

SEC COVID-19 Updated FAQs

April 27, 2020

The SEC has added three new Q&As and expanded the answer to the previously released Question III.2.

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Q. I am a small advisory firm that meets the requirements of the Paycheck Protection Program (PPP) established by the U.S. Small Business Administration in connection with COVID-19. If I receive or have received a PPP loan, what are my regulatory reporting obligations under the Investment Advisers Act of 1940 to my firm's clients?

A. As a fiduciary under federal law, you must make full and fair disclosure to your clients of all material facts relating to the advisory relationship. If the circumstances leading you to seek a PPP loan or other type of financial assistance constitute material facts relating to your advisory relationship with clients, it is the staff's view that your firm should provide disclosure of, for example, the nature, amounts and effects of such assistance. If, for instance, you require such assistance to pay the salaries of your employees who are primarily responsible for performing advisory functions for your clients, it is the staff's view that you would need to disclose this fact. In addition, if your firm is experiencing conditions that are reasonably likely to impair its ability to meet contractual commitments to its clients, you may be required to disclose this financial condition in response to Item 18 (Financial Information) of Part 2A of Form ADV (brochure), or as part of Part 2A, Appendix 1 of Form ADV (wrap fee program brochure). (Posted April 27, 2020)

Question II.5.

Q. My firm is an SEC-registered investment adviser that participates in a wrap fee program (a "participating adviser"). The participating adviser has contracted with the wrap fee program sponsor to deliver Form ADV Part 2 (or a summary of material changes), as applicable ("Brochure"), to clients of the wrap fee program. The sponsor has notified us that it is unable to deliver the Brochure to our existing wrap fee program clients by the delivery deadline due to circumstances related to current or potential effects of COVID-19. In this regard, the participating adviser would like to take advantage of the Commission's March 25, 2020, order (Advisers Act Release No. 5469) ("Order") granting certain temporary exemptive relief to registered investment advisers from the deadline for Brochure delivery. What steps should a participating adviser and a wrap fee program sponsor take to satisfy the requirements in the Order that the adviser notify its clients and the Commission when relying on the Order?

A. To rely on the temporary relief, an adviser must satisfy the conditions described in the Order. These conditions include that the adviser relying on the Order "promptly notifies the Commission staff via email at IARDLive@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) that it is relying" on the Order. A participating adviser and wrap fee program sponsor should consider the following when seeking to satisfy these notice and disclosure requirements:

Disclosure to clients. To rely on the Order, the participating adviser must disclose on its public website (or if it does not have a public website, provide notice as described in the Order) that it is relying on the Order. In the case of clients that primarily or exclusively interact with the

participating adviser through the wrap fee program sponsor, the staff believes the sponsor should also consider posting on its public website notice that the participating adviser is relying on the Order to further inform existing clients regarding the availability of updated Brochure disclosures.

Notice to Commission staff. The Order also requires the participating adviser to notify the Commission staff via email that it is relying on the Order. In the staff's view, a wrap fee program sponsor could promptly notify Commission staff via email on the participating adviser's behalf that the participating adviser is relying on the Order if, in its email to Commission staff, the sponsor identifies each individual participating adviser that is relying on the Order and represents that it has authority to submit the email on behalf of those participating advisers. If the participating adviser is also relying on the Order with respect to any clients for which the sponsor is not contractually obligated to deliver the Brochure, the participating adviser would need to separately satisfy this notice condition.

Consistent with the Order, the participating adviser's Brochure must be delivered to existing clients as soon as practicable, but not later than 45 days after the original due date. The relief provided in the Order is time-limited. Please refer to the Order for details on the period for which relief is available. (Posted April 27, 2020)

Question III.2.

Q. Has the Division of Investment Management provided any assistance for investment companies affected by COVID-19?

A. Yes. The Division of Investment Management has taken temporary positions in the no-action letters described below, which funds affected by COVID-19 may find useful.

Certain purchases by affiliates

In one letter, the staff addresses the ability of certain affiliates to purchase debt securities from a mutual fund, under the circumstances and subject to the conditions described in the letter. In another letter, the staff addresses the ability of certain affiliates to purchase securities from a money market fund, under the circumstances and subject to the conditions described in the letter. Shareholder meetings

In addition, the staff of the Division of Investment Management, together with the staff of the Division of Corporation Finance, has published guidance to assist issuers (including registered investment companies and BDCs), shareholders, and other market participants affected by COVID-19 with meeting their obligations under the federal proxy rules with respect to shareholder meetings. The staff issued this guidance on March 13, 2020, and updated it on April 7, 2020.

Signatures on electronic filings

The Division of Investment Management, together with the Division of Corporation Finance and the Division of Trading and Markets, issued a statement, on March 24, 2020, providing staff views regarding the requirement in Rule 302(b) of Regulation S-T that each signatory to documents electronically filed with the SEC under the federal securities laws "manually sign a signature page or other document authenticating, acknowledging or otherwise adopting his or her signature that appears in typed form within the electronic filing."

EDGAR filing window on April 29, 2020

The Division of Investment Management issued a statement, on April 22, 2020, stating that it was extending the EDGAR filing window on April 29, 2020, from 5:30 p.m. to 10:00 p.m. Eastern Daylight Time (EDT) for registered investment company and business development company filings. Filers, including those who do not intend a filing date adjustment on that date, should refer to the statement for further information.

Investment Company Act Rule 8b-16(a) requires every registered management investment company that is required to file an annual report on Form N-CEN to amend its registration statement not more than 120 days after the close of its fiscal year. The 120th day for an investment company with a December 31, 2019, fiscal year end falls on April 29, 2020. (Modified April 27, 2020)

Question III.6.

Q. Is updated information available regarding the process for interested persons to request a hearing in connection with notices of applications under the Investment Company Act and the Investment Advisers Act?

A. Yes. The Division of Investment Management issued IM Information Update 2020-03 on April 8, 2020 discussing this process. (Posted April 27, 2020)