

MEMO# 32268

March 6, 2020

COVID-19 and SEC Exemptive Relief

[32268]

March 6, 2020 TO: Chief Compliance Officer Committee
SEC Rules Committee
Small Funds Committee
Technology Committee
Transfer Agent Advisory Committee RE: COVID-19 and SEC Exemptive Relief

On March 4, 2020, the Securities and Exchange Commission ("SEC") issued an order providing that, subject to certain conditions, public companies and other persons required to file certain reports and other materials under the Securities Exchange Act of 1934 ("SEA") between March 1 and April 30 would be given an additional 45 days to make the filings due to COVID-19 challenges ("March 2020 Order").[\[1\]](#)

We are asking members to consider if there is any exemptive relief under the Investment Company Act of 1940 ("ICA") or other provisions of the federal securities needed for registered investment companies due to COVID-19 challenges.[\[2\]](#)

March 2020 Order

Under the March 2020 Order, the SEC provided conditional relief for an additional 45 days to make certain filings. Reports under the SEA during the specified period include, for example, Form 10-K filings for registrants with a calendar fiscal year, Form 10-Q filings for registrants with a non-calendar fiscal year, certain definitive proxy statements and reports on Form 8-K that become due during the time period. The March 2020 Order also applies to any Schedule 13G (or amendment thereto) that is due during the specified time period, but excludes from relief requirements to file any Schedule 13D (or amendment thereto). The March 2020 Order does not apply to beneficial ownership reports required under Section 16 of the SEA. There also is relief relating to SEA Sections 14(a) and (c) and Regulations 14A and 14C to furnish soliciting materials to any security holder where the security holder has a mailing address located in an area where, as a result of COVID-19, the common carrier has suspended the delivery service customarily used and the registrant or other person has made a good faith effort to furnish the soliciting materials to the security holder as otherwise required by the applicable rules.

Registrants relying on the March 2020 Order must furnish the SEC with a Form 8-K or Form 6-K, as applicable, by the original filing deadline stating: (i) that it is relying on the March 2020 Order, (ii) a brief description of the reasons why it could not file such report on a timely basis, (iii) the estimated date by which the report is expected to be filed, and (iv) if

material, a risk factor explaining the impact of COVID-19 on its business. Additionally, if the reason that the report cannot be filed timely relates to the inability of any person, other than the registrant, to furnish any required opinion, report or certification (e.g., an auditor's opinion on audited financial statements), the Form 8-K or Form 6-K must attach as an exhibit a statement signed by such person stating the specific reasons why such person is unable to furnish the required opinion, report or certification in time. The registrant must file the subject report no later than 45 days after the original filing deadline. The filing must disclose that the registrant is relying on the relief and state the reasons why the registrant could not file the document on a timely basis.

Registered Investment Companies

Given the challenges that may be presented for registered investment companies by COVID-19 in meeting certain obligations under the federal securities laws, **we are asking members to consider if there is any exemptive relief which may be needed for registered investment companies.** The SEC has asked us to discuss with them as soon as possible any exemptive relief which may be needed by the industry related to COVID-19 challenges.

As background in considering what exemptive relief could be appropriate in the context of registered investment companies, there was exemptive relief issued in 2018 for SEC registrants related to disruptions caused by Hurricane Florence, including lack of facilities and staff and disruptions in mail delivery ("Hurricane Order").^[3] The Hurricane Order specified relief related to certain filings under the SEA, including for proxy and information statements, as well as relief under the ICA related to the transmittal of annual and semi-annual reports. Further, there was relief related to transfer agent compliance with Sections 17A and 17(f) of the SEA. The Hurricane Order did not include the Form 8-K condition which is in the March 2020 Order. Instead, the Hurricane Order required that in any filing made under the relief that the registrant include a statement that it was relying on the relief and describe the reasons why, in good faith, it could not make the filing on a timely basis.

Please contact Susan Olson at 202-326-5813 or Tami Salmon at 202-326-5825 with any concerns or questions.

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endnotes

^[1] Order under Section 36 of the Securities Exchange Act of 1934 Granting Exemptions from Specified Provisions of the Exchange Act and Certain Rules, Rel. 34-88318, March 4, 2020, available at <https://www.sec.gov/rules/other/2020/34-88318.pdf>

^[2] The Division of Investment Management issued a statement on March 4, 2020 regarding in-person fund board meetings and Coronavirus Disease 2019 ("COVID-19"), available at <https://www.sec.gov/investment/staff-statement-im-covid-19>.

[3] SEC Order, Release 34-84210 and 40-33240, September 19, 2018 (“Hurricane Order”), available at <https://www.sec.gov/rules/other/2018/34-84210.pdf>

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