

SEC Takes Targeted Action to Assist Funds and Advisers, Permits Virtual Board Meetings and Provides Conditional Relief from Certain Filing Procedures

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by Ellen J. Bickal

On March 13, 2020, the Securities and Exchange Commission (SEC), indicating that it is closely monitoring the impact of coronavirus on investors, funds and advisers, announced regulatory relief for funds and investment advisers whose operations may be affected by the coronavirus.

The relief covers in-person board meetings and certain filing and delivery requirements for investment funds and investment advisers. Recognizing that the impacts of the coronavirus may delay or prevent funds and advisers operating in affected areas from meeting certain regulatory obligations, relief is designed to enable funds and advisers to meet those obligations and to continue their operations, while recognizing that there may be temporary disruptions outside of their control.

SEC Chairman Jay Clayton stated that, “As investors, investment funds, investment advisers and other market participants endeavor to address these challenges, the Commission stands ready to take action in the interest of our investors and our markets as appropriate.” In its press release the SEC indicated that it and its staff continue to assess impacts relating to the coronavirus on investors and market participants, and will consider additional relief from other regulatory requirements. The SEC also indicated that it may extend the time period for relief, with any additional conditions it deems appropriate, or provide additional relief as circumstances warrant.

The SEC indicated that issued the orders seeking to balance the needs and safety of registered investment companies, other funds and investment advisers impacted by coronavirus while also considering the importance of markets and investors receiving materially accurate and timely information. They emphasize that an entity seeking to rely upon an order, must meet the various conditions, including, as applicable, the requirements to notify SEC staff of the intention to rely upon the order and to disclose information on its website about its reliance upon the order.

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Subject to their conditions, the orders provide the following temporary exemptive relief:

Relief Related to the Investment Advisers Act of 1940

The relief specified in the Advisers Act Order is limited to filing or delivery obligations, as applicable, for which the original due date is on or after the date of the order (March 13, 2020) but on or prior to April 30, 2020, and provides relief with respect to each of the following:

- Registered investment advisers and exempt reporting advisers affected by coronavirus to file an amendment to Form ADV or file reports on Form ADV part 1A, respectively;
- Registered investment advisers affected by coronavirus from requirements to deliver amended brochures, brochure supplements or summary of material changes to clients where the disclosures are not able to be timely delivered because of circumstances related to coronavirus; and
- Private fund advisers affected by coronavirus from Form PF filing requirements.

The Adviser Order provides an email address at which advisers must contact the SEC indicating their intention to rely on the order, the basis on which it must rely on the order, and the estimated date by which it intends to meet its obligations. This information must also be posted on the firm's website. Finally, the Adviser Order provides that the firm must comply with its obligations as soon as practicable, but not later than 45 days after the original due date for filing or delivery, as applicable.

Relief Related to the Investment Company Act of 1940

In light of the current situation, the SEC is also issuing the Investment Company Act Order providing an exemption from certain requirements of the Investment Company Act and a statement regarding prospectus delivery obligations of registered funds. Different time periods and conditions apply to different aspects of the Investment Company Act Order, but the order provides relief with respect to each of the following:

- Registered management investment companies, business development companies, and any investment adviser or principal underwriter of such companies from Investment Company Act sections and rules requiring certain agreements, plans or arrangements be approved by the company's board of directors by an in-person vote due to circumstances related to the current or potential effects of coronavirus;
- Registered management investment companies and unit investment trusts affected by coronavirus from Form N-CEN and Form N-PORT filing deadlines;
- Registered management investment companies and unit investment trusts affected by coronavirus from annual and semi-annual report transmittal deadlines; and
- Registered closed-end investment companies and business development companies from the requirement to file Form N-23C-2 at least 30 days prior to calling or redeeming securities.

Finally, the SEC also indicated, as described further in the Investment Company Act Order, that it would not provide a basis for an enforcement action if a registered fund does not deliver to investors the current prospectus of the registered fund where the

prospectus is not able to be timely delivered because of circumstances related to coronavirus, subject to the conditions described in the orders.

As previously announced, Dorsey has created a [Corona Virus Resource Center \(CVRC\)](#), which contains critical information and resources to help you navigate your way through this crisis. We will continue to update the content as frequently as necessary. Please do not hesitate to call any one of us if you have questions about anything you see in the CVRC or if you would like information on a topics addressed in this alert.