

**MEMO# 32396**

April 17, 2020

## **SEC Staff Issues FAQs Related to COVID-19**

[32396]

April 17, 2020 TO: ICI Members SUBJECTS: Advisory Contract Renewal  
Audit Committees  
Closed-End Funds  
Compliance  
Disclosure RE: SEC Staff Issues FAQs Related to COVID-19

The staff of the Securities and Exchange Commission's Division of Investment Management ("IM") recently issued frequently asked questions concerning the novel coronavirus ("COVID-19").<sup>[1]</sup> Five questions are specific to investment companies ("funds"). We summarize the fund FAQs below, which can be separated into three categories: (i) general relief; (ii) relief from in-person board meeting requirements; and (iii) relief for closed-end funds.<sup>[2]</sup>

**General Relief.** The first two questions involve Commission and IM relief granted during the COVID-19 pandemic. The first question asks whether the Commission has provided relief to funds affected by COVID-19. IM's response summarizes the Commission's exemptive orders providing time-limited relief to funds that cover: (a) in-person board meetings and certain filing, transmittal, and delivery obligations;<sup>[3]</sup> (b) temporary additional funding flexibility;<sup>[4]</sup> and (c) temporary additional flexibility for business development companies.<sup>[5]</sup> The staff reminds issuers that the filing, transmittal, and delivery relief does not cover prospectus filing requirements or prospectus delivery obligations to new investors,<sup>[6]</sup> and that obligations related to such relief must be met as soon as practicable but no later than 45 days after their due date.

The second question asks whether IM has provided assistance for funds affected by COVID-19. The response summarizes two IM no-action letters permitting certain affiliates temporary relief to purchase securities from mutual funds<sup>[7]</sup> and money market funds,<sup>[8]</sup> as well as guidance that IM (and the Division of Corporation Finance) published to assist issuers, shareholders and other market participants meet their obligations under the federal proxy rules with respect to shareholder meetings.<sup>[9]</sup>

**Relief from In-Person Board Meeting Requirements.** The third question asks whether the Commission has provided relief from in-person board meeting requirements and whether the relief covers approvals of new auditors or advisory contracts. IM responds affirmatively by once again referencing the Commission order that provides relief from in-

person board meetings.<sup>[10]</sup> It also highlights a 2019 IM no-action letter providing relief from those requirements.<sup>[11]</sup>

**Relief for Closed-End Funds.** The last two questions relate to closed-end funds. Question four asks whether a closed-end fund can rely on the Commission's exemptive order providing temporary relief to obtain short-term funding.<sup>[12]</sup> IM staff states that a closed-end fund cannot rely on the short-term funding relief, but that it continues to assess the impacts from COVID-19. It adds that a closed-end fund seeking relief should contact IM staff.

Question five asks whether a closed-end fund can use a prospectus supplement to satisfy its Item 34.1 undertaking. Item 34.1 of Form N-2 requires a closed end fund to undertake to suspend its offering of shares until it amends its prospectus when the fund's net asset value ("NAV") declines more than 10 percent from the fund's NAV as of the effective date of its registration statement. IM staff states that it will not object to a fund using a prospectus supplement to meet the undertaking as long as the fund notifies its IM disclosure reviewer of any closed-end fund(s) that intend to take such actions. In so doing, the staff requests at least one business days' notice. Further, funds taking such actions should consider including the following disclosure in their prospectus supplements:

- that the fund's NAV has fallen and that, in accordance with the undertaking, the fund has suspended its offering as of a certain date;
- the date on which the fund will restart its offering;
- the extent, in dollars and by percent that the NAV has fallen from the effective date of the fund's registration statement;
- the fund's NAV as of a recent date and, if exchange traded, the last reported share price on the exchange;
- an explanation of why the NAV has fallen; and
- any material information that needs to be updated (e.g., how current market conditions have impacted the fund and its holdings). If relevant, the fund should tailor the disclosure to describe the impact of market conditions on the fund's holdings.

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#### endnotes

<sup>[1]</sup> See Division of Investment Management Coronavirus (COVID-19) Response FAQs (April 2020), available at <https://www.sec.gov/investment/covid-19-response-faq>.

<sup>[2]</sup> The FAQs also respond to questions about contacting the Division of Investment Management and registered investment advisers.

<sup>[3]</sup> On March 25, the Commission issued an exemptive order extending and superseding temporary relief given to funds from in-person board meetings and certain filing, transmittal and delivery obligations. See Investment Company Act Release No. 33824

(March 25, 2020), available at <https://www.sec.gov/rules/other/2020/ic-33824.pdf>. For a detailed summary of the exemptive order, see ICI Memorandum No. 32318, available at [https://www.ici.org/my\\_ici/memorandum/memo32318](https://www.ici.org/my_ici/memorandum/memo32318). On the same day, the Commission issued another exemptive order extending and superseding temporary relief given to issuers from the requirement to furnish certain proxy soliciting and information materials in areas where the common carrier has suspended delivery. See Securities Exchange Act Release No. 88465 (Mar. 25, 2020), available at <https://www.sec.gov/rules/exorders/2020/34-88465.pdf>.

[4] On March 23, the Commission issued an exemptive order providing temporary relief to open-end funds (other than money market funds) and insurance company separate accounts to borrow from certain affiliates and for those open-end funds to more flexibly engage in interfund lending and other lending arrangements. See Investment Company Act Release No. 33821 (Mar. 23, 2020), available at <https://www.sec.gov/rules/other/2020/ic-33821.pdf>. For a detailed summary of the exemptive order, see ICI Memorandum No. 32314, available at [https://www.ici.org/my\\_ici/memorandum/memo32314](https://www.ici.org/my_ici/memorandum/memo32314).

[5] On April 8, the Commission issued an exemptive order providing temporary relief for BDCs to more flexibly provide capital to their portfolio companies. See Investment Company Act Release No. 33837 (April 8, 2020), available at <https://www.sec.gov/rules/exorders/2020/ic-33837.pdf>. For a detailed summary of the exemptive relief, see ICI Memorandum No. 32380, available at [https://www.ici.org/my\\_ici/memorandum/memo32380](https://www.ici.org/my_ici/memorandum/memo32380).

[6] In this regard, IM reminds funds that the information in their prospectuses must be timely, including information in fund financial statements. See Importance of Delivering Timely and Material Information to Investment Company Investors (April 2020), available at <https://www.sec.gov/investment/delivering-timely-material-information>.

[7] See Investment Company Institute (pub. avail. Mar. 26, 2020), available at <https://www.sec.gov/investment/investment-company-institute-032620-17a>. For a detailed summary of the no-action letter, see ICI Memorandum No. 32327, available at [https://www.ici.org/my\\_ici/memorandum/memo32327](https://www.ici.org/my_ici/memorandum/memo32327).

[8] See Investment Company Institute (pub. avail. Mar. 19, 2020), available at <https://www.sec.gov/investment/investment-company-institute-031920-17a>. For a detailed summary of the no-action letter, see ICI Memorandum No. 32322, available at [https://www.ici.org/my\\_ici/memorandum/memo32322](https://www.ici.org/my_ici/memorandum/memo32322).

[9] See Staff Guidance for Conducting Annual Meetings in Light of COVID-19 Concerns (April 2020), available at [www.sec.gov/ocr/staff-guidance-conducting-annual-meetings-light-covid-19-concerns?auHash=zrsDVFen7QmUL6Xou7EIHYov4Y6lfrRTjW3KPSVukQs#\\_ftnref6](https://www.sec.gov/ocr/staff-guidance-conducting-annual-meetings-light-covid-19-concerns?auHash=zrsDVFen7QmUL6Xou7EIHYov4Y6lfrRTjW3KPSVukQs#_ftnref6). For a detailed summary of this guidance, see ICI Memorandum No. 32376, available at [https://www.ici.org/my\\_ici/memorandum/memo32376](https://www.ici.org/my_ici/memorandum/memo32376), and ICI Memorandum No. 32384, available at [https://www.ici.org/my\\_ici/memorandum/memo32284](https://www.ici.org/my_ici/memorandum/memo32284).

[10] See *supra* note 3 (citing to the Commission exemptive order providing temporary relief to funds from in-person board meetings).

[11] See Independent Directors Counsel (pub. avail. Feb. 28, 2019), available at

<https://www.sec.gov/divisions/investment/noaction/2019/independent-directors-council-022819>. For a detailed summary of the no-action letter, see ICI Memorandum No. 31631, available at [https://www.ici.org/my\\_ici/memorandum/memo31631](https://www.ici.org/my_ici/memorandum/memo31631).

[12] See *supra* note 4 (citing to the Commission exemptive order providing temporary relief to certain open-end funds and insurance company separate accounts to borrow from affiliates and enter into lending arrangements).

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