

# Alert

## Private Funds — Coronavirus Update for Fund Managers

March 10, 2020

*Business Continuity Planning.* SRZ hosted a webinar on March 5, 2020 addressing key considerations for business continuity planning as fund managers prepare for business interruptions associated with the coronavirus outbreak. (Please contact [events@srz.com](mailto:events@srz.com) if you would like the materials from that webinar.) As the situation continues to develop, fund managers will need to consider implementing aspects of their business continuity plan in light of the specific facts and circumstances (for example, in the past few days, New York State and local authorities have asked that businesses consider allowing employees to work from home “if they can” or find other measures, such as staggering commute times, to ease crowding on mass transit).

*Valuation Considerations.* With the quarter-end approaching, managers should consider how they will be handling valuations in this period of stress. In particular, managers with Level 2 and 3 assets should be planning for and seeking to mitigate uncertainty in the valuation process, such as the timing and extent of external opinions that are customarily received, and delays in general. Managers with books of exchange-traded instruments have to be prepared to address partial or complete trading suspensions, excessive volatility and fluctuating liquidity. Managers of vehicles that offer periodic liquidity should also assess how they will address full redemptions when initial returns of capital are subject to low audit holdback levels.

*Regulatory Reporting.* Managers should assume for now that standard regulatory filing deadlines (e.g., Form ADV, 13G, CPO-PQR) will remain in effect. If a manager seeks to claim a hardship exemption (which is not always an option), the planning for that needs to be done well in advance. Please note that the Form ADV annual update is due, for most U.S. fund managers, on March 30, 2020.

*Custody Rule Compliance.* Managers should discuss with their auditors the feasibility of complying with the Custody Rule’s requirement of 120-day delivery of financial statements<sup>1</sup> and with the 90-days following year-end requirements for audited pool financial statements under the NFA’s rules.

*Risk Factor Disclosure.* Managers should consider whether specific disclosures are warranted with respect to the risks associated with the coronavirus. The Form ADV Part 2A may be a useful mechanism for such disclosure because many managers will file their annual updated ADV on March 30, 2020 and provide it to their investors. SRZ has prepared disclosures for use by our clients.

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<sup>1</sup> On Feb. 19, 2020, the SEC and PCAOB issued a joint statement noting, among other things, their ongoing dialogue with senior leaders of the largest U.S. audit firms regarding the potential impact of the coronavirus outbreak on financial disclosures and audit quality for issuers, urging a process that is as robust as possible under the circumstances. However, they did not address the potential Custody Rule impact for private fund managers.

*Material Adverse Events.* Private equity managers and direct lending funds should consider whether the coronavirus outbreak may constitute a material adverse effect (“MAE”) under their agreements in deals that have not yet closed. For transactions still being negotiated, managers should consider whether they want to build in specific thresholds to establish at what point the coronavirus’ impact on a target company will constitute a MAE.

*SEC Relief for Registered Fund Boards.* On March 4, 2020, the staff of the SEC Division of Investment Management issued a statement providing conditional relief through June 15, 2020 for approvals typically required to be made by registered fund boards at in-person board meetings by allowing videoconferences, teleconferences or similar means in lieu of in-person meetings. An SRZ *Alert* regarding the staff statement can be found [here](#).

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If you have any questions concerning this *Alert*, please contact your attorney at Schulte Roth & Zabel or one of the authors.

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