

CORONAVIRUS INFORMATION & UPDATES

March 27, 2020

SEC and Federal Reserve Actions to Enhance Funds' Liquidity

On March 23, 2020, the SEC issued an [Order](#) (the “Order”) providing registered funds (*except* money market funds) exemptions from certain 1940 Act requirements to enhance their ability to obtain short-term funding from affiliates. The Order 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.

The SEC’s actions coincide with the Federal Reserve’s creation of the Money Market Mutual Fund Liquidity Facility (MMLF) and other facilities as steps to improve the liquidity of the money markets and capital markets, generally.

The SEC and Federal Reserve actions are summarized below.

THE SEC ORDER

There were four principal component in the SEC order that, respectively:

- permit borrowings from non-fund-affiliated persons;
- enhance flexibility under existing interfund lending (“IFL”) orders;
- permit funds without an existing IFL order authority to adopt a recently effective IFL order to create a new IFL facility; and
- for each of the foregoing points, provide authority for a fund to override Sections 13(a)(2) and 13(a)(3) of the 1940 Act (prohibiting deviations from fundamental policies), without shareholder approval, for the purpose of entering into lending or borrowing transactions that deviate from any relevant policy recited in a fund’s registration statement.

Each of these four components is described below. The SEC stated that it will provide at least two weeks’ notice before terminating the relief in the Order, which will remain in effect until at least June 30, 2020.

Borrowing from Affiliates

The Order provides that, until at least June 30, 2020:

1. open-end funds *other than money market funds* (an “OEF”) and insurance company separate accounts registered as a unit investment trust (a “UIT”) are exempt from Section 12(d)(3) of the 1940 Act (concerning securities-related issuers) to permit them to borrow money from affiliated persons (or any affiliated person of an affiliated person) (an “Affiliate”) that are not registered investment companies;
2. an Affiliate that is not a registered investment company is exempt from Section 17(a) of the 1940 Act to make collateralized loans to an OEF or UIT; and

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3. an OEF is exempt from Section 18(f)(1) of the 1940 Act to borrow money from an Affiliate that is not a bank or a registered investment company;

provided that the following conditions are satisfied:

1. The OEF's board, including a majority of its members who are not interested persons (or the insurance company on behalf of the UIT), reasonably determines that such borrowing:
 - a. is in the best interests of the OEF and its shareholders (or UIT and its unit holders); and
 - b. will be for the purpose of satisfying shareholder redemptions.
2. Prior to relying on the Order's relief, the OEF or UIT notifies the SEC staff via email at IM-EmergencyRelief@sec.gov stating that it is relying on the Order.

Interfund Lending for Complexes with Interfund Lending Orders

The Order provides that, until at least June 30, 2020, any registered investment company now able to rely on an existing interfund lending and borrowing order ("Existing IFL") may:

1. Make loans under the Existing IFL up to 25% of its current NAV at the time of the loan, notwithstanding any lower limitation in the Existing IFL;
2. Borrow (if permitted under the Existing IFL to be a borrower) or make loans under the Existing IFL for any term, notwithstanding any conditions limiting the term of such loans, provided that:
 - a. the term of any interfund loan made in reliance on the Order does not extend beyond the expiration of the Order's relief;
 - b. the OEF's board, including a majority of its members who are not interested persons, reasonably determines that the maximum term for interfund loans to be made in reliance on the Order is appropriate; and
 - c. the loans will remain callable and subject to early repayment on the terms described in the Existing IFL; and
3. Avail itself of the Order, notwithstanding any condition of the Existing IFL that incorporates limits set forth in its fundamental or non-fundamental restrictions.

provided that, in each case:

1. Any loan under the Existing IFL is otherwise made in accordance with the terms and conditions of the Existing IFL;
2. Prior to relying on the Order's relief, the registered investment company notifies the SEC staff via email at IM-EmergencyRelief@sec.gov stating that it is relying on the Order; and
3. Prior to relying on the Order's relief, the registered investment company discloses on its public website that it is relying on an SEC exemptive order that modifies the terms of its Existing IFL to permit additional flexibility to provide or obtain short-term funding through its Existing IFL.

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Interfund Lending for Complexes Without Interfund Lending Orders

The Order provides that, until at least June 30, 2020, any registered investment company that does *not* currently have an Existing IFL may establish and participate in an IFL facility in accordance with any exemptive order permitting such a facility that the SEC has issued to another party within the twelve months preceding March 23, 2020 (“recent IFL precedent”). The following conditions apply:

1. The registered investment company must satisfy the terms and conditions for relief in the recent IFL precedent, except:
 - a. It may rely on the relief provided to fund complexes that have an Existing IFL (above) subject to the same terms and conditions (other than the notice requirement above);
 - b. It need not satisfy the condition in the recent IFL precedent requiring prior disclosure in its registration statement or shareholder report; and
 - c. Money market funds may not participate as borrowers in the new IFL facility;
2. Prior to relying on the Order, the registered investment company notifies the SEC staff via email at IM-EmergencyRelief@sec.gov stating that it is relying on the Order and identifying the recent IFL precedent that it is relying on; and
3. The registered investment company:
 - a. Discloses on its public website that it is relying on the Order to use an IFL facility; and
 - b. If it files a prospectus supplement, or a new or amended registration statement or shareholder report, while it is relying on the Order, updates its disclosure regarding its use of an IFL facility.

Authority for an OEF to Deviate from a Lending or Borrowing Fundamental Policy

The Order provides that, until at least June 30, 2020, an OEF is exempt from Sections 13(a)(2) and 13(a)(3) of the 1940 Act (prohibiting deviations from fundamental policies) to permit it to enter into lending or borrowing transactions that deviate from any relevant policy recited in its registration statement without prior shareholder approval, provided that:

1. The OEF’s board, including a majority of its members who are not interested persons, reasonably determines that lending or borrowing is in the best interests of the OEF and its shareholders;
2. The OEF promptly notifies its shareholders of the change by filing a prospectus supplement and including a statement on the fund’s public website; and
3. Prior to relying on the Order, the OEF notifies the SEC staff via email at IM-EmergencyRelief@sec.gov stating that it is relying on the Order.

THE SEC STAFF NO-ACTION LETTER

In the March 19, 2020 [no-action letter](#) addressed to the Investment Company Institute, the SEC staff stated it would not recommend enforcement action against any money market fund or any Affiliate of the fund that is subject to Sections

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23A and 23B of the Federal Reserve Act and that purchases a security from the fund notwithstanding the fact that a purchaser was unable rely on Rule 17a-9.

The SEC staff's no-action position was based on the following conditions:

1. The purchase price of the purchased security would be its fair market value, as determined by a reliable third-party pricing service.
2. Each purchase (a "Purchase") effected in reliance on the no-action letter must satisfy the conditions of Rule 17a-9, except to the extent the terms of the Purchase would conflict with (i) applicable banking regulations or (ii) the exemption issued by the Board of Governors of the Federal Reserve System on March 17, 2020, defining "covered transaction" for purposes of Section 23A of the Federal Reserve Act not to include the purchase of assets from an affiliated money market fund.
3. The Fund timely files Form N-CR reporting each Purchase under Part C, and reports in Part H that the Purchase was conducted in reliance on the no-action letter.
4. The relief provided by the no-action letter would be in effect on a temporary basis in response to the national emergency concerning the COVID-19 outbreak, and will cease to be in effect upon notice from the SEC staff.

THE FEDERAL RESERVE FACILITIES

On March 18, 2020, the Federal Reserve announced the creation of the Money Market Mutual Fund Liquidity Facility (the "MMLF") as an additional step to improve the liquidity of the money markets. The MMLF announcement followed the Federal Reserve's announcements the day before establishing the Commercial Paper Funding Facility (the "CPFF") and the Primary Dealer Credit Facility (the "PDCF"). On March 23, the Federal Reserve announced the establishment of three additional facilities, the Primary Market Corporate Credit Facility (the "PMCCF"), the Secondary Market Corporate Credit Facility (the "SMCCF") and the Term Asset-Backed Securities Loan Facility (the "TALF"). Key features of each of these facilities are summarized below.

MMLF. Prime money market funds, which invest in high-quality corporate debt and asset-backed securities, have seen elevated outflows in recent weeks. The MMLF (described [here](#)) authorizes the Federal Reserve Bank of Boston to make loans, on commercially favorable terms, available to eligible borrowers secured by high-quality assets purchased by the borrowers from prime money market mutual funds. Eligible borrowers include U.S. banks, and bank holding companies and their U.S. broker-dealer subsidiaries. The MMLF is similar to the Asset-Backed Commercial Paper Money Market Mutual Fund Liquidity Facility, or AMLF, that operated from late 2008 to early 2010, but includes a broader range of assets that may be pledged as collateral. On March 20, the Federal Reserve announced that the program was being expanded to permit eligible borrowers to secure their borrowings with high-quality assets purchased from municipal money market funds, which experienced significantly diminished liquidity during the week ended March 19. The types of assets permitted as collateral under the MMLF were broadened further on March 23.

CPFF. The CPFF (described [here](#)) is intended to provide a liquidity backstop to U.S. issuers of commercial paper through a special purpose vehicle that will purchase unsecured and asset-backed commercial paper rated A1/P1 through the Federal Reserve Bank of New York's primary dealers. By eliminating much of the risk that eligible issuers will not

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be able to repay investors by rolling over their maturing commercial paper obligations, the CPFF is intended to encourage investors to re-engage in term lending in the commercial paper market.

PDCF. The PDCF (described [here](#)) is available only to primary dealers of the New York Fed. Under the PDCF, these dealers are eligible to borrow cash at a commercially favorable interest rate for up to 90 days by pledging eligible collateral, including investment grade debt, commercial paper and municipal bonds, and a broad range of equity securities.

PMCCF. The PMCCF (described with the SMCCF and TALF [here](#)) provides four-year bridge financing, through a special purpose vehicle funded by the Federal Reserve and the U.S. Treasury, to investment grade companies to help maintain business operations and capacity, including paying employees and suppliers, during the period of dislocations related to the COVID-19 pandemic.

SMCCF. The SMCCF will purchase in the secondary market corporate bonds issued by U.S. investment grade companies and shares of U.S.-listed ETFs whose objective is to provide broad exposure to the market for U.S. investment grade corporate bonds. (Bond ETFs have experienced substantial investor redemptions over the past week and have traded at historic discounts to their underlying NAV).

TALF. Under the TALF, the Federal Reserve will lend on a nonrecourse basis to holders of certain AAA-rated asset-backed securities backed by newly and recently originated consumer and small business loans.

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](#).