ALERTS

Regulatory Update — Limited SEC Form ADV and PF Filing Relief Now Extended to June 30, 2020

March 30, 2020

On March 25, 2020, the Securities and Exchange Commission issued an order[1] ("Updated Order"), under the "public interest" powers in Section 206A of the Investment Advisers Act of 1940, expanding the coverage of the temporary relief extending the upcoming Form ADV and Form PF filing deadlines that was provided in an earlier March 13, 2020 order[2] ("Original Order").

This relief originally was limited to Form ADV and Form PF filing and delivery obligations that would otherwise fall due between March 13, 2020 and April 30, 2020, where the deadline cannot be met "due to circumstances related to current or potential effects of COVID-19." As a result of the Updated Order, that relief now extends to all Form ADV and Form PF filing obligations originally due *on or before June 30, 2020*. Therefore, Q1 2020 Form PF filings for private fund managers classified as "large hedge fund advisers" (due on May 30, 2020) are now covered by the relief.

Under the Updated Order, private fund managers are still required to notify the SEC (and in the case of Form ADV filings, also post on their website or notify clients) that they are relying on the Order; *however* the Updated Order *eliminates* the requirements in the Original Order to include (i) a brief description of the reasons why the manager could not file on a timely basis and (ii) the date on which the manager estimates that it will make the relevant filing or delivery. A simple statement that the manager is relying upon the Order is all that is required.

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Managers seeking to take advantage of this relief should note that:

- The time period for compliance remains the same — managers relying upon this relief must file or deliver the Form ADV or Form PF within 45 days after the original due date; and
- No relief was provided in respect of how current the regulatory assets under management figure on the Form ADV must be (the instructions provide that regulatory assets under management figures used in Form ADV amendments must be within 90 days prior to the filing date.

Private fund managers should also note that, subsequent to the Original Order but prior to the issuance of the Updated Order, the SEC's Office of Compliance Inspections and Examinations issued a statement confirming that "reliance on regulatory relief will not be a risk factor utilized in determining whether OCIE commences an examination. We encourage registrants to utilize available regulatory relief as needed."[3] However, managers that elect to utilize this relief should be prepared to explain in any examination that does commence why the manager's utilization of the relief does not indicate that its business continuity program is deficient.

As with the Original Order, private fund managers should consider the potential benefits and drawbacks of the Updated Order before electing to claim this relief.

Authored by Brian T. Daly and Marc E. Elovitz.

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

This Alert replaces an SRZ Alert published on March 15, 2020 titled Form ADV — Coronavirus Update for Private Fund Managers — Limited SEC Form ADV and Form PF Filing Relief.

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[1] Available at https://www.sec.gov/rules/other/2020/ia-5469.pdf.

[2] Available at https://www.sec.gov/rules/other/2020/ia-5463.pdf.

[3] OCIE Statement on Operations and Exams – Health, Safety, Investor Protection and Continued Operations are our Priorities, available at

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https://www.sec.gov/ocie/announcement/ocie-statement-operations-health-safety-investor-protection-and-continued.

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