEN or Form N-PORT filed pursuant to this portion of the 1940 Act order must include a statement of the filer that it relied on the 1940 Act order and the reasons why it was unable to file such report on a timely basis.

Transmittal of Annual and Semi-Annual Reports to Investors Required by the 1940 Act and the Rules Thereunder

With respect to any 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, a fund is temporarily exempt from the requirements of Section 30(e) of the 1940 Act and Rule 30e-1 thereunder to transmit annual and semi-annual reports to investors, provided that:¹

1. The fund is unable to prepare or transmit the report due to circumstances related to current or potential effects of COVID-19;
2. Any fund relying on this portion of the 1940 Act order promptly notifies the SEC staff via email at IM-EmergencyRelief@sec.gov stating:
 - a. that it is relying on the 1940 Act order;
 - b. a brief description of the reasons why it could not transmit its report on a timely basis; and
 - c. the estimated date by which it expects to transmit the report;
3. Any fund relying on this portion of the 1940 Act order includes a statement on the applicable registered fund's public website briefly stating that it is relying on the 1940 Act order and the reasons why it could not prepare and transmit its reports on a timely basis; and
4. The 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 with the SEC Required by the 1940 Act and the Rules Thereunder

Through June 15, 2020, closed-end funds and BDCs are temporarily exempt from the requirement to file with the SEC notices of their intention to call or redeem securities at least 30 days in advance under Sections 23(c) and 63, as applicable, of the 1940 Act and Rule 23c-2 thereunder, if such company files a Form N-23C-2 ("Notice") with the Commission fewer than 30 days prior to, including the same business day as, the company's call or redemption of

¹ The 1940 Act order provides that, for the same period, a registered unit investment trust is temporarily exempt from the requirements of Section 30(e) of the 1940 Act and Rule 30e-2 thereunder to transmit annual and semi-annual reports to unitholders, provided the following conditions are satisfied.

CORONAVIRUS

INFORMATION & UPDATES

securities of which it is the issuer, provided that the closed-end fund or BDC (“Company”) relying on this portion of the 1940 Act order:

1. promptly notifies Commission staff via email at IM-EmergencyRelief@sec.gov stating:
 - a. that it is relying on the 1940 Act order; 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.

Commission Statement Regarding Prospectus Delivery

In the 1940 Act order, the SEC also stated that:

it would not provide a basis for a Commission enforcement action if a registered fund does not deliver to investors the current prospectus of the registered fund where the prospectus is not able to be timely delivered because of circumstances related to COVID-19 and delivery was due during the limited period specified below, provided that the sale of shares to the investor was not an initial purchase by the investor of shares of the registered fund.

Conditions attach to this position. Delivery must have been originally required on or after March 13, 2020 or prior to April 30, 2020, and the prospectus must be delivered to investors as soon as practicable, but not later than 45 days after the date originally required. In addition, the fund must:

1. Notify the Division of Investment Management staff via email at IM-EmergencyRelief@sec.gov stating: (a) that it is relying on this SEC position; (b) 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 (c) the estimated date by which it expects the prospectus to be delivered;
2. Publish 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; and
3. Publish its current prospectus on its public website.

THE ADVISERS ACT EXEMPTIVE ORDER (the “IAA order”)

The IAA order states that its relief is limited to Form ADV and Form PF 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. During this period, the IAA order provides the following relief:

CORONAVIRUS

INFORMATION & UPDATES

1. A registered investment adviser is exempt from the requirements: (a) under Rule 204-1 of the Advisers Act to file an amendment to Form ADV; and (b) under Rule 204-3(b)(2) and (b)(4) related to the delivery of Form ADV Part 2 (or a summary of material changes) to existing clients, where the conditions below are satisfied;
2. An exempt reporting adviser is exempt from the requirements under Rule 204-4 under the Advisers Act to file reports on Form ADV, where the conditions below are satisfied; and
3. A registered investment adviser that is required by Section 204(b) of and Rule 204(b)-1 under the Advisers Act to file Form PF is exempt from those requirements, where the conditions below are satisfied.

Conditions

1. The registered investment adviser or exempt reporting 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 investment adviser relying on the IAA order with respect to the filing of Form ADV or delivery of its brochure, summary of material changes, or brochure supplement required by Rule 204-3(b)(2) or (b)(4), promptly provides the SEC via email at IAADLive@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:
 - a. that it is relying on the IAA order;
 - b. a brief description of the reasons why it could not file or deliver its Form on a timely basis; and
 - c. the estimated date by which it expects to file or deliver the Form.
3. Any investment adviser relying on the IAA order with respect to filing Form PF required by Rule 204(b)-1 must promptly notify the SEC via email at FormPF@sec.gov stating:
 - a. that it is relying on the IAA order;
 - b. a brief description of the reasons why it could not file its Form on a timely basis; and
 - c. the estimated date by which it expects to file the Form.
4. The investment adviser files the Form ADV or Form PF, as applicable, and delivers the brochure (or summary of material changes) and brochure supplement required by Rule 204-3(b)(2) and (b)(4) under the Advisers Act, as soon as practicable, but not later than 45 days after the original due date for filing or delivery, as applicable.

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If you would like to learn more about the issues in this Alert, please contact your usual Ropes & Gray attorney. For additional materials regarding a range of COVID-19 related issues, please visit the Ropes & Gray [Coronavirus Resource Center](#).