

# CORONAVIRUS INFORMATION & UPDATES

March 30, 2020

## SEC No-Action Letter Temporarily Expands Ability of Affiliates to Purchase Debt Securities from Mutual Funds

In a March 26, 2020 [no-action letter](#) (the “Letter”) addressed to the Investment Company Institute, the SEC staff stated it would not recommend enforcement action against a registered open-end investment company that is not an ETF or a money market fund (each, a “Fund”) or an affiliated person (or an affiliated person of an affiliated person) of the Fund (each, an “Affiliate Purchaser”) that is not a registered investment company, if the Affiliate Purchaser purchases a debt security from a Fund. Rule 17a-9 under the 1940 Act already permits an Affiliate Purchaser of a money market fund to purchase certain securities from the money market fund – the Letter temporarily expands the relief provided by the rule by permitting purchases from non-money market funds. The SEC staff’s no-action position was based on the following conditions:

1. The purchase price must be paid in cash.
2. The price of the purchased debt security is its fair market value under Section 2(a)(41) of the 1940 Act, provided that this price is not materially different from the fair market value of the security indicated by a reliable third-party pricing service (the “Purchase Price”).
3. If the Affiliate Purchaser resells the purchased security for a higher price than the Purchase Price paid to the Fund, the Affiliate Purchaser must promptly pay to the Fund the amount by which the subsequent sale price exceeds the Purchase Price paid to the Fund.<sup>1</sup>
4. Within one business day of the purchase, the Fund must publicly post on its website and inform the SEC staff via email to [IM-EmergencyRelief@sec.gov](mailto:IM-EmergencyRelief@sec.gov) stating the name of the Fund, the name of the Affiliate Purchaser, the security(s) purchased (including a legal identifier if available), the amount purchased and the Purchase Price(s) paid.
5. The no-action letter’s relief will remain in effect on a temporary basis in response to the national emergency concerning the COVID-19 outbreak, and will terminate upon notice from the SEC staff.

### Observations

The Letter follows a March 19, 2020 [no-action letter](#) relaxing the conditions of Rule 17a-9 under the 1940 Act for bank purchases of securities from affiliated money market funds (described in this Ropes & Gray [Alert](#)). Both no-action letters are steps to improve the liquidity of a class of securities for which liquidity has been disrupted.

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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](#).

<sup>1</sup> If the Affiliate Purchaser is subject to Sections 23A and 23B of the Federal Reserve Act, this condition does not apply to the extent that it conflicts with (i) applicable banking regulations or (ii) any applicable exemption from such regulations issued by the Board of Governors of the Federal Reserve System. This variation on condition 3 is consistent with the SEC staff’s March 19, 2020 no-action letter, described in this Ropes & Gray [Alert](#), and permits funds affiliated with a bank to rely on the no-action letter described here.