



Investment Management ADVISORY ■

MARCH 31, 2020

SEC Extends Timeframe for Regulatory Relief for Investment Advisers and Investment Companies

On March 25, 2020, in response to the continuing challenges presented by the coronavirus (COVID-19) pandemic, the Securities and Exchange Commission (SEC) issued [Release No. IA-5469](#) (the “Updated IAA Order”) and [Release No. IC-33824](#) (the “Updated ICA Order”), extending the timeframe for relief under the Investment Advisers Act of 1940 and the Investment Company Act of 1940, respectively. The March 25 orders follow the SEC’s [Release No. IA-5463](#) and [Release No. IC-33817](#) on March 13, 2020, which granted exemptions from certain provisions under the respective Acts and the rules thereunder, subject to satisfying certain conditions. In addition to extending the timeframe for relief, the March 25 orders remove certain conditions required to obtain relief.

The Updated Advisers Act Order

Extending timeframe for relief for filing or delivery obligations

The Updated IAA Order extends the timeframe for the relief for filing and delivery obligations whose original due date is on or before June 30, subject to satisfying certain conditions. The original orders covered due dates through April 30. The relief applies to the filing and delivery obligations for registered investment advisers under the following sections and rules of the Advisers Act:

- Rule 204-1 to file an amendment to Form ADV.
- Rules 204-3(b)(2) and (b)(4) related to the delivery of either Form ADV Part 2 or a summary of material changes to existing clients.
- Section 204(b) and Rule 204(b)-1 to file Form PF.

Exempt reporting advisers may also obtain relief under Rule 204-4 to file reports on Form ADV.

Modification of conditions required for relief

The Updated IAA Order removed two conditions required for relief under the original order, specifically, that the investment adviser (1) include, in its email correspondence to SEC staff and on its website, why it is unable to meet a filing deadline or delivery requirement; and (2) provide an estimated date of filing or delivery completion.

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To qualify for relief under the Updated IAA Order, the investment adviser must satisfy the following conditions:

- The investment adviser is unable to meet a filing deadline or delivery requirement due to circumstances related to current or potential effects of COVID-19.
- If relying on the orders for filing Form ADV or the delivery of its brochure, summary of material changes, or brochure supplement required by Rule 204-3(b)(2) or (b)(4), the investment adviser must promptly notify the SEC staff via email at IARDLive@sec.gov that it is relying on the orders and disclose on its public website (or if it does not have a public website, promptly notifies its clients and private fund investors) that it is relying on the orders.
- If relying on the orders for filing Form PF required by Rule 204(b)-1, the investment adviser must promptly notify the SEC staff via email at FormPF@sec.gov stating that it is relying on the orders.
- The investment adviser must file the forms and make deliveries required under the Advisers Act as soon as practicable, but not later than 45 days after the original due date for filing or delivery.

The Updated Investment Company Act Order

In-person board meeting requirements

The Updated ICA Order extends the period for relief from March 13, 2020 to August 15, 2020. The relief applies to registered management investment companies and business development companies (BDCs) and any investment adviser of or principal underwriter for such registered management investment company or BDC exempting them from the requirements imposed by Sections 15(c) and 32(a) of the Investment Company Act and Rules 12b-1(b)(2) and 15a-4(b)(2)(ii) thereunder that votes of the board of directors must be cast in person, provided that:

- Reliance on the order is necessary or appropriate due to circumstances related to current or potential effects of COVID-19.
- The votes required to be cast at an in-person meeting are instead cast at a meeting where directors may participate by any means of communication that allows all directors participating to hear each other simultaneously during the meeting.
- The board of directors, including a majority of the directors who are not interested persons of the registered management investment company or BDC, ratifies the action taken pursuant to this exemption by a vote cast at the next in-person meeting.

Forms N-CEN and N-PORT

The Updated ICA Order extends the period for relief from March 13, 2020 to June 30, 2020. The Updated ICA Order removes two requirements for relief in the original orders that a registered management investment company or unit investment trust (each a "registered fund") intending to rely on the order must (1) include in its email correspondence to SEC staff and on its website a brief description of the reasons why it is unable to file Form N-CEN or Form N-PORT; and (2) provide SEC staff with an estimated date it expects to file such report. The relief applies to a registered fund that is required to file Form N-CEN pursuant to Rule 30a-1 or Form N-PORT pursuant to Rule 30b1-9 under the Investment Company Act, provided that:

- The registered fund is unable to meet a filing deadline due to circumstances related to current or potential effects of COVID-19.
- The registered fund promptly notifies the SEC staff via email at IM-EmergencyRelief@sec.gov stating that it is relying on the order.
- The registered fund includes a statement on the fund's public website briefly stating that it is relying on the order.

- The registered fund required to file Form N-CEN or Form N-PORT files the report as soon as practicable, but not later than 45 days after the original due date.
- Any Form N-CEN or Form N-PORT filed pursuant to the order must include a statement of the filer that it relied on the order and the reasons why it was unable to timely file its report.

Annual and semiannual reports to investors

The Updated ICA Order extends the period for relief from March 13, 2020 to June 30, 2020. The Updated ICA Order removes two requirements for relief in the original orders that the registered fund intending to rely on the order must (1) include in its email correspondence to the SEC staff and on its website a brief description of the reasons why it is unable to timely file its report; and (2) provide the SEC staff with an estimated date it expects to file its report. The relief applies to registered funds that are required to transmit annual and semiannual reports to shareholders or unitholders, provided that:

- The registered fund is unable to prepare or transmit the report due to circumstances related to current or potential effects of COVID-19.
- The registered fund relying on the order promptly notifies SEC staff via email at IM-EmergencyRelief@sec.gov stating that it is relying on the order.
- The registered fund relying on the order includes a statement on its public website briefly stating that it is relying on the order.
- The registered 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.

Form N-23C-2

The Updated ICA Order extends the period for relief from March 13, 2020 to August 15, 2020. The Updated ICA Order removes one requirement for relief in the original orders that a closed-end fund or BDC intending to rely on the order must include in its email correspondence to the SEC staff a brief description of the reasons why it needs to file Form N-23C-2 fewer than 30 days before the date set by the closed-end fund or BDC, as applicable, for calling or redeeming the securities it is the issuer of. The relief is applicable to closed-end funds and BDCs that are required 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 Investment Company Act and Rule 23c-2 if such company files a notice with the SEC fewer than 30 days before the closed-end fund or BDC's call or redemption of securities it is the issuer of, provided that the closed-end fund or BDC:

- Promptly notifies SEC staff via email at IM-EmergencyRelief@sec.gov stating that it is relying on the order.
- Ensures that the filing of the notice on an abbreviated timeframe is permitted under relevant state law and the closed-end fund or BDC's governing documents.
- Files a notice that contains all the information required by Rule 23c-2 before (1) any call or redemption of existing securities; (2) the commencement of any offering of replacement securities; and (3) providing notification to the existing shareholders whose securities are being called or redeemed.

Prospectus delivery

The Updated ICA Order removes two requirements from the relief in the original orders that a registered fund intending to rely on the relief must (1) include in its email correspondence to SEC staff and on its website a brief description of the reasons why it or any other person required could not timely deliver the prospectus to investors; and (2) provide the SEC staff with an estimated date it expects the prospectus to be delivered.

Under the Updated ICA Order, a registered fund will not face an enforcement action for being unable to timely deliver to investors its current prospectus if the untimely delivery is because of circumstances related to COVID-19, *provided* that the sale of shares to the investor was not an initial purchase of shares of the registered fund by the investor, and:

- Delivery was originally required between March 13, 2020 and June 30, 2020, and the prospectus is delivered to investors as soon as practicable, but not later than 45 days after the date originally required; and
- The registered fund:
 - Notifies SEC staff via email at IM-EmergencyRelief@sec.gov stating that it is relying on this SEC position.
 - Publishes on its public website that it intends to rely on the SEC position.
 - Publishes its current prospectus on its public website.

Alston & Bird has formed a multidisciplinary [task force](#) to advise clients on the business and legal implications of the coronavirus (COVID-19). You can [view all our work](#) on the coronavirus across industries and [subscribe](#) to our future webinars and advisories.

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