

CLIENT ALERT

SEC and NFA Provide Special Relief and Guidance as a Result of the COVID-19 Outbreak

March 19, 2020

AUTHORS

Anne C. Choe | **Benjamin J. Haskin** | **Mark Proctor** | **P. Jay Spinola**
Deborah A. Tuchman | **Neesa Sood**

On Friday, March 13, 2020, the Securities and Exchange Commission (“SEC”) and its staff issued regulatory relief and guidance in light of the current and potential effects of the COVID-19 outbreak in the United States and its impact on the operations of investment advisers and investment funds. The measures taken by the SEC provide conditional temporary relief from some, but not all, filings required for registered investment companies (“Registered Funds”), business development companies (“BDCs”) and investment advisers, including advisers to unregistered funds. In addition, the measures provide some flexibility for shareholder meetings of Registered Funds.¹

For Registered Funds, the relief also provided an exemption that went beyond the relief provided by the SEC staff on March 4, 2020. The SEC granted an exemptive order (“1940 Act Order”) from specified board meeting and filing requirements and a no-action position related to prospectus delivery requirements under the Investment Company Act of 1940 (“1940 Act”).² For registered investment advisers and exempt reporting advisers, the SEC extended the deadline for filing Form ADV or amendments to the Form, as well as providing relief from custody rule requirements related to pooled investment vehicle audits, as well as other technical requirements under the Investment Advisers Act of 1940 (“Advisers

¹ See Staff Guidance for Conducting Annual Meetings in Light of COVID-19 Concerns (March 13, 2020), available [here](#).

² See Order Under Section 6(c) and Section 38(a) of the Investment Company Act of 1940 Granting Exemptions From Specified Provisions of the Investment Company Act and Certain Rules Thereunder; Commission Statement Regarding Prospectus Delivery, IC-33817 (March 13, 2020), available [here](#).

SEC and NFA Provide Special Relief and Guidance as a Result of the COVID-19 Outbreak

Act”).³ For individual Registered Funds, BDCs, investment advisers and exempt reporting advisers, the practical uses of the SEC relief will depend on the specific facts and circumstances of each entity.

In addition to the SEC relief, the National Futures Association (“NFA”) recently issued Notices to Members acknowledging that the COVID-19 outbreak may require the Commodity Futures Trading Commission (“CFTC”) and the NFA to adopt regulatory relief and providing specific guidance with respect to branch offices.⁴

This Memorandum is divided into the following sections:

- I. Registered Funds and BDCs
- II. Registered Investment Advisers and Exempt Reporting Advisers
- III. Commodity Pool Operators and Commodity Trading Advisors
- IV. Summary Chart of 1940 Act and Advisers Act Relief

I. Registered Funds and BDCs

In-Person Board Meeting Requirements. Through June 15, 2020, a Registered Fund or BDC and any investment adviser of or principal underwriter for the Registered Fund or BDC is exempt from the requirements under the 1940 Act that votes of the board of directors/trustees of the Registered Fund or BDC be cast *in person*, provided that the below conditions are met:⁵

³ See Order Under Section 206A of the Investment Advisers Act of 1940 Granting Exemptions From Specified Provisions of the Investment Advisers Act and Certain Rules Thereunder, IA-5463 (March 13, 2020), available [here](#).

⁴ See NFA Notice to Members 1-20-10, *Information on Coronavirus/COVID-19* (March 4, 2020), available [here](#); NFA Notice to Members 1-20-12, *Coronavirus Update – NFA Branch Office Requirements: Branch Offices* (March 13, 2020), available [here](#).

⁵ Section 15(c) of the 1940 Act requires that the terms of an investment advisory contract or principal underwriting agreement and any renewal thereof be approved by the vote of a majority of a Registered Fund’s directors/trustees who are not parties to the contract or agreement or “interested persons” (as defined in Section 2(a)(19) of the 1940 Act) of any such party, cast in person at a meeting. Section 32(a) requires that independent public accountants be selected by a vote, cast in person, of a majority of a Registered Fund’s directors/trustees who are not interested persons of the Registered Fund. Rule 12b-1(b)(2) under the 1940 Act requires that a plan regarding distribution-related payments pursuant to that Rule (“12b-1 Plan”) be approved by a vote of a Registered Fund’s board of directors/trustees, and of the directors/trustees who are not interested persons of the Registered Fund and have no direct or indirect financial interest in the operation of the 12b-1 Plan or in any agreements related to the 12b-1 Plan, cast in person at a meeting. Rule 15a-4(b)(2) under the 1940 Act requires that certain interim contracts be approved by vote in person of a Registered Fund’s board of directors/trustees, including a majority of non-interested directors/trustees. Section 59 of the 1940 Act provides that, among other sections, Sections 15(c) and 32(a) apply to a BDC to the same extent as a Registered Fund.

SEC and NFA Provide Special Relief and Guidance as a Result of the COVID-19 Outbreak

1. Reliance on the 1940 Act Order is necessary or appropriate due to circumstances related to current or potential effects of COVID-19;
2. The votes required to be cast at an in-person meeting are instead cast at a meeting in which directors/trustees may participate by any means of communication that allows all directors/trustees participating to hear each other simultaneously during the meeting; and
3. The board of directors/trustees, including a majority of the directors/trustees who are not interested persons of the Registered Fund or BDC, ratifies the action taken pursuant to this exemption by vote cast at the next in-person meeting.⁶

The 1940 Act Order goes a step further than the prior Staff Statement by conditionally exempting a Registered Fund or BDC from the applicable 1940 Act requirements. Unlike other aspects of the relief described below, reliance on the 1940 Act Order for an exemption from the in-person board meeting requirement does not require notification to the SEC or a statement on the public website of the Registered Fund or BDC. The 1940 Act Order also does not require the adoption of any new policies or procedures to take advantage of the exemptive relief. We would suggest clients verify that a fund's organizational documents provide sufficient flexibility to rely on the relief (as some forms of organizational documents imbed 1940 Act requirements or have more limited flexibility in the manner in which meetings are conducted).

Forms N-CEN and N-PORT Filing Requirements. For any Forms N-CEN and N-PORT⁷ filings for which the original filing due date is on or after March 13, 2020 but on or prior to April 30, 2020, a Registered Fund is temporarily exempt from the filing requirements, provided that the following conditions are met:

1. The Registered Fund is unable to meet a filing deadline due to circumstances related to current or potential effects of COVID-19;

⁶ This SEC exemptive relief from the in-person voting requirements of the 1940 Act follows the Division of Investment Management Staff Statement on Fund Board Meetings ("Staff Statement") made on March 4, 2020 in which the SEC staff broadened the no-action position in its February 2019 letter to the Independent Directors Council ("IDC Letter"). See Division of Investment Management Staff Statement on Fund Board Meetings and Unforeseen or Emergency Circumstances Related to Coronavirus Disease 2019 (COVID-19) (March 4, 2020), available [here](#); Letter to the IDC from the Chief Counsel's Office, Division of Investment Management (Feb. 28, 2019), available [here](#). The Staff Statement provided that the staff would not recommend enforcement action if the board of a Registered Fund or BDC does not adhere to certain in-person voting requirements in the event of unforeseen or emerging circumstances. The SEC staff broadened the no-action position in the IDC Letter to cover all approvals and renewals (including material changes) of contracts, plans or arrangements under Section 15(c) or Rules 12b-1(b)(2) or 15a-4(b)(2)(ii), as well as the selection of an independent public accountant pursuant to Section 32(a) where such accountant is not the same accountant as selected in the immediately preceding fiscal year.

⁷ Form N-CEN is the reporting form that is used for annual reports filed pursuant to Rule 30a-1 under the 1940 Act for Registered Funds. Form N-PORT is the reporting form that is used for monthly reports filed pursuant to Rule 30b1-9 under the 1940 Act of portfolio investments and other data for Registered Funds.

SEC and NFA Provide Special Relief and Guidance as a Result of the COVID-19 Outbreak

2. Any Registered Fund relying on the 1940 Act Order promptly notifies the SEC staff via email at IM-EmergencyRelief@sec.gov stating:
 - a. that it is relying on the 1940 Act Order;
 - b. a brief description of the reasons why it could not file its report on a timely basis; and
 - c. the estimated date by which it expects to file the report;
3. Any Registered Fund relying on the 1940 Act Order includes a statement on the applicable Registered Fund's public website briefly stating that it is relying on the 1940 Act Order and the reasons why it could not file its reports on a timely basis;
4. The Registered Fund required to file such Form N-CEN or Form N-PORT files such report as soon as practicable, but not later than 45 days after the original due date; and
5. Any Form N-CEN or Form N-PORT filed pursuant to the 1940 Act Order must include a statement of the filer that it relied on the 1940 Act Order and the reasons why it was unable to file such report on a timely basis.

Transmittal of Annual and Semi-Annual Reports to Investors. For any annual and semi-annual report filings for which the original filing due date is on or after March 13, 2020 but on or prior to April 30, 2020, a Registered Fund is temporarily exempt from the filing requirements of Section 30(e) of the 1940 Act and Rule 30e-1 thereunder to transmit annual and semi-annual reports to investors, provided that the following conditions are met:

1. The Registered Fund is unable to prepare or transmit the report due to circumstances related to current or potential effects of COVID-19;
2. Any Registered Fund relying on the 1940 Act Order promptly notifies the staff via email at IM-EmergencyRelief@sec.gov stating:
 - a. that it is relying on the 1940 Act Order;
 - b. a brief description of the reasons why it could not transmit its report on a timely basis; and
 - c. the estimated date by which it expects to transmit the report;
3. Any Registered Fund relying on the 1940 Act Order includes a statement on the applicable Registered Fund's public website briefly stating that it is relying on the 1940 Act Order and the reasons why it could not prepare and transmit its reports on a timely basis; and

SEC and NFA Provide Special Relief and Guidance as a Result of the COVID-19 Outbreak

4. The Registered Fund transmits the reports to shareholders 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.

Timing of Filing Form N-23C-2 for Closed-End Fund and BDC Share Repurchases. 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 23(c) and 63, as applicable, of the 1940 Act and Rule 23c-2 thereunder if such closed-end fund or BDC files a Form N-23C-2 (“Notice”) with the SEC 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, provided that any closed-end fund or BDC relying on the 1940 Act Order:

1. Promptly notifies the SEC staff via email at IM-EmergencyRelief@sec.gov stating:
 - a. that it is relying on the 1940 Act Order; and
 - b. a brief description of the reasons why it needs to file a Notice fewer than 30 days in advance of the date set by the closed-end fund or BDC for calling or redeeming the securities of which it is the issuer;
2. Ensures that the filing of the Notice on an abbreviated time frame is permitted under relevant state law and the closed-end fund or BDC’s governing documents; and
3. Files 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.

SEC Statement on Prospectus Delivery. The 1940 Act Order also states that the SEC takes the position that it would not provide a basis for an SEC enforcement action if a Registered Fund does not deliver to investors the current prospectus of the Registered Fund where (i) the prospectus is not able to be timely delivered because of circumstances related to COVID-19 and (ii) delivery was due during the limited period specified below, provided that the sale of shares to the investor was not an initial purchase by the investor of shares of the Registered Fund and the Registered Fund:

1. Notifies Division of Investment Management staff via email at IM-EmergencyRelief@sec.gov stating: (1) that it is relying on this SEC position; (2) 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 (3) the estimated date by which it expects the prospectus to be delivered;

SEC and NFA Provide Special Relief and Guidance as a Result of the COVID-19 Outbreak

2. Publishes on its public website that it intends to rely on the SEC position and briefly states the reasons why it could not deliver the prospectus on a timely basis;
3. Publishes its current prospectus on its public website; and
4. Delivers the prospectus to investors as soon as practicable, but not later than 45 days after the date originally required (if prospectus delivery was originally required on or after the date of the 1940 Act Order but on or prior to April 30, 2020).

Notably, the 1940 Act Order provides relief from the 1940 Act and the rules under the 1940 Act only and does not address requirements for the offering of securities registered under the Securities Act of 1933 (“Securities Act”). For example, the 1940 Act Order does not extend to annual or interim amendment requirements of a Registered Fund’s registration statement under the Securities Act. Further, the SEC has not provided any guidance as to what reasons would be sufficient to cause a delay in meeting a fund’s delivery obligations, and it is possible that the SEC will deem some reasons to be insufficient in hindsight.

Relief to Hold Virtual Shareholder Meetings. The ability to hold an annual meeting by means of remote communication (a “virtual” shareholder meeting) is primarily a function of state law corporate requirements and a company’s organizational documents (e.g., its charter and bylaws). Various states, including Delaware and Maryland, permit virtual annual meetings subject to certain conditions. When companies with securities registered under Section 12 of the Securities Exchange Act of 1934 solicit proxies from their shareholders in connection with an annual meeting, they are also required to comply with the federal proxy rules. These rules require, among other things, the delivery of proxy statements and proxy cards to shareholders.

Recognizing that the ability of investment company shareholders to meet in-person at an annual meeting may be disrupted as a result of public health concerns stemming from the COVID-19 outbreak, the SEC staff issued guidance to investment companies and other issuers related to holding virtual shareholder meetings. In the guidance, the staff stated its expectation that a Registered Fund or BDC seeking to hold a virtual or hybrid (i.e., an in-person meeting that also permits shareholder participation through electronic means) meeting “should notify its shareholders, intermediaries in the proxy process, and other market participants of such plans in a timely manner and disclose clear directions as to the logistical details of the ‘virtual’ or ‘hybrid’ meeting, including how shareholders can remotely access, participate in, and vote at such meeting.”

The guidance addresses situations where a company has (1) not previously filed and mailed its definitive proxy materials and (2) already mailed definitive proxy materials and wishes to make changes necessary to hold a virtual meeting. The staff stated that for companies that have not yet filed and sent their definitive proxy materials, the logistical details of how to access, participate in and vote at the virtual meeting should be disclosed in the definitive proxy statement and other

SEC and NFA Provide Special Relief and Guidance as a Result of the COVID-19 Outbreak

soliciting materials. Companies currently intending to hold an in-person meeting may wish to consider whether to include disclosure regarding the potential to change the date, time or location of the meeting due to COVID-19 concerns, including whether the meeting may be conducted as a virtual or hybrid meeting.

The staff explained that companies that have already filed and mailed their definitive proxy materials “would not need to mail additional soliciting materials (including new proxy cards) solely for the purpose of switching to a ‘virtual’ or ‘hybrid’ meeting” if they:

- issue a press release announcing such change;
- file the announcement as definitive additional soliciting material on EDGAR; and
- take all reasonable steps necessary to inform other intermediaries in the proxy process (such as any proxy service provider) and other relevant market participants (such as the appropriate national securities exchanges) of the change.

The staff noted that these actions should be taken promptly after a decision to change the meeting is made and sufficiently in advance of the meeting so the market is alerted to the change in a timely manner.

In deciding whether to hold a virtual or hybrid annual meeting, Registered Funds and BDCs should review their organizational documents to determine if they have authority to conduct such a meeting and the requirements that must be met under their documentation. Registered Funds and BDCs should also determine if there are any state law limitations or requirements when holding a virtual or hybrid meeting. Among other things, management may wish to consider how it will verify that each person present and authorized to vote at the meeting by means of remote communication is a shareholder or proxy holder. The means by which shareholders and proxy holders can be provided with a reasonable opportunity to participate in the meeting and to vote, including an opportunity to view or hear the proceedings of the meeting in real time, may also be a consideration.

II. Registered Investment Advisers and Exempt Reporting Advisers

The SEC announced that investment advisers whose operations may be affected by COVID-19 would be given an extension of the deadlines to:

- File amendments to Form ADV (in the case of registered investment advisers) or file reports on Form ADV (in the case of exempt reporting advisers);
- Deliver their brochure (or summary of material changes) and brochure supplement (in the case of registered advisers); and

SEC and NFA Provide Special Relief and Guidance as a Result of the COVID-19 Outbreak

- File Form PF (in the case of registered advisers to private funds).

The extension will last up to 45 days after the original due date of the filing or delivery; an adviser, however, relying on the extension must file or deliver the relevant document as soon as practicable. In addition, an investment adviser relying on the extension must meet the following conditions:

1. It must be unable to meet a filing deadline or delivery requirement due to circumstances related to the current or potential effects of COVID-19; and
2. It must provide the SEC via email at IARDLive@sec.gov and disclose on its public website (or if it does not have a public website, notify its clients and/or private fund investors of) the following information:
 - a. That it is relying on the extension;
 - b. A brief description of the reasons why it could not file or deliver its form on a timely basis; and
 - c. The estimated date by which it expects to file or deliver the Form.

It should be noted that investment advisers have voiced concerns about posting a statement on their websites regarding a delay in meeting their obligations due to COVID-19. In addition, the SEC has not provided any guidance as to what reasons would be sufficient to cause a delay in meeting delivery or filing obligations, and it is possible that the SEC will deem some reasons to be insufficient in hindsight.

Updated FAQs on Working Remotely and Custody Issues. The SEC said it will continue to monitor the COVID-19 situation and, if necessary, extend the relief with any additional conditions that are deemed appropriate, and may issue additional relief if necessary or appropriate. To date, the SEC staff has posted two updates to its Frequently Asked Questions on Form ADV and IARD and Rule 206(4)-2(b)(4) under the Advisers Act (“Custody Rule”) concerning COVID-19, and may post further updates as circumstances develop.⁸ One update clarifies that firms do not need to list the temporary addresses of employees working remotely in response to Item 1.F.⁹ The second update clarifies that with respect to an investment adviser who inadvertently receives securities from a client but is unable to access mail due to circumstances related to COVID-19, the SEC staff would not consider the adviser to have received client assets for purposes of the custody rule until firm personnel are able to access the mail or deliveries.¹⁰

⁸ See *Staff of the Division of Investment Management FAQs*, available [here](#).

⁹ See *id.*, FAQ to Form ADV: Item 1.F, posted March 16, 2020.

¹⁰ See *Staff Responses to Questions About the Custody Rule*, updated response to Question II.1, modified March 16, 2020, available [here](#).

SEC and NFA Provide Special Relief and Guidance as a Result of the COVID-19 Outbreak

Finally, some investment advisers who rely on the “audit provision” under the Custody Rule may have trouble distributing financial statements for pooled investment vehicles before the applicable 120-day deadline due to delays caused by the impact of COVID-19. We note that the SEC staff has noted in the past that an investment adviser would not be in violation of the Custody Rule’s audit provision if a pooled vehicle fails to distribute its audited financial statements within 120 days after the end of the fiscal year if (i) the adviser reasonably believed the financial statements would be distributed within the 120-day deadline and (ii) it failed to have them distributed in time under unforeseeable circumstances.¹¹

III. Commodity Pool Operators and Commodity Trading Advisors

In a March 4, 2020 Notice to Members, the NFA acknowledged that members may have concerns about being able to comply with certain regulatory requirements. The notice stated that both the CFTC and the NFA are monitoring the potential need for regulatory relief. The NFA also advised members to review their business continuity plans to confirm that the plans adequately cover pandemic-related situations.

Commodity Pool Annual Reports and CPO-PQR Filings. Commodity pool operators (“CPOs”) registered with the CFTC generally must file and distribute audited annual financial statement reports of a commodity pool within 90 days of the pool’s fiscal year-end. To date, neither the CFTC nor the NFA has issued specific relief with respect to COVID-19 related delays. CPOs that require additional time to file and distribute their pool annual reports may file for extensions under existing CFTC regulations. Under CFTC Regulation 4.22(f)(1), a CPO that cannot timely file and distribute a pool annual report without “substantial undue hardship” may, prior to the due date of the report, request up to a 90-day extension from the NFA. Requests for extensions longer than 90 days from the original due date must be submitted directly to the CFTC. Fund-of-fund CPOs may similarly file for extensions under CFTC Regulation 4.22(f)(2) to the extent they cannot obtain information necessary to prepare a pool’s financial statements. Extension requests filed with the NFA must be made through its EasyFile Extensions and Notice Filings system. Extension requests may not be submitted for CPO-PQR filings.

NFA Branch Office Requirements. A firm that is a member of the NFA (other than a swap dealer), including a CPO or commodity trading advisor, is required to list its branch offices on its Form 7-R. Branch offices are locations, other than the member’s main business address, where associated persons are engaged in activities that require registration. Each branch office must have a branch office manager. In a March 13, 2020 Notice to Members, the NFA acknowledged that due to COVID-19, certain branch office managers and registered associated persons (“APs”) would be working remotely at locations not listed as branch offices. The NFA confirmed that it will not pursue disciplinary action against a member that permits APs to temporarily work from locations that (i) are not listed as branch offices; or (ii) do not have a branch manager, provided that alternative supervisory procedures are implemented and documented.

¹¹ See *id.*, response to Question VI.9.

SEC and NFA Provide Special Relief and Guidance as a Result of the COVID-19 Outbreak

SUMMARY OF INVESTMENT COMPANY ACT OF 1940 RELIEF			
	Scope of Relief* and Time Period**	Conditions	Notification
<u>In-Person Board Meeting</u>	<p>Relief from in-person voting requirement by the Board of a Registered Fund or BDC as required by Sections 15(c) and 32(a) and Rules 12b-1(b)(2) and 15a-4(b)(2)(ii) under the 1940 Act.</p> <p><u>Time Period:</u> Effective March 13, 2020 to June 15, 2020</p>	<ul style="list-style-type: none"> • Reliance on this Order is necessary or appropriate due to circumstances related to current or potential effects of COVID-19; • 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 • The board of directors, including a majority of the directors who are not interested persons of the Registered Fund or BDC, ratifies the action taken pursuant to this exemption by vote cast at the next in-person meeting. 	N/A
<u>Form N-CEN and N-PORT Filings</u>	<p>Extension of deadline for the filing requirement with respect to Form N-CEN pursuant to Rule 30a-1 or Form N-PORT pursuant to Rule 30b1-9 under the 1940 Act.</p> <p><u>Time Period:</u> Where original filing due date is on or after March 13, 2020 but on or prior to April 30, 2020.</p>	<ul style="list-style-type: none"> • Any Registered Fund relying on the 1940 Act Order includes a statement on the Registered Fund's public website briefly stating that it is relying on the 1940 Act Order and the reasons why it could not file its reports on a timely basis; • The Registered Fund required to file such Form N-CEN or Form N-PORT files such report as soon as practicable, but not later than 45 days after the original due date; and • Form N-CEN or Form N-PORT filed pursuant to the 1940 Act Order 	<p>Promptly notify the SEC staff via email at IM-EmergencyRelief@sec.gov stating:</p> <ol style="list-style-type: none"> (1) That it is relying on this Order; (2) A brief description of the reasons why it could not file its report on a timely basis; and (3) The estimated date by which it expects to file the report.

SEC and NFA Provide Special Relief and Guidance as a Result of the COVID-19 Outbreak

SUMMARY OF INVESTMENT COMPANY ACT OF 1940 RELIEF			
	Scope of Relief* and Time Period**	Conditions	Notification
		<p>must include a statement of the filer that it relied on the 1940 Act Order and the reasons why it was unable to file such report on a timely basis.</p>	
<p><u>Transmittal of Reports to Shareholders</u></p>	<p>Extension of deadline to prepare or transmit annual and semi-annual reports to shareholders pursuant to Section 30(e) and Rule 30e-1 under the 1940 Act.</p> <p><u>Time Period:</u> Where original filing due date is on or after March 13, 2020 but on or prior to April 30, 2020.</p>	<ul style="list-style-type: none"> Includes a statement on the Registered Fund’s public website briefly stating that it is relying on the 1940 Act Order and the reasons why it could not prepare and transmit its reports on a timely basis; and The Registered Fund transmits the reports to shareholders 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. 	<p>Promptly notify the SEC staff via email at IM-EmergencyRelief@sec.gov stating:</p> <ol style="list-style-type: none"> (1) That it is relying on this Order; (2) A brief description of the reasons why it could not transmit its report on a timely basis; and (3) The estimated date by which it expects to transmit the report.
<p><u>Form N-23C-2 Filings</u></p>	<p>Ability for closed-end funds and BDCs (“Company”) to file a Form N-23C-2 (“Notice”) pursuant to Sections 23(c) and 63 and Rule 23c-2 under the 1940 Act with the SEC 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.</p> <p><u>Time Period:</u> Effective March 13, 2020 to June 15, 2020</p>	<ul style="list-style-type: none"> Ensure that the filing of the Notice on an abbreviated time frame is permitted under relevant state law and the Company’s governing documents; and Files 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. 	<p>Promptly notify SEC staff via email at IM-EmergencyRelief@sec.gov stating:</p> <ol style="list-style-type: none"> (1) That it is relying on this Order; and (2) A brief description of the reasons why it needs to file a Notice fewer than 30 days in advance of the date set by the Company for calling or redeeming the securities of which it is the issuer.

SEC and NFA Provide Special Relief and Guidance as a Result of the COVID-19 Outbreak

SUMMARY OF INVESTMENT COMPANY ACT OF 1940 RELIEF			
	Scope of Relief* and Time Period**	Conditions	Notification
<u>Prospectus Delivery</u>	<p>SEC will take a no-action position 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, provided that the sale of shares to the investor was not an initial purchase by the investor of shares of the registered fund.</p> <p><u>Time Period:</u> Delivery was originally required on or after March 13, 2020 but on or prior to April 30, 2020.</p>	<ul style="list-style-type: none"> • Publishes on its public website that it intends to rely on the SEC position and briefly states the reasons why it could not deliver the prospectus on a timely basis; • Publishes its current prospectus on its public website; and • The prospectus is delivered to investors as soon as practicable, but not later than 45 days after the date originally required. 	<p>Notifies SEC staff via email at IM-EmergencyRelief@sec.gov stating:</p> <ol style="list-style-type: none"> (1) That it is relying on this SEC position; (2) 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 (3) The estimated date by which it expects the prospectus to be delivered.
<u>Shareholder Meetings</u>	<p>An issuer that has already mailed and filed its definitive proxy materials can notify shareholders of a change in the date, time, or location of its annual meeting (including switching to a “virtual” or “hybrid” meeting if permitted under state law and governing documents) without mailing additional soliciting materials or amending its proxy materials.</p>	<ul style="list-style-type: none"> • Issues a press release announcing such change; and • Files the announcement as definitive additional soliciting material on EDGAR. • To the extent an issuer plans to conduct a “virtual” or “hybrid” meeting, the staff expects the issuer to notify its shareholders, intermediaries in the proxy process, and other market participants of such plans in a timely manner and disclose clear directions as to the logistical details of the “virtual” or “hybrid” meeting, including how shareholders can remotely access, participate in, and vote at such meeting. 	<p>Takes all reasonable steps necessary to inform other intermediaries in the proxy process (such as any proxy service provider) and other relevant market participants (such as the appropriate national securities exchanges) of such change.</p>

SEC and NFA Provide Special Relief and Guidance as a Result of the COVID-19 Outbreak

SUMMARY OF INVESTMENT ADVISERS ACT OF 1940 RELIEF			
	Scope of Relief* and Time Period**	Conditions	Notification Requirements
<u>Form ADV</u>	<p>Extension of deadline to file amendments to Form ADV (in the case of registered advisers) or file reports on Form ADV (in the case of exempt reporting advisers) under Rule 204-1 and Rule 204-4 under the Advisers Act.</p> <p><u>Time Period:</u> Form ADV original due date is on or after March 13, 2020 but on or prior to April 30, 2020.</p>	<p>Must file the Form ADV as soon as practicable, but not later than 45 days after the original due date for filing.</p>	<p>Promptly provide the SEC via email at IARDLive@sec.gov and disclose on its public website (or if it does not have a public website, promptly notifies its clients and/or private fund investors of) the following information:</p> <ol style="list-style-type: none"> (1) That it is relying on the 1940 Act Order; (2) A brief description of the reasons why it could not file or deliver its Form on a timely basis; and (3) The estimated date by which it expects to file or deliver the Form.
<u>Form ADV Part 2 - Brochure Delivery</u>	<p>Extension of deadline to deliver brochure (or summary of material changes) and brochure supplement under Rule 204-3(b)(2) and (b)(4) under the Advisers Act (in the case of registered advisers).</p> <p><u>Time Period:</u> Brochure (or summary of material changes) and brochure supplement original due date is on or after March 13, 2020 but on or prior to April 30, 2020.</p>	<p>Must deliver the brochure, brochure supplement or summary of material changes, as soon as practicable, but not later than 45 days after the original due date for delivery.</p>	<p>Same as above</p>
<u>Form PF</u>	<p>Extension of deadline to file Form PF (in the case of registered advisers to private funds) under Section 204(b)</p>	<p>Must file the Form PF as soon as practicable, but not later than 45 days after the original due date for filing.</p>	<p>Promptly notify the SEC via email at FormPF@sec.gov stating:</p> <ol style="list-style-type: none"> (1) That it is relying on the Order;

SEC and NFA Provide Special Relief and Guidance as a Result of the COVID-19 Outbreak

SUMMARY OF INVESTMENT ADVISERS ACT OF 1940 RELIEF			
	Scope of Relief* and Time Period**	Conditions	Notification Requirements
	of and Rule 204(b)-1 under the Advisers Act. <u>Time Period</u> : Form PF original due date is on or after March 13, 2020 but on or prior to April 30, 2020.		(2) A brief description of the reasons why it could not file its Form on a timely basis; and (3) The estimated date by which it expects to file the Form.

* The SEC said it will continue to monitor the situation and, if necessary, extend the relief with any additional conditions that are deemed appropriate, and may issue additional relief if necessary or appropriate.

** The time period for any or all of the relief may, if necessary, be extended with any additional conditions that are deemed appropriate, and the SEC may issue other relief as necessary or appropriate.

SEC and NFA Provide Special Relief and Guidance as a Result of the COVID-19 Outbreak

Willkie has multidisciplinary teams working with clients to address coronavirus-related matters, including, for example, contractual analyses, litigation, restructuring, financing, employee benefits, SEC and other corporate-related matters. Please click [here](#) to access our publications addressing issues raised by the coronavirus. For advice regarding the coronavirus, please do not hesitate to reach out to your primary Willkie contacts.

If you have any questions regarding this client alert, please contact the following attorneys or the Willkie attorney with whom you regularly work.

Anne C. Choe

202 303 1285

achoe@willkie.com

Benjamin J. Haskin

202 303 1124

bhaskin@willkie.com

Mark Proctor

212 728 8234

mproctor@willkie.com

P. Jay Spinola

212 728 8970

jspinola@willkie.com

Deborah A. Tuchman

212 728 8491

dtuchman@willkie.com

Neesa Sood

202 303 1232

nsood@willkie.com

Copyright © 2020 Willkie Farr & Gallagher LLP.

This alert is provided by Willkie Farr & Gallagher LLP and its affiliates for educational and informational purposes only and is not intended and should not be construed as legal advice. This alert may be considered advertising under applicable state laws.

Willkie Farr & Gallagher LLP is an international law firm with offices in New York, Washington, Houston, Palo Alto, San Francisco, Paris, London, Frankfurt, Brussels, Milan and Rome. The firm is headquartered at 787 Seventh Avenue, New York, NY 10019-6099. Our telephone number is (212) 728-8000 and our fax number is (212) 728-8111. Our website is located at www.willkie.com.