

Securities Regulators' Rx for COVID-19

April 13, 2020

In response to the national outbreak of coronavirus disease 2019 (COVID-19), federal securities regulators have provided guidance and relief to the industry. Listed below are some of these actions that are most relevant to insurers and investment firms that provide securities-based products and services.

The listed regulatory actions are generally subject to terms and conditions that are in addition to any mentioned below and that should be reviewed for a complete understanding. For example, the relief from a legal or regulatory requirement is frequently subject to such conditions as providing some form of notice and explanation to the regulator and thereafter coming into compliance within some finite time frame.

Securities and Exchange Commission

Staff Guidance for Conducting Shareholder Meetings in Light of COVID-19 Concerns

<https://www.sec.gov/ocr/staff-guidance-conducting-annual-meetings-light-covid-19-concerns>

This guidance from the staff of the SEC's Division of Corporation Finance and the Division of Investment Management is being updated periodically and will be useful for registrants that are considering such things as the need to change the timing or manner of holding shareholder meetings or delivering related proxy materials.

Securities Exchange Act Release No. 88465, March 25, 2020

<https://www.sec.gov/rules/exorders/2020/34-88465.pdf>

- Exempts a registrant subject to the reporting requirements of Exchange Act section 13(a) or 15(d) from filing certain periodic disclosure materials if the due dates for such filings fall on or before July 1, 2020, and the registrant is unable to meet the due dates because of COVID-19.

- Exemption from the requirements under the Exchange Act to furnish proxy statements, information statements, annual reports, and other soliciting materials if the registrant's security holder has a mailing address where, as a result of COVID-19, the common carrier has suspended delivery service.

Division of Investment Management Staff Statement on Fund Board Meetings and Unforeseen or Emergency Circumstances Related to Coronavirus Disease 2019, March 4, 2020

<https://www.sec.gov/investment/staff-statement-im-covid-19>

- Division staff won't recommend enforcement action if mutual fund boards do not adhere to certain in-person voting requirements in the event of unforeseen or emergency circumstances, including current or potential consequences of COVID-19, affecting some or all of the directors in connection with board meetings held not later than June 15, 2020.

Investment Company Act Release No. 33824, March 25, 2020

<https://www.sec.gov/rules/other/2020/ic-33824.pdf>

- Exempts a mutual fund and any investment adviser or principal underwriter from certain in-person voting requirements at board meetings held not later than August 15, 2020. This is similar to the relief in the above-mentioned March 4 SEC staff statement, except that this is (a) exemptive (rather than merely no-action) relief and (b) subject to different conditions, including that any reliance on the exemption must be related to COVID-19 (and not any other unforeseen or emergency circumstances).
- Exempts a "registered fund" (which includes mutual funds and most SEC-registered insurance company separate accounts) from Form N-CEN or Form N-PORT filing requirements if the original due date is on or before June 30, 2020, and reliance on the exemption is related to COVID-19.
- Exempts a registered fund from the requirements to transmit annual or semiannual reports to security holders if the original due date is on or before June 30, 2020, and the inability to transmit the report is related to COVID-19.
- States that it would not be a basis for an enforcement action if the current prospectus of a registered fund is not timely delivered to existing investors in a registered fund due to COVID-19 if the original due date for delivery is on or before June 30, 2020. (This relief does not apply to delivery of prospectuses to new investors.)

Investment Advisers Act Release No. 5469, March 25, 2020

<https://www.sec.gov/rules/other/2020/ia-5469.pdf>

- Exempts a registered investment adviser from the requirements to file an amendment to Form ADV or to deliver Form ADV Part 2 to existing clients, to file reports on Form ADV, and to file Form PF if the original due date for filing/delivery is on or before June 30, 2020, and the inability to meet the deadline is related to COVID-19.

A more complete presentation of the SEC's responses to COVID-19 can be found at <https://www.sec.gov/seccoronavirus-covid-19-response>.

Financial Industry Regulatory Authority

Pandemic-Related Business Continuity Planning, Guidance and Regulatory Relief, Regulatory Notice 20-08, March 9, 2020

<https://www.finra.org/rules-guidance/notices/20-08>

- Encourages FINRA member firms to review their business continuity plans in light of COVID-19 and sets forth related guidance on topics such as remote offices or telework arrangements, cybersecurity, emergency office relocations, and communicating with customers and with FINRA.
- Encourages member firms experiencing difficulties in making timely regulatory filings such as FOCUS filings and “form of custody” filings to contact FINRA to seek extensions.
- States that FINRA has temporarily suspended the requirements to update Form U4 regarding the office of employment address and to submit branch office applications on Form BR in light of COVID-19.

Frequently Asked Questions Related to Regulatory Relief Due to the Coronavirus Pandemic

<https://www.finra.org/rules-guidance/guidance/faqs/coronavirus>

These FAQ, which FINRA is continuing to update, provide extensive additional guidance and numerous types of relief for member firms that qualify. The following are a few examples:

- A 30-day extension for member firms to file their annual reports related to fiscal years ending in January 2020 through March 2020.
- A 10-day extension for filing any FOCUS report related to a period ending in February 2020 through April 2020.
- An extended examination window, such that individuals who were designated to function as principals before February 2, 2020, now have until May 31, 2020, to pass the appropriate examination.

- An exemption from the requirement of obtaining an individual applicant’s manual signature on an initial or transfer Form U4.

A more complete presentation of FINRA’s responses to COVID-19 can be found at <https://www.finra.org/rules-guidance/key-topics/covid-19>.

Related Practices

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