ALERTS

SEC Update: New FAQs on ADV and Custody Rule Issues (COVID-19)

March 18, 2020

On Monday, March 16, 2020, the staff of the U.S. Securities and Exchange Commission's Division of Investment Management issued guidance in the form of two new frequently asked questions that relate to "work-from-home" arrangements resulting from the COVID-19 outbreak.

The new FAQs provide limited relief in certain circumstances where (1) advisers might otherwise be required to identify home offices as places of business on the Form ADV; and (2) advisers might otherwise be deemed to have inadvertently received client funds or securities at their offices even where they don't have access to their offices.

Form ADV FAQ. In the Form ADV FAQ, the staff stated that it would not recommend any enforcement actions against advisers that do not include, as an "office, other than your principal office and place of business, at which you conduct investment advisory business," remote teleworking locations employed on a temporary basis during the COVID-19 outbreak. The FAQ makes it clear that this relief is only available where employees are "temporarily" teleworking pursuant to the investment adviser's business continuity plan, but does not provide any additional guidance on the limits of the term "temporary." (It is clear, however, that teleworking arrangements that are permanent or otherwise undertaken outside of the investment adviser's business continuity plan are not covered by this guidance).

Custody Rule FAQ. The staff also updated Question II.1 of the Custody Rule FAQ to provide that investment advisers that inadvertently receive client funds or securities at their office location, and are unable to access mail and deliveries at their offices, will be considered to have received such securities on the date that they actually are able to access mail or deliveries at their office locations. Question II.1 already requires investment advisers to return inadvertently received client funds and securities, but this FAQ clarifies that the "three business day" clock begins to run when the investment adviser's personnel have access to office mail and deliveries. This relief is only available when the investment adviser's personnel are unable to access mail or deliveries as a result of the investment adviser's business continuity plan relating to COVID-19.

These two FAQs reflect a pattern of activity across a number of financial regulators and self-regulatory organizations, which is to respond to discrete issues and to provide practical, but focused, relief where appropriate. Private fund managers and other advisers should recognize that most of their obligations and deadlines remain in place and should continue to allocate resources to their ordinary course regulatory responsibilities.

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.

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