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Coronavirus (COVID-19)



In recognition of the unique hardships presented by Novel Coronavirus/COVID-19, the SEC has issued a variety of relief orders across the securities industries. Many of these have come in the form of deadline exemptions or extensions. Our newsletter is focused on providing updates and information primarily concerning the investment advisory business. Therefore the SEC may have issued additional forms of relief affecting the securities industry we do not discuss here. Please visit the SEC's website to keep abreast of all securities-related announcements. Additionally, keep a lookout for future updates as these deadlines may change, depending on the course of the coronavirus and the SEC's response.

- 1) On March 25, pursuant to its authority under Section 206A of the Investment Advisers Act of 1940 the SEC issued Release No. IA-5469, Granting Exemptions from Specified Provisions of The Investment Advisers Act and Certain Rules Thereunder. See [New Advisers Act Order](#). This is an update to and supersedes the original March 13 [Advisers Act Order](#).

Under the new order, The SEC has granted a 45-day extension for (1) **filing Form ADV**; (2) **delivery of brochure, summary of material changes, or brochure supplement**; and (3) **filing Form PF**. This extends the period covered from due dates through April 30 to due dates through June 30, depending on your firm's fiscal year-end.

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In order to be eligible for such relief, an adviser must:

- (a) be unable to meet a filing deadline or delivery requirement due to circumstances related to current or potential effects of COVID-19;
- (b) **Form ADV and Related Materials:** (i) promptly notify SEC staff via email at IARDlive@SEC.gov and (ii) disclose on its public website (or if it does not have a website, notify its clients and/or private fund investors) it is relying on this order;
- (c) **Form PF:** promptly notify SEC staff via email at FormPF@sec.gov it is relying on this order; and
- (d) file or deliver as soon as practicable but not later than 45 days after the original due date.

This amended order no longer requires an adviser to provide a brief explanation for why the adviser is relying on the relief or to provide an estimate filing/delivery date.

- 2) On March 25, the SEC issued [Release No. 34-88465](#), superseding their original order from March 4, under Section 36 of the Securities Exchange Act of 1934, Modifying Exemptions from The Reporting and Proxy Delivery Requirements for Public Companies. This order pertains to Form 13F, Schedule 13G, and proxy solicitation materials. Pursuant to this order, the SEC has granted a 45-day extension, covering the time period March 1-July 1. To claim relief under this order:

- **Form 13F and Schedule 13G**—a filer must:
 - (a) be unable to meet a filing deadline due to circumstances related to COVID-19;
 - (b) file within 45 days of the original due date; and
 - (c) adviser must disclose in regards to its Form 13F or Schedule 13G that it is relying on this order and state the reasons why it could not timely file.
- **Proxy Solicitation Materials**—a person is exempt from requirement to furnish if:
 - (a) The security holder has a mailing address located in an area where the customary delivery service has been suspended due to COVID-19; and
 - (b) a good faith effort has been made to furnish the materials.

Note: this order does not apply to Schedule 13D, amendments to 13D, or Form 13H.

2020 Exam Priorities and Report

On January 7, the SEC's Office of Compliance Inspections and Examinations (OCIE) made their annual announcement regarding exam priorities for the 2020 year ([OCIE 2020 Examination Priorities](#)). OCIE has been expanding its examination coverage in recent years and looks to continue this trend. From a baseline in fiscal year 2014 of 10 percent investment adviser coverage, OCIE posted a 15 percent coverage rate of investment advisers in the fiscal year 2019. OCIE has managed to achieve this despite the continued population growth of investment advisers, as well as a 35-day lapse in appropriations. Priorities affecting investment advisers are outlined below.

What Will OCIE Be Looking at?

- **Protecting retail investors, including seniors and others saving for retirement.** In particular, examinations will have a heightened review of disclosures regarding fees, expenses, and conflicts of interest.
- **Information Security.** OCIE will place a continued focus on firms' cyber and other data security, discussed in greater detail later in this newsletter.
- **Financial Technology Innovation: Digital Assets and Electronic Investment Advice.** In light of the rapid pace of FINTECH innovation, OCIE will be placing a focus on firms' use of digital assets, as well as automated investment tools and platforms, otherwise known as "robo-advisers."

Who Will OCIE Be Looking at?

OCIE will focus its exams on investment advisers that have not yet been examined, which includes both new investment advisers and investment advisers that have been registered for several years without being examined. Therefore, firms falling into either of these categories should not be surprised if the SEC comes calling. Furthermore, although there is a focus on the protection of retail investors, OCIE has also announced it will be examining investment advisers advising private funds as well.

How Will Coronavirus Affect Exams?

Although many things have shut down in the face of the coronavirus and concerns over COVID-19, OCIE has come out and said it plans to continue examinations. However, in a recent March 20 announcement, they stated, "In light of health and safety concerns and other circumstances, OCIE has moved to conducting examinations off-site through correspondence, unless it is absolutely necessary to be onsite." See [OCIE Statement on Operations and Exams – Health, Safety, Investor Protection and Continued Operations are our Priorities](#) for more details.

New Rules in 2020: Regulation Best Interest and Form CRS

Reg BI and Form CRS are the most significant pieces of legislation passed in fiscal year 2019 that will impact broker-dealers, investment advisers, and OCIE going forward. The stated purpose of these requirements is to enhance the quality and transparency of retail investors' relationships with investment advisers and broker-dealers by bringing the legal requirements and mandated disclosures in line with reasonable investor expectations. In effect, this will require firms to make changes not only to their operations but also required disclosures, marketing materials, and compliance programs. To aid in the transition, the SEC has established an inter-Divisional Standards of Conduct Implementation Committee. Inquiries may be made by emailing IABDQuestions@sec.gov.

As a reminder, following are the important Form CRS implementation dates for investment advisers.

- Beginning May 1, 2020, and not later than June 30, 2020, investment advisers must file their initial Form CRS through the IARD system.
- Investment advisers must deliver their initial Form CRS to all retail investor clients by July 30, 2020.
- Beginning June 30, 2020, investment advisers should have fully implemented their Form CRS policies and procedures.

Cybersecurity and Resiliency Observations Report

On January 27, OCIE issued its [Cybersecurity and Resiliency Observations Report](#). The report is the result of OCIE's continued efforts to combat cybersecurity risk and provide best practices for maintaining and enhancing operational resiliency. In light of this report, firms should review their practices to determine how adequately they are protecting their clients' personal and financial information, as well as highlight any potential blind spots.

The following topics are detailed in the report:

(1) governance and risk management; (2) access rights and controls; (3) data loss prevention; (4) mobile security; (5) incident response and resiliency; (6) vendor management; and (7) training and awareness.

Business Continuity Plan

Now is a great time to review your Business Continuity Plan (BCP) and determine whether any additional procedures should be added or updated to address the current situation. As an essential business, your firm and its activities are not stopping due to the widespread stay-at-home orders. In fact, we have started to see the SEC reach out to firms requesting information related to firms' BCP and, in particular, sections related to pandemic response. Here are some questions you should be asking to determine if your firm is prepared. How would you prepare for continuity of operations given a significantly reduced workforce due to illness? Are there work-from-home policies already in place, and can they be scaled to include the majority of your employees?

If you've adopted a work-from-home policy, do all necessary employees have secure and reliable remote access (via VPNs and firewalls) to access vital systems such as webmail, client information, and other enterprise systems? Do your clients have the ability to reach you? Have remote meetings and conference call capabilities been established and tested?

If employees are required in the office, have you implemented social distancing policies? Are you providing hand sanitizers, masks, gloves, or other hygiene products? Have you considered increased sanitizing and disinfecting of facilities?

SEC Enforcement Actions

Jury Finds Investment Adviser and its Owner Liable for Fraud

In March, a jury returned a verdict in the SEC's favor against an investment adviser and its owner for defrauding their advisory clients by repeatedly purchasing securities, generating large sums of undisclosed compensation, and enriching themselves at their client's expense. The dually registered adviser and broker-dealer repeatedly invested advisory clients' funds in risky securities that generated hundreds of thousands of dollars in undisclosed mark-ups and resulted in more than \$1 million in losses for clients. According to the complaint, the defendant purchased securities for several years from underwriters at a discount to the public offering price and then, acting as a principal for its own account, re-sold those same securities to its advisory clients at higher prices without disclosing the mark-up. The court found, in some instances, these risky investments went against client's express objectives. Furthermore, the defendant, in its capacity as a broker-dealer, received undisclosed 12B-1 fees and the adviser failed to disclose this conflict of interest. A decision has yet to be published, but see a copy of the complaint [here](#).

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SEC Charges Wells Fargo In Connection With Investment Recommendation Practices

The SEC announced in February that they have settled charges against Wells Fargo Clearing Services and WFA Financial Network for failing to reasonably supervise and train investment advisers and registered representatives who recommended single-inverse ETF investments to retail investors and for lacking adequate compliance policies and procedures regarding the suitability of those recommendations. Wells Fargo has been ordered to pay a \$35 million penalty, to be distributed to harmed investors. According to the SEC's order, some Wells Fargo brokers and advisers did not fully grasp the risk of losses associated with such complex products and as a result made unsuitable recommendations to clients. Furthermore, a number of these clients were senior citizens and retirees with limited incomes and conservative-to-moderate risk profiles. Such an enforcement action by the SEC is another example of the types of issues OCIE will be prioritizing during exams, as discussed above. For a copy of the order, click [here](#).

A Vital Resource from Dinsmore Legal Counsel



COVID-19 Business Strategies Hub

In an ongoing effort to help business leaders sort through information regarding the COVID-19 pandemic, we have created a user-friendly hub with updates, insights, and best practices.

[VISIT AT DINSMORE.COM/COVID-19/](https://www.dinsmore.com/covid-19/)

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