

MEMO# 32282

March 14, 2020

05 SEC Issues Coronavirus-Related Exemptive Relief for Funds and Investment Advisers

[32282]

March 14, 2020 TO: ICI Members SUBJECTS: Closed-End Funds

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Variable Insurance Products RE: SEC Issues Coronavirus-Related Exemptive Relief for Funds and Investment Advisers

On March 13, the Securities and Exchange Commission announced regulatory relief for funds and investment advisers whose operations may be affected by the coronavirus.

The temporary exemptive relief covers:

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

The guidance notes that the impacts of the coronavirus may delay or prevent funds and advisers operating in affected areas from meeting certain regulatory obligations due to restrictions on large gatherings, travel and access to facilities, the potential limited availability of personnel, and similar disruptions. The 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.

Importantly, the Commission also announced that the Commission and staff are continuing to assess impacts relating to the coronavirus on investors and market participants and will consider additional relief from other regulatory requirements. The Commission may extend the time period for relief, with any additional conditions it deems appropriate, or provide additional relief as circumstances warrant^[1].

Relief Related to the Investment Company Act of 1940

In-Person Fund Board Meetings [Relief Available from March 13 until June 15, 2020]

A registered management investment company or BDC (hereinafter referred to collectively as fund) and any investment adviser of or principal underwriter for such fund 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 this 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 fund, ratifies the action taken pursuant to this exemption by vote cast at the next in-person meeting.

Forms N-CEN and N-PORT Filing Requirements [Relief Available from March 13 to April 30, 2020]

According to the Order, any fund that is required to file Form N-CEN or Form N-PORT is temporarily exempt from filing the forms where the conditions described below are satisfied.

- a. The fund is unable to meet a filing deadline due to circumstances related to current or potential effects of COVID-19.
- b. The fund promptly notifies the Commission staff via email at IM-EmergencyRelief@sec.gov stating that it is relying on this Order; 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.
- c. The fund includes a statement on its public website briefly stating that it is relying on this Order and the reasons why it could not file its reports on a timely basis.
- d. The fund files Form N-CEN or Form N-PORT as soon as practicable, but not later than 45 days after the original due date.
- e. Any Form N-CEN or Form N-PORT filed pursuant to this Order must include a statement of the filer that it relied on this Order and the reasons why it was unable to file such report on a timely basis.

Fund and UIT Transmittal of Annual and Semi-Annual Shareholder Reports [Relief Available from March 13 to April 30, 2020]

Funds, including UITs, are exempt from having to transmit and file annual and semi-annual shareholder reports, provided they comply with the conditions described below.

- a. The fund is unable to prepare or transmit the report due to circumstances related to current or potential effects of COVID-19.
- b. The fund promptly notifies the staff via email at IMEmergencyRelief@sec.gov stating that it is relying on this Order; a brief description of the reasons why it could not transmit its report on a timely basis; and the estimated date by which it expects to transmit the report.
- c. The fund includes a statement on its public website briefly stating that it is relying on this Order and the reasons why it could not prepare and transmit its reports on a timely basis.
- d. The fund transmits the shareholder reports as soon as practicable, but not later than 45 days after the original due date and files the report within 10 days of its transmission to shareholders.

Closed-End Funds and BDCs Filing Form 23C-2 [Relief Available from March 13 to June 15, 2020]

A fund may file a Form N-23C-2 with the Commission fewer than 30 days prior to, including the same business day as, the company's call or redemption of securities of which it is the issuer where the conditions described below are satisfied.

- a. The fund promptly notifies Commission staff via email at IM-EmergencyRelief@sec.gov stating that it is relying on this Order; and a brief description of the reasons why it needs to file Form N-23C-2 fewer than 30 days in advance of the date set by the fund for calling or redeeming the securities of which it is the issuer.
- b. The fund ensures that the filing of Form N-23C-2 on an abbreviated time frame is permitted under relevant state law and the fund's governing documents.
- c. The fund files a Form N-23C-2 prior to any call or redemption of existing securities; the commencement of any offering of replacement securities; and providing notification to the existing shareholders whose securities are being called or redeemed.

Commission Statement Regarding Prospectus Delivery [Relief Available for prospectuses where delivery was originally required on March 13 until April 30, 2020, and the prospectus is delivered to investors as soon as practicable, but not later than 45 days after the date originally required]

The Order contains the following statement:

[T]he Commission takes the position that it would not provide a basis for a Commission 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 COVID-19 and delivery was due during the ... [period March 13 to April 30, 2020], provided that the sale of shares to the investor was not an initial purchase by the investor of shares of the registered fund.

In addition, it requires funds relying on this Commission position to comply with the conditions described below.

- a. The fund notifies Division of Investment Management staff via email at IMEmergencyRelief@sec.gov stating that it is relying on this Commission position; a brief description of the reasons why it or any other person required could not deliver the prospectus to investors on a timely basis; and the estimated date by which it expects the prospectus to be delivered
- b. The fund publishes on its public website that it intends to rely on the Commission position and briefly states the reasons why it could not deliver the prospectus on a timely basis; and
- c. The fund publishes its current prospectus on its public website.

Relief Related to Investment Advisers Act of 1940

Investment Advisers Filing Form ADV [Relief Available from March 13 to April 30, 2020]

The relief applies to investment advisers affected by the coronavirus. The Order requires an investment adviser to file Form ADV and deliver the brochure (or summary of material changes) and brochure supplement as soon as practicable, but not later than 45 days after the original due date for filing or delivery. Investment advisers relying on the Order are subject to similar conditions as those required of investment companies, as described above.

Dorothy M. Donohue
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endnotes

[1] The press release announcing the relief also includes Division of Investment Management contact information, which is *available at* <https://www.sec.gov/news/press-release/2020-63>. The press release also includes links to the orders granting relief, which can be accessed directly at <https://www.sec.gov/rules/other/2020/ic-33817.pdf> (order for investment companies); <https://www.sec.gov/rules/other/2020/ia-5463.pdf> (order for investment advisers)