

Kevin S. Woodard | April 30, 2020

Paycheck Protection Program Disclosure Requirements: UPDATE

On April 27, 2020 the SEC updated its Division of Investment Management [Coronavirus \(COVID-19\) Response FAQ](#) and addressed a question pertinent to [our article](#) dated April 17, 2020. Question II.4 asked: "If I receive or have received a PPP loan, what are my regulatory reporting requirements under the Investment Advisers Act of 1940 to my firm's clients?" In response, the Division of Investment Management stated:

As a fiduciary under federal law, you must make full and fair disclosure to your clients of all material facts relating to the advisory relationship. If the circumstances leading you to seek a PPP loan or other type of financial assistance constitute material facts relating to your advisory relationship with clients, it is the staff's view that your firm should provide disclosure of, for example, the nature, amounts and effects of such assistance. If, for instance, you require such assistance to pay the salaries of your employees who are primarily responsible for performing advisory functions for your clients, it is the staff's view that you would need to disclose this fact. In addition, if your firm is experiencing conditions that are reasonably likely to impair its ability to meet contractual commitments to its clients, you may be required to disclose this financial condition in response to Item 18 (Financial Information) of Part 2A of Form ADV (brochure), or as part of Part 2A, Appendix 1 of Form ADV (wrap fee program brochure).

Thus, disclosure obligations may arise under either (1) the general fiduciary duty to disclose all material facts relating to your advisory relationship with clients or (2) in response to Item 18 (Financial Information) of Part 2A of Form ADV or Part 2A, Appendix 1 of Form ADV. In practice, these two obligations work together and the Division of Investment Management's FAQ response does not change the analysis presented in our earlier article, but it does provide some clarity.

If your firm's operations and delivery of investment advisory services to clients would have been materially affected without taking out a PPP loan (or other financial assistance), then you are in a financial condition requiring disclosure as a fiduciary and under Item 18 of your Brochure and/or Item 9 of your Wrap Fee Program Brochure. This does not mean that taking out a PPP loan in and of itself requires disclosure. Disclosure is only required in those instances when a firm would have been subject to a disclosure obligation but for the receipt of PPP loan proceeds.

Questions? Contact the DCS Team

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