



# CORONAVIRUS

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## SEC Eases In-Person Board Meeting and Other Filing and Delivery Requirements for Funds and Advisers in Response to Coronavirus Developments

As the coronavirus (“COVID-19”) continues to impact this country and all countries across the globe, businesses in every industry, including the investment company industry, must adapt to the quarantining and other preventative mandates and restrictions that many cities and states are imposing. Investment company boards must continue in their fund oversight role, including with respect to any required approvals, notwithstanding any travel or other restrictions now being imposed. The Securities and Exchange Commission (the “SEC”) has indicated that it has been actively monitoring the current and potential effects of COVID-19 on investment advisers and funds. On March 13, 2020, the SEC announced regulatory relief for funds and investment advisers whose operations may be affected by the coronavirus.<sup>1</sup>

The temporary exemptive relief for registered investment companies covers:

- in-person board meetings;
- Form N-CEN and Form N-PORT filing deadlines;
- annual and semi-annual shareholder report transmittal deadlines;
- Form N-23C-2 transmittal and filing deadlines (which closed-end funds and BDCs file at least 30 days prior to calling or redeeming securities); and
- prospectus delivery deadlines.

The SEC also granted temporary relief to investment advisers from certain filing and delivery requirements with respect to Form ADV and from filing requirements with respect to Form PF.

In the Investment Company Order, the SEC recognized that COVID-19 may present challenges for boards of directors of registered management investment companies and business development companies (“BDCs”) to travel in order to meet the in-person voting requirements under the Investment Company Act of 1940 (the “Investment Company Act” or “the Act”) and rules thereunder, and that registered management investment companies and unit investment trusts may face challenges filing and delivering certain reports and forms if, as a result of COVID-19, personnel of registered fund managers or other third-party service providers that are necessary to prepare these reports become unavailable, or only available on a limited basis. The staff also noted that due to recent market movements certain registered closed-end funds and BDCs may seek to call or redeem securities and may face challenges in providing the advance notice required under Rule 23c-2. The staff also noted there may be difficulties in the timely delivery of registered fund prospectuses.

1. See Order for relief related to Investment Company Act (the “Investment Company Order”) at [sec.gov/rules/other/2020/ic-33817.pdf](https://www.sec.gov/rules/other/2020/ic-33817.pdf) and Order for relief related to Investment Advisers Act (the “Investment Advisers Order”) at [sec.gov/rules/other/2020/ia-5463.pdf](https://www.sec.gov/rules/other/2020/ia-5463.pdf).

The Orders include the following:

### **Relief from In-Person Board Meeting Requirements through June 15, 2020**

Under a no-action letter released to the Independent Directors Council in February 2019 (the “IDC no-action letter”),<sup>2</sup> the SEC staff had agreed to not recommend enforcement action if fund boards did not adhere to certain in-person meeting requirements in the event of unforeseen or emergency circumstances affecting some or all of a fund’s directors. Under the IDC no-action letter, boards were, however, required to have reviewed all material aspects of the proposed approvals previously and also could not approve new auditors. On March 4, 2020, the SEC staff extended the IDC no-action letter relief to cover:

- all approvals and renewals (*including material changes*) of contracts, plans or arrangements under section 15(c) or rules 12b-1 or 15a-4(b)(2)(ii), and
- the selection of a fund’s independent public accountant pursuant to Section 32(a) where such accountant is not the same accountant as selected in the immediately preceding fiscal year.

The SEC staff has now formalized this relief in the new Investment Company Order. From March 13, 2020 to June 15, 2020, a registered management investment company or BDC and any investment adviser of or principal underwriter for such registered management investment company or BDC is exempt from the requirements imposed under sections 15(c) and 32(a) of the Investment Company Act and Rules 12b-1(b)(2) and 15a-4(b)(2)(ii) under the Investment Company Act that votes of the board of directors of either the registered management investment company or BDC be cast in person, provided that:

- (i) reliance on the Order is necessary or appropriate due to circumstances related to current or potential effects of COVID-19;
- (ii) the votes required to be cast at an in-person meeting are instead cast at a meeting in which directors may participate by any means of communication that allows all directors participating to hear each other simultaneously during the meeting; and
- (iii) 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 vote cast at the next in-person meeting.

### **Up to 45-Day Extension of Filing Deadline for Form N-CEN and Form N-PORT Filings Due Originally on or Prior to April 30, 2020**

A registered investment company is temporarily exempt from Form N-CEN and Form N-PORT filing obligations for which the original due date is between March 13, 2020 and April 30, 2020, subject to certain conditions. Among the conditions, the fund must notify the SEC that it is relying on the Investment Company Order and provide a brief description of the reasons why it could not file its report on a timely basis and the estimated date by which it expects to file the report. A fund relying on this Order must also include a statement on the applicable registered fund’s public website briefly stating that it is relying on this Order and the reasons why it could not file its report on a timely basis. The fund must file such report as soon as practicable, but not later than 45 days after the original due date.

### **Up to 45-Day Extension of Transmittal Deadline for Annual and Semi-Annual Shareholder Reports Originally Required to Be Transmitted on or Prior to April 30, 2020**

Funds have likewise been granted temporary relief, from the transmittal requirements for annual and semi-annual reports to shareholders that have an original due date between March 13, 2020 and April 30, 2020, subject to certain conditions. Among the conditions, the fund must be unable to prepare or transmit the report due to circumstances related to current or potential effects of COVID-19. The fund must notify the SEC staff that it is relying on the Investment Company Order and provide a brief description of the reasons why it could not transmit the report on a timely basis and the estimated date by which it expects to transmit such report. A fund relying on this Order must also include a statement on the fund’s public website briefly stating that it is relying on this Order and the reasons why it could not prepare and transmit such reports on a timely basis. The fund must transmit such reports to shareholders as soon as practicable, but not later than 45 days after the original due date and must file the reports within 10 days of their transmission.

### **Temporary Exemption from Requirement to File a Form N-23C-2 At Least 30 Days Prior to Calling or Redeeming Securities**

From March 13, 2020 through June 15, 2020, closed-end funds and BDCs are temporarily exempt from the requirement to file with the SEC notices of their intention to call or redeem securities at least 30 days in advance under Sections

2. See letter from the staff of the Division of Investment Management to Independent Directors Council (Feb. 28, 2019). Available at [sec.gov](https://www.sec.gov). See also *the Division of Investment Management Staff Statement on Fund Board Meetings and Unforeseen or Emergency Circumstances Related to the Coronavirus Disease 2019 (COVID-19)* (March 4, 2020) at [sec.gov/investment/staff-statement-im-covid-19](https://www.sec.gov/investment/staff-statement-im-covid-19).

23(c) and 63, as applicable, of the Investment Company Act and Rule 23c-2 thereunder. Such fund or BDC may file a Form N-23C-2 (“Notice”) with the SEC fewer than 30 days prior to, including the same business day as, the call or redemption of securities subject to certain conditions. These conditions include notifying the SEC staff that it is relying on the Investment Company Order and briefly describing the reasons why it needs to file a Notice fewer than 30 days in advance of the call or redemption date. In addition, the filing of the Notice on an abbreviated time frame must be permitted under relevant state law and the governing documents of the fund or BDC. Also, the fund or BDC is required to file a Notice that contains all the information required by Rule 23c-2 prior to (a) any call or redemption of existing securities; (b) the commencement of any offering of replacement securities; and (c) providing notification to the existing shareholders whose securities are being called or redeemed.

### **Delivery Requirement for Fund Prospectuses Extended up to 45 Days**

The SEC also stated that it would not provide a basis for an SEC enforcement action if a fund does not deliver the fund’s current prospectus to investors where the prospectus is not able to be timely delivered because of circumstances related to the coronavirus, subject to the conditions described in the Investment Company Order. The prospectus must have been originally required to be delivered on or after the date of the Investment Company Order (March 13, 2020) but on or prior to April 30, 2020. Among other conditions, the fund must post the prospectus on its public website and the prospectus must be delivered to shareholders as soon as practicable, but not later than 45 days after the date that was originally required.

### **Relief to Advisers with Respect to Certain Filing and Delivery Requirements**

Any registered investment adviser or exempt reporting adviser who is unable to meet the filing deadline for the updating of its Form ADV or the delivery requirements with respect to Form ADV Part 2 (or to a supplement or summary of material changes) to existing clients due to circumstances related to current or potential effects of COVID-19 has been granted relief from such requirements, subject to certain

conditions contained in the Investment Adviser Order. Similar to the relief in the Investment Company Order, the delivery or filing must be made as soon as practicable, but not later than 45 days of the original deadline. Likewise, private fund advisers affected by the coronavirus have also been granted relief from certain Form PF filing requirements.

### **Time Period for Temporary Relief May Be Indefinite; Other Regulatory Requirements May Be Addressed in the Future**

The SEC also stated 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 it will continue to monitor the situation and may introduce relief from additional regulatory requirements. We also note that the SEC’s Washington, D.C. headquarters have transitioned to a full telework structure with certain limited exceptions, but the SEC has announced that the agency does remain fully operational.

We note that many boards have continued to meet either via video conference or audio conference and conduct the business of their investment companies during these trying times following the relief granted by the SEC. Additionally, a board may want to request regular updates from fund management as to adviser and fund operations. We will continue to follow this ever-changing situation and update our clients as new pronouncements are made or relief is granted by the SEC.

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