



# A Robinson+Cole Legal Update

## Coronavirus (COVID-19)

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## SEC Extends Temporary Relief for Public Companies and Registered Investment Advisers Affected by the Coronavirus (COVID-19)

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On March 25, 2020, the Securities and Exchange Commission (SEC) [announced](#) the release of new orders superseding and extending the relief periods provided in its respective previous orders relevant to publicly-traded companies located, or with significant operations, in the areas affected by the outbreak of the coronavirus disease 2019 (COVID-19) (see the previous [order](#) issued on March 4, 2020), and registered investment advisers (RIAs) whose operations are affected by COVID-19 (see the previous [order](#) issued on March 13, 2020).

### Relief for Public Companies

A [new SEC order](#) provides that, if certain conditions are satisfied, public companies subject to the reporting requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934 (the Exchange Act) and any person required to make any filings with respect to such a company (collectively, Filers) will have an additional 45 days to file certain disclosure reports (including annual reports and quarterly reports) that would otherwise have been due within the period from and including March 1, 2020 to July 1, 2020 (extended from April 30, 2020, as provided in the previous order).

The conditions specified by the SEC include, but are not limited to, the filing of a Form 8-K (or a Form 6-K, if applicable) with the SEC by the Filer by the later date of March 16 or the original filing deadline of the report, stating, among other things, that it is relying on the order and the reasons it could not file the report on a timely basis.

In connection with the relief, the SEC staff will take the following positions with respect to certain obligations under the Securities Act of 1933, as amended, and the Exchange Act:

- For purposes of eligibility to use Form S-3 (and for well-known seasoned issuer status), Form S-8 and Rule 144, a company relying on the Order will be considered current and timely in its filing requirements under the Exchange Act if it was current and timely as of the first day of the relief period and it files the required reports by the extended deadline.
- Companies that rely on the extension on filing annual reports or quarterly reports pursuant to the Order will be considered to have a due date 45 days after the filing deadline for the report. As such, those companies will be permitted to rely on Rule 12b-25 (which allows a 15-day extension for annual reports and a 5-day extension for quarterly reports) if they are unable to file the required reports on or before the extended deadline.

In addition, the order provides relief for public companies seeking to comply with the requirements of Sections 14(a) and (c) of the Exchange Act and Regulation 14A, Regulation 14C and Rule 14f-1

promulgated thereunder to furnish proxy/information statements and other materials to shareholders when mail delivery is not possible due to COVID-19, if certain conditions are satisfied, including that the shareholder has a mailing address located in an area affected by COVID-19, in which the common carrier has suspended delivery service of the type or class customarily used.

### **Relief for Registered Investment Advisers**

A [new SEC order](#) provides that RIAs affected by COVID-19 will have an additional 45 days to fulfill their filing or delivery obligations, as applicable, under certain provisions of the Investment Advisers Act of 1940 (Advisers Act) that would otherwise have been due within the period from and including March 13, 2020 to June 30, 2020 (extended from April 30, 2020, as provided in the previous order).

Pursuant to the order:

- RIAs are exempt from the requirements under Rule 204-1 of the Advisers Act to file an amendment to Form ADV, and under Rule 204-3(b)(2) and (b)(4) of the Advisers Act to deliver Form ADV Part 2 (or a summary of material changes) to existing clients;
- Exempt reporting advisers are exempt from the requirements under Rule 204-4 of the Advisers Act to file reports on Form ADV; and
- RIAs are exempt from the requirements under Section 204(b) of and Rule 204(b)-1 of the Advisers Act to file Form PF.

RIAs wishing to rely on the order must promptly notify the SEC staff, and disclose on their websites or notify their clients (if in connection with the obligations under Rule 204-3(b)(2) and (b)(4)), that they are relying on such order. The new order removes the conditions set forth in the previous order that an RIA that intends to rely upon the relief must (i) explain in its correspondence to the SEC staff and on its website, as applicable, why it is unable to meet a filing or delivery deadline and (ii) provide an estimated date of completing the filing or delivery.

### **Other SEC Relief**

On the same day, the SEC also issued another [new order](#) superseding and extending the relief provided under the Investment Company Act of 1940 by a [previous order](#) for registered management investment companies, closed-end investment companies, business development companies, and unit investment trusts that have been affected by the COVID-19 outbreak. Such order provides relief related to in-person board meetings as well as several filing requirements.

If necessary, the SEC may further extend the period for the above-mention reliefs, with any additional conditions it deems appropriate, or provide additional relief as circumstances warrant.

Companies affected by COVID-19 are encouraged to consult with their legal counsel with questions or issues of particular concern and actions to be taken.

### **Related Legal Updates:**

**3/24/2020**

[\*SEC Provides Temporary Relief for Registered Investment Advisers Affected by the Coronavirus \(COVID-19\)\*](#)

**3/6/2020**

[\*SEC's Conditional Regulatory Relief for Companies Affected by the Coronavirus \(COVID-19\)\*](#)

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