

# SEC Updates Investment Company Act Exemptive Order in Response to COVID-19

March 31, 2020

On March 25, 2020, the Securities and Exchange Commission (“SEC”) issued an exemptive order (the “Order”) superceding its March 13, 2020 exemptive order, which provided relief from certain provisions of the Investment Company Act of 1940, as amended (the “1940 Act”), to registered funds in light of the current outbreak of coronavirus disease 2019 (COVID-19). In each case, the relief is available if reliance on the Order is necessary or appropriate in light of the current or potential effects of COVID-19.

In extending the previous 1940 Act exemptive relief by two months and eliminating prior conditions requiring disclosure as to why the exemptive relief was being relied upon, the SEC recognized the evolving challenges market participants are facing in meeting the requirements of the federal securities laws.

## Relief from In-Person Meeting Requirements

The Order provides relief from the in-person meeting requirements under Sections 15(c) and 32(a) of the 1940 Act and Rules 12b-1(b)(2) and 15a-4(b)(2)(ii). These provisions relate to the approval or renewal of advisory and underwriting agreements, the approval or renewal of distribution plans, agreements or arrangements, and the appointment of auditors. The relief is available if (1) the votes cast for such matters are cast at a meeting in which directors may participate by any means that allows all directors to hear each other simultaneously during the meeting; and (2) the board, including a majority of independent directors, ratifies such actions at the next in-person meeting.

This relief is available for votes held from March 13, 2020 through August 15, 2020.

## Relief from Filing Obligations

The Order provides relief from the filing obligations of Form N-PORT and Form N-CEN, if the fund is unable to meet the filing deadline due to circumstances related to the effects of COVID-19. To rely on the Order, a registered fund must do the following:

- Promptly notify the SEC staff via e-mail at [IM-EmergencyRelief@sec.gov](mailto:IM-EmergencyRelief@sec.gov) that it is relying on the Order.
- Include a statement on its website that it is relying on the Order.
- File the reports within 45 days of the original due date.
- Include a statement in any Form N-CEN or Form N-PORT filed pursuant to the Order that such filing was made in reliance on the Order and the reasons why the fund was unable to make timely filings.

This relief applies to filings with original due dates from March 13, 2020 through June 30, 2020.

## Relief from Shareholder Report Delivery Obligations

Registered funds are temporarily exempt from the requirement to transmit annual and semi-annual reports to investors. To rely on the Order, a registered fund must do the following:

- Promptly notify the SEC staff via e-mail at [IM-EmergencyRelief@sec.gov](mailto:IM-EmergencyRelief@sec.gov) that it is relying on the Order.
- Provide website notification that the fund is relying on the Order.
- Transmit the reports to shareholders as soon as practicable but not later than 45 days after the original due date, and file the report within 10 days of transmission to shareholders.

This relief applies for reports with originally scheduled due dates from March 13, 2020 through June 30, 2020.

## Relief from Advance Notice Requirements of Rule 23c-2

For registered closed-end funds and business development companies, the Order provides temporary relief from the requirement to file notices of their intent to call or redeem securities at least 30 days in advance under Sections 23(c) and 63 of the 1940 Act and Rule 23c-2 thereunder. To rely on the Order, the fund must do the following:

- Promptly notify the SEC staff via e-mail at [IM-EmergencyRelief@sec.gov](mailto:IM-EmergencyRelief@sec.gov) of its intent to rely on the Order.
- Determine that the abbreviated notice is permitted under state law and the fund's governing documents.
- File a Form N-23C Notice containing all required information prior to (including the same business day as) (1) the call or redemption of securities, (2) the commencement of offering of replacement securities and (3) providing notification to existing shareholders.

This relief applies through August 15, 2020.

## Position Regarding Prospectus Delivery Requirements

In the same release adopting the updated Order, the SEC reiterated its position that it would not take enforcement action if a registered fund does not deliver to investors a current prospectus on the required date, provided the sale was not an initial purchase of fund shares, if the fund:

- Promptly notifies the SEC staff via e-mail at [IM-EmergencyRelief@sec.gov](mailto:IM-EmergencyRelief@sec.gov) stating that it is relying on the position.
- Provides website notification that it is relying on the position.
- Publishes its prospectus online.
- Delivers the prospectus as soon as practicable but not later than 45 days after the date originally required.

This relief applies to delivery required from March 13, 2020 through June 30, 2020.

If you have any questions regarding the topics discussed in this article, please contact **Maureen A. Miller** at +1 (312) 609 7699, **Deborah Bielicke Eades** at +1 (312) 609 7661, or any Vedder Price attorney with whom you have worked.