ALERTS

Schedule 13/Section 16 — Coronavirus Update for Private Fund Managers — Limited SEC Filing Relief for Schedule 13G Filers and Unchanged Schedule 13D and Section 16 Obligations

March 15, 2020

On March 4, 2020, the U.S. Securities and Exchange Commission, under the "public interest" powers in Section 36 of the Securities Exchange Act of 1934, as amended, ("Exchange Act") issued an order[1] providing conditional regulatory relief to SEC registrants subject to the reporting requirements of the Exchange Act and persons required to make filings with respect to such registrants that are unable to make certain filings in a timely manner due to circumstances related to COVID-19. The order includes relief for filers required to file on Schedule 13G between March 1, 2020 and April 30, 2020.

Filers that are unable to meet the filing deadline applicable to a Schedule 13G filing or an amendment to a Schedule 13G filing during such period due to circumstances related to COVID-19:

- Will have an additional 45 days to file the applicable Schedule 13G filing; and
- Any Schedule 13G filer relying on the order must disclose when it files the applicable Schedule 13G that it relied on the order and state why it could not file the schedule on time.

Unlike other filing relief that the SEC has provided to investment advisers (See *SRZ Alert* "Coronavirus Update for Private Fund Managers —

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Limited SEC Form ADV and Form PF Filing Relief"[2]), a filer is not required to directly notify the SEC or the issuer that it will be making a delayed filing in reliance on the order or make any other public disclosure or posting stating that it is relying on the order.

The order does not offer relief from filing deadlines for Schedule 13D filings, amendments to Schedule 13D filings or Section 16 filings (Form 3 and Form 4). Those subject to Section 16 also must continue to keep the profit disgorgement rules under Section 16(b) in mind when transacting (including those considering purchasing at depressed prices).

Given the limited duration and the public disclosure requirement associated with this relief, private fund managers should carefully weigh the potential benefits and drawbacks of this relief in advance.

Authored by Eleazer Klein, Adriana Schwartz and Michael E. Swartz.

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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[1] Order Under Section 36 of the Securities Exchange Act of 1934 Granting Exemptions From Specified Provisions of the Exchange Act and Certain Rules Thereunder, Release No. 34-88318 (March 4, 2020), available here.

[2] "Coronavirus Update for Private Fund Managers — Limited SEC Form ADV and Form PF Filing Relief," *SRZ Alert*, March 15, 2020, available here.

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