CLIENT ALERTS & INSIGHTS

COVID-19 Outbreak: SEC Extends Relief for Investment Advisers and Other Updates

<u>Extension of Filing Relief</u>

APRIL 17, 2020

The Securities and Exchange Commission (the "SEC") extended and modified its previous order providing certain conditional relief for upcoming filings for investment advisers affected by the COVID-19 outbreak. The modified order extends the time period covered by its relief for Form ADV and Form PF filings that would have been due between March 13 and June 30, 2020.

The modified order also revises the conditions of this filing relief. Under the original order, investment advisers were required to, among other things, provide an explanation as to why the investment adviser was unable to meet a filing deadline or delivery requirement and also provide an estimated date of filing or delivery. The modified order removes these conditions, given the scope of the interruptions COVID-19 has caused and the uncertainty around the duration of the COVID-19 outbreak.

Investment advisers seeking to take advantage of this relief must still notify the SEC at IARDLive@sec.gov of their reliance on the SEC's relief with respect to the Form ADV or Form PF filing, as applicable. Additionally, with respect to delayed Form ADV filings and/or deliveries, the investment adviser must also disclose on its public website (or, if the adviser does not have a public website, promptly notify its clients and/or private fund investors) that it is relying on the SEC's order.

With respect to both the Form ADV and Form PF, the investment adviser still must file both (and deliver its brochure and brochure supplement) as soon as practicable, but in no event later than 45 days after the original due date.

The modified order can be found here and our original alert can be found here.

Investment Adviser FAQs

In addition to revising its filing relief, the staff of the Division of Investment Management (the "Division") has posted FAQs in response to questions raised by investment advisers arising from the circumstances related to the COVID-19 outbreak.

Form ADV - Location of Business - The Division advised that firms that have employees temporarily working remotely (that is, locations other than the principal office/place of business) in accordance with the firm's business continuity plan do not need to update their Form ADV to list out the teleworking addresses of the firm's employees.

Custody and Surprise Examinations - The Division responded to several questions regarding custody and surprise examinations:

- The Division supplemented a prior FAQ regarding the inadvertent receipt of securities to note that advisers' personnel may be unable to access mail or deliveries due to COVID-19. The Division further stated that it would not consider the adviser to have received client assets until firm personnel are able to access the mail and deliveries at the office location. Accordingly, an adviser would not be deemed in violation of the custody rules as a result of receiving client assets during such time when such adviser is unable to access mail and other deliveries.
- The Division also responded to a question about handling recent investments in privately issued securities evidenced by physical certificates where the adviser's qualified custodian has announced it would not be accepting physical certificates for a period of time as a result of COVID-19. The Division would not recommend enforcement action against advisers that do not maintain such certificates with qualified custodians, so long as certain conditions are met: (1) the physical certificates can only be used to effect a transfer or to otherwise facilitate a change in beneficial ownership of the security with the prior consent of the issuer or holders of the outstanding securities of the issuer; (2) ownership of the security is recorded on the books of the issuer or its transfer agent (or person performing similar functions) in the name of the client; (3) the physical certificates contain a legend restricting transfer; (4) the physical certificates are appropriately safeguarded by the adviser and can be replaced upon loss or destruction; and (5) the adviser makes and keeps (in accordance with the terms of Advisers Act Rule 204-2) a record of the custodian's closure.
- The Division also advised on COVID-19 related disruptions to surprise examinations of investment advisers. The Division advised that it would not recommend enforcement action against an adviser that reasonably believes its independent public accountant would complete its surprise examination and submit the Form ADV-E with the certificate of accounting within the 120-day deadline, but experienced logistical disruptions and delays as a result of COVID-19. The independent accountant should file such report as soon as practicable, but in any event, no later than 45 days after the original due date.

If you have any questions regarding the above, please contact a member of Benesch's Corporate & Securities Practice Group.

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Please note that this information is current as of the date of this Client Alert, based on the available data. However, because COVID-19's status and updates related to the same are ongoing, we recommend real-time review of guidance distributed by the CDC and local officials.

