Chapman and Cutler LLP

Chapman Client Alert

March 26, 2020 Current Issues Relevant to Our Clients

# Actions of the SEC and FINRA in Response to COVID-19

The Securities and Exchange Commission (*"SEC"*) has taken several actions to assist funds and advisers in light of the effects of COVID-19. Similarly, the Financial Industry Regulatory Authority (*"FINRA"*) also has taken several actions to provide guidance and certain regulatory relief to its member firms. Both the SEC and FINRA continue to monitor the effects of COVID-19 and additional relief and guidance may be issued. The SEC maintains an overview of its COVID-19 response, which is available here. The following is summary of some of these initiatives.

## No-Action Assurances from the In-Person Voting Requirements under the Investment Company Act of 1940 (the *"1940 Act"*)

On March 4, 2020, the staff of the Division of Investment Management provided no-action assurances if boards do not adhere to the in-person voting requirements of Sections 12(b), 15(c) and 32(a) of the 1940 Act and Rule 12b-1 or 15a-4(b)(2) thereunder for board meetings held between the date of the relief and June 15, 2020 (unless extended further by the staff) (the *"March Letter"*). The March Letter extended the relief the staff previously granted to fund boards on February 28, 2019 from the in-person requirement, in relevant part, when directors could not meet in person due to "unforeseen or emergency circumstances," provided that (i) no material changes to the relevant contract, plan and/or arrangement are proposed to be approved, or are approved, at the meeting and (ii) such directors ratify the applicable approval at the next in-person board meeting. In addition, for purposes of the approvals of the independent public accountant under Section 32(a), the independent public accountant must be the same as the prior fiscal year. (See Independent Directors Council (pub. avail. February 28, 2019) (the *"February Letter"*)).

In the February Letter, "unforeseen or emergency circumstances" included any circumstances that, "as determined by the board," could not have been reasonably foreseen or prevented and make it impossible or impracticable for directors to attend a meeting in person. Such circumstances would include, but not be limited to, illness or death, including of family members; weather events or natural disasters; acts of terrorism; and disruptions in travel that prevent some or all directors from attending the meeting in person. In the March Letter, the SEC staff extended the no-action position in the February Letter with respect to unforeseen or emergency circumstances to "cover all approvals and renewals (including material changes) of contracts, plans or arrangements under Section 15(c) or Rules 12b-1 or 15a-4(b)(2), as well as the selection of a fund's independent public accountant pursuant to Section 32(a) where such accountant is not the same accountant as selected in the immediately preceding fiscal year." The Division may extend this position as circumstances warrant (with additional conditions as appropriate). The March Letter requires the board to ratify these actions at the next in-person meeting. The SEC further invited advisers and funds to contact the staff with any concerns or need for relief or guidance in light of the current or potential effects of COVID-19.

## Exemptive Relief from Certain Provisions of the 1940 Act Regarding Certain Filing and Prospectus Delivery Requirements

In a series of orders, the SEC granted exemptive relief pursuant to Sections 6(c) and 38(a) of the 1940 Act (collectively, the *"Order"*) from the following provisions of the 1940 Act:

1. **Exemption from In-Person Voting Requirements.** Similar to the no-action assurances provided in the March Letter, the Order grants an exemption from the in-person meeting requirements of Sections 15(c) and 32(a) of the 1940 Act and Rules 12b-1(b)(2) and 15a-4(b)(2)(ii) thereunder for registered management investment companies or business development companies (each a *"BDC"*) for the period beginning on March 13, 2020 through August 15, 2020, subject to the following conditions:

   (a) reliance on the Order is necessary or appropriate due to circumstances related to current or potential effects of COVID-19;

(b) the votes required to be cast at an in-person meeting are instead cast at a meeting in which directors may participate by any means of communication that allows all directors participating to hear each other simultaneously during the meeting; and

(c) the board of directors, including a majority of the directors who are not interested persons of the registered management investment company or BDC, ratifies the action taken pursuant to this exemption by votes cast at the next in-person meeting.

2. **Delayed Filings for Form N-CEN and Form N-PORT.** Registered funds required to file Form N-CEN or Form N-PORT with due dates on or after March 13, 2020 but on or prior to June 30, 2020 are temporarily exempt from such form-filing requirements subject to the following conditions:

(a) the registered fund is unable to meet a filing deadline due to circumstances related to current or potential effects of COVID-19;

(b) any registered fund relying on the Order promptly notifies the SEC staff via email at IM-EmergencyRelief@sec.gov stating that it is relying on the Order;

(c) any registered fund relying on the Order includes a statement on the applicable registered fund's public website briefly stating that it is relying on the Order;

(d) the registered fund required to file such Form N-CEN or Form N-PORT files such report as soon as practicable, but not later than 45 days after the original due date; and

(e) any Form N-CEN or Form N-PORT filed pursuant to the Order must include a statement of the filer that it relied on the Order and the reasons why it was unable to file such report on a timely basis.

3. **Delayed Transmission of Shareholder Reports.** Registered management investment companies and registered unit investment companies required to transmit annual and semiannual reports for which the original due date is on or after March 13, 2020 but on or prior to June 30, 2020 are temporarily exempt from transmitting such reports subject to the following conditions:

(a) the registered fund is unable to prepare or transmit the report due to circumstances related to current or potential effects of COVID-19;

(b) any registered fund relying on the Order promptly notifies the staff via email at IM-EmergencyRelief@sec.gov stating that it is relying on the Order;

(c) any registered fund relying on the Order includes a statement on the applicable registered fund's public website briefly stating that it is relying on the Order; and

(d) the registered fund transmits the reports to shareholders as soon as practicable, but not later than 45 days after the original due date, and files the report within 10 days of its transmission to shareholders.

4. **Delayed Filings of FORM N-23C-2.** For the period from March 13, 2020 to August 15, 2020, closed-end funds and BDCs (collectively, the *"Companies"* and each a *"Company"*) are temporarily exempt from the requirement to file with the SEC notices of their intention to call or redeem securities at least 30 days in advance under Section 23(c) and Section 63, as applicable, and Rule 23c-2 thereunder if such Company files a Form N-23C-2 (the "*Notice*") with the SEC fewer than 30 days prior to, including the same business day as, the Company's call or redemption of securities of which it is the issuer subject to the following conditions:

(a) it promptly notifies SEC staff via email at IM-EmergencyReliev@sec.gov stating that it is relying on the Order.

(b) ensures that the filing of the Notice on an abbreviated time frame is permitted under relevant state law and the Company's governing documents; and

(c) files a Notice that contains all the information required by Rule 23c-2 prior to:

- any call or redemption of existing securities;
- the commencement of any offering of replacement securities; and
- providing notification to the existing shareholders whose securities are being called or redeemed.

5. **Delay in Delivering Certain Prospectuses.** The SEC will not use as a basis for an enforcement action if a registered fund is not able to timely deliver a prospectus to investors and delivery was due during the period set forth below, provided that the sale of shares to the investor was

not an initial purchase by the investor of shares of the registered fund and subject to the following conditions:

(a) the registered fund:

- notifies the Division of Investment Management staff via email at IM-EmergencyRelief@sec.gov stating that it is relying on this SEC position;
- publishes on its public website that it intends to rely on the SEC position; and
- publishes its current prospectus on its public website; and

(b) delivery was originally required on or after March 13, 2020 but on or prior to June 30, 2020 and the prospectus is delivered to investors as soon as practicable, but not later than 45 days after the date originally required.

The SEC notes in the Order that the time period for any or all relief may, if necessary, be extended with any additional conditions that are deemed appropriate and the SEC may issue other relief as necessary or appropriate.

## Exemptive Relief from Certain Provisions of the Investment Advisers Act of 1940 and Certain Rules Thereunder

In a series of orders, the SEC granted the following relief (the *"Adviser's Exemptive Order"*) for filing or delivery obligations, as applicable, for which the original due date is on or after March 13, 2020 but on or prior to June 30, 2020 (the *"Exemptive Period"*).

1. **Delay in Filing Amendments to Form ADV and Delivering Form ADV Part 2**. For the Exemptive Period, a registered investment adviser is exempt from the requirements (a) under Rule 204-1 of the Investment Advisers Act of 1940 (the *"Advisers Act"*) to file an amendment to Form ADV; and (b) under Rule 204-3(b)(2) and (b)(4) related to the delivery of Form ADV Part 2 (or a summary of material changes) to existing clients, subject to satisfying the conditions below.

2. **Delay in Filing Reports on Form ADV for Exempt Reporting Advisers**. For the Exemptive Period, an exempt reporting adviser is exempt from the requirements of Rule 204-4 under the Advisers Act to file reports on Form ADV, subject to satisfying the conditions below.

3. **Delay in Filing Form PF.** For the Exemptive Period, a registered investment adviser that is required by Section 204(b) of and Rule 204(b)-1 under the Advisers Act to file Form PF is exempt from those requirements, subject to satisfying the conditions below.

4. **Conditions**.

(a) The registered investment adviser or exempt reporting adviser is unable to meet a filing deadline or delivery requirement due to circumstances related to current or potential effects of COVID-19;

(b) The investment adviser relying on the Adviser's Exemptive Order with respect to the filing of Form ADV or delivery of its brochure, summary of material changes or brochure supplement required by Rule 204-3(b)(2) or (b)(4) promptly provides the SEC via email at IARDLive@sec.gov and discloses on its public website (or, if it does not have a public website, promptly notifies its clients and/or private fund investors of) that it is relying on the Adviser's Exemptive Order.

(c) Any investment adviser relying of the Adviser's Exemptive Order with respect to filing Form PF required by Rule 204(b)-1 must promptly notify the SEC via email at Form PF@sec.gov stating that it is relying on the Adviser's Exemptive Order.

(d) The investment adviser files the Form ADV or Form PF, as applicable, and delivers the brochure (or summary of material changes) and brochure supplement required by Rule 204-3(b)(2) and (b)(4) under the Advisers Act as soon as practicable, but not later than 45 days after the original due date for filing or delivery, as applicable.

## SEC Guidance for Conducting Annual Meetings

On March 13, 2020, the staff of the Division of Corporation Finance and the Division of Investment Management at the SEC issued guidance regarding the conduct of annual meetings in light of the concerns surrounding COVID-19. The staff noted that issuers are generally required to hold annual meetings of security holders under state law and those issuers with securities registered under the Securities Exchange Act of 1934, as amended (the *"Exchange Act"*) are required to comply with the federal proxy rules, including delivery requirements, when they solicit proxy authority from their shareholders in connection with an annual meeting. The SEC guidance addressed three main areas of focus relating to the conduct of annual meetings: (1) providing notice of a change in the date, time or location of an annual meeting; (2) conducting a "virtual" or "hybrid" annual meeting; and (3) providing shareholder

proponents an opportunity to present Rule 14a-8 proposals other than by attending the meeting and present in person.

1. **Changing the Date, Time or Location of an Annual Meeting.**

   (a) **For Issuers Who Have Already Mailed and Filed Definitive Proxy Materials**. To the extent that an issuer has already filed and mailed its definitive proxy materials, the staff has noted that it will take the position that the issuer can change the date, time or location of its annual meeting without having to mail additional soliciting materials or amending its proxy if it:

   - issues a press release announcing such change;
   - files the announcement as definitive additional soliciting material on EDGAR; and
   - takes all reasonable steps necessary to inform other intermediaries in the proxy process (such as any proxy service provider) and other relevant market participants (such as the appropriate national securities exchanges) of such change.

   The staff's expectation is that notice of changes be made promptly after the decision is made to make a change and sufficiently in advance of the meeting so that shareholders and the market are alerted to the changes in a timely manner.

   (b) **For Issuers Who Have Not Mailed and Filed Their Definitive Proxy Materials.** To the extent that issuers have not yet mailed or filed their definitive proxy materials, the staff notes that such issuers should consider whether to include disclosures regarding the possibility that the date, time or location of the annual meeting will change due to COVID-19. Such determination should be made based on each issuer's particular facts and circumstances and the reasonable likelihood of such a change.

2. **Conducting "Virtual" or "Hybrid" Annual Meetings.** The staff has been made aware that some issuers are contemplating holding "virtual" shareholder meetings through the internet or other electronic means or "hybrid" meetings where an in-person meeting would be combined with participation through electronic means. The staff highlighted that robust disclosures that facilitate informed shareholder voting are just as important for a "virtual" or "hybrid" meeting as with an in-person meeting. The staff noted that the ability to conduct a "virtual" or "hybrid" annual meeting is governed by state law where permitted and by the issuer's governing documents. For issuers who plan to conduct such meetings, the staff expects the issuer to notify shareholders, intermediaries in the proxy process and other market participants of such plans in a timely manner with clear directions as to the logistical details of the meetings, including how to access, participate in and vote at the meeting. If the issuer has already filed and mailed its definitive proxy materials, the issuer would not have to mail additional soliciting materials (including new proxy cards) solely for the purpose of switching to a "virtual" or "hybrid" meeting but should provide the notice in the manner set forth in the steps outlined above for changing the meeting date, time or location. For issuers that have not yet filed and delivered their definitive proxy materials, such disclosure should be in the definitive proxy statement and other soliciting materials.

3. **Presenting Shareholder Proposals.** Shareholders who have submitted proposals to be considered at an annual meeting under Rule 14a-8 are required to appear and present their proposals at the annual meeting under Rule 14a-8(h). In light of the difficulties shareholders may face in attending annual meetings in person, the staff's guidance "encourages issuers, to the extent feasible under state law, to provide shareholder proponents or their representatives with the ability to present their proposals through alternative means, such as by phone, during the 2020 proxy season." In addition, the staff says that to the extent a shareholder proponent or representative is not able to attend an annual meeting and present the proposal due to the inability to travel or other hardships related to COVID-19, the staff would consider such factors to constitute "good cause" under Rule 14a-8(h)(3) such that registrants would not be permitted to exclude a subsequent proposal by the shareholder for any meetings held during the following two calendar years for failure to appear and present its proposal in 2020.

Given the public health and safety concerns related to COVID-19, the staff has provided the above guidance to assist issuers, shareholders and other market participants affected by the virus. The staff's expectation is that registrants will cooperate with shareholders and other market participants in working through obstacles they may encounter. The staff highlighted that "[w]e strongly encourage all parties and intermediaries involved in the proxy voting process – including broker-dealers, transfer agents, and proxy service providers – to be flexible and work collaboratively with one another."

## SEC Permits Funds to Use Additional Funding and Other Tools to Manage their Portfolios

On March 23, 2020, the SEC issued an order granting additional flexibility for registered open-end funds (other than

money market funds) and certain insurance company separate accounts registered as unit investment trusts to obtain short-term funding. The relief provided in this order is limited to the period starting on March 23, 2020 through a date to be specified by the SEC upon at least two weeks' notice but not earlier than June 30, 2020.

1. **Ability of Open-End Funds or Separate Accounts to Borrow from Affiliated Persons.**

   The order provides (i) that such a registered open-end fund or separate account is exempt from Section 12(d)(3) of the 1940 Act to the extent necessary to permit it to borrow money from any affiliated person, or affiliated person of such affiliated person (*"Second Tier Affiliates"*), that is not itself a registered investment company, (ii) any such affiliated person or Second Tier Affiliate is exempt from Section 17(a) of the 1940 Act to the extent necessary to permit it make collateralized loans to such open-end fund or separate account and (iii) an open-end fund is exempt from Section 18(f) to the extent necessary to permit such open-end fund to borrow from such affiliate that is not a bank or registered investment company. The relief is conditioned on compliance with the following conditions:

   (a) The board of directors of the open-end fund, including a majority of the directors who are not interested persons of the open-end fund, or the insurance company on behalf of the separate account, reasonably determines that such borrowing: (i) is in the best interests of the registered investment company and its shareholders or unit holders; and (ii) will be for the purpose of satisfying shareholder redemptions; and

   (b) Prior to relying on the relief for the first time, the open-end fund or separate account notifies the SEC staff via email at IM-EmergencyRelief@sec.gov stating that it is relying on this order.

2. **Interfund Lending Arrangements for Registered Investment Companies.**

   The order provides that any registered investment company currently able to rely on an SEC order permitting an interfund lending or borrowing facility (an *"IFL Order"*) may, notwithstanding its existing IFL Order:

   (a) make loans through the facility in an aggregate amount that does not exceed 25 percent of its current net assets at the time of the loan, notwithstanding any lower limitation in the IFL Order;

   (b) borrow (if permitted under the existing IFL Order to be a borrower) or make loans through the facility for any term notwithstanding any conditions limiting the term of such loans, provided that (i) the term of any interfund loan made in reliance on the order does not extend beyond the expiration of this temporary relief, (ii) the board of directors of the registered investment company, including a majority of the directors who are not interested persons of the registered investment company, reasonably determines that the maximum term for interfund loans to be made in reliance on the order is appropriate, and (iii) the loans will remain callable and subject to early repayment on the terms described in the existing IFL Order; and

   (c) deviate from its fundamental policy with respect to lending or borrowing, as described in item 3 immediately below notwithstanding any condition of the IFL Order that incorporates limits set forth in its fundamental limitations or non-fundamental policies;

   provided that, in each case:

   (a) any loan under the facility is otherwise made in accordance with the terms and conditions of the existing IFL Order;

   (b) prior to relying on the relief for the first time, the registered investment company notifies the SEC staff via email at IM-EmergencyRelief@sec.gov stating that it is relying on this Order; and

   (c) prior to relying on the relief for the first time, the registered investment company discloses on its public website that it is relying on an SEC exemptive order that modifies the terms of its existing IFL Order to permit additional flexibility to provide or obtain short-term funding from its interfund lending and borrowing facility.

   For a registered investment company without an IFL Order, the order provides that such investment company may rely on any IFL Order issued within the last twelve months, provided that it must generally satisfy the conditions of such relief except (i) as permitted above for a registered investment company with an existing IFL Order, (ii) with respect to any prior disclosure requirements in the IFL Order, and (iii) money market funds may not participate as borrowers in the interfund facility. Such an investment company must also prior to relying on the relief for the first time, notify the SEC via email at IM-EmergencyRelief@sec.gov stating that it is relying on this order and identifying the recent IFL Order precedent that it is relying on. Finally, such an investment company must disclose on its public website that is relying on this order to utilize an

interfund lending and borrowing facility and, to the extent it files a prospectus supplement, registration statement or shareholder report while relying on the relief, update its disclosure with the material facts about its participation or intended participation in the facility.

3. **Ability of a Registered Open-End Investment Company to Deviate from its Fundamental Policy with Respect to Lending or Borrowing**

   The order provides that an open-end fund is exempt from Sections 13(a)(2) and 13(a)(3) of the 1940 Act to the extent necessary to permit it to enter into otherwise lawful lending or borrowing transactions that deviate from any relevant policy recited in its registration statement without prior shareholder approval. This relief is conditioned on the following:

   (a) The board of directors of the open-end fund, including a majority of the directors who are not interested persons of the investment company, reasonably determines that such lending or borrowing is in the best interests of the registered investment company and its shareholders;

   (b) The open-end fund promptly notifies its shareholders of the deviation by filing a prospectus supplement and including a statement on the applicable fund's public website; and

   (c) Prior to relying on the relief for the first time, the registered investment company notifies the SEC staff via email at IM-EmergencyRelief@sec.gov stating that it is relying on the order.

## FINRA Guidance and Relief to Member Firms Relating to COVID-19

1. **Pandemic-Related Business Continuity Planning, Guidance and Regulatory Relief.** On March 9, 2020, FINRA issued Regulatory Notice 20-08 (the *"Notice"*), which provides pandemic-related guidance and regulatory relief to member firms from certain requirements as summarized below. FINRA noted that as coronavirus-related risks decrease, member firms should expect to return to meeting any regulatory obligations for which relief has been provided and, when appropriate, FINRA will publish a notice announcing a termination date for the regulatory relief it has provided.

   (a) **Business Continuity Plans (each a *"BCP"*) and Emergency Contact Information.** In the Notice, FINRA reminded member firms that Rule 4370 requires a member firm to create, maintain, review at least annually and update upon any material change a BCP identifying procedures relating to an emergency or significant business disruption. FINRA further noted that BCPs should be reasonably designed to enable a member firm to meet its existing obligations to customers and to address existing relationships with other broker-dealers and counterparties. The Notice further reminded member firms that Rule 4370 requires each firm to provide (and promptly update upon any material change) to FINRA prescribed emergency contact information, including the designation of two emergency contact persons, both of whom must be associated persons of the member firm, with one contact being a member of senior management and a registered principal of the member firm and the second contact, if not a registered principal, being a member of senior management with knowledge of the firm's business operations.

   In light of COVID-19, FINRA encouraged firms to review their BCPs to consider pandemic preparedness and to contact their assigned FINRA Risk Monitoring Analyst to discuss the activation and implementation of their BCPs as well as discuss any issues they may be facing, such as disruptions to business operations.

   (b) **Remote Offices or Telework Arrangements.** In an effort to mitigate the impacts of the COVID-19 pandemic, FINRA has allowed a member firm to consider employing methods such as remote offices or telework arrangements for a broad range of employees. However, FINRA reminded member firms that with remote offices or telework arrangements, a member firm must implement ways to supervise its associated persons while working from such alternative or remote locations, even temporarily. With respect to the supervision obligations, a member firm's scheduled on-site inspections of branch offices may be temporarily postponed during the pandemic, with FINRA understanding that the ability to complete the annual regulatory obligation may need to be re-evaluated for 2020 depending on the duration and severity of the pandemic.

   FINRA also highlighted that member firms should consider the increased risk of cyber events as part of pandemic-related preparedness, particularly as the risk of cyber events may increase with the use of remote offices and telework arrangements. FINRA noted these steps may include: (1) ensuring that virtual private networks (VPNs) and other remote access systems are properly patched with available

security updates; (2) checking that system entitlements are current; (3) employing the use of multi-factor authentication for associated persons who access systems remotely; and (4) reminding associated persons of cyber risks through education and other exercises that promote heightened vigilance.

(c) **Temporary Suspension of Maintaining Updated Form U4 Information.** FINRA has temporarily suspended the requirement to maintain updated Form U4 information regarding office of employment addresses for registered persons who temporarily relocate due to COVID-19. In addition, member firms are not required to submit branch office applications on Form BR for any newly opened temporary office locations or space-sharing arrangements established as a result of recent events.

(d) **Emergency Office Relocation.** If a member firm relocates personnel to a temporary location that is not currently registered as a branch office or identified as a regular non-branch location, FINRA advises that the member firm should use its best efforts to provide written notification to its FINRA Risk Monitoring Analyst as soon as possible after establishing a new temporary office or space-sharing arrangement. This notification shall include information such as office address, names of each member firm involved, names of registered personnel, contact information, expected duration and whether sharing space with another entity. FINRA reminds member firms of the risks in sharing space (*e.g.,* customer privacy, information security) and to take steps to mitigate such risks. If customer calls are being rerouted, member firms must exercise diligence in validating the customer's identity and heighten supervision of the effected accounts.

(e) **Communicating with Customers**. FINRA recognized that member firms may experience an increase in customer calls during a pandemic and therefore encouraged firms to review their BCPs in communicating with customers and ensuring their access to funds and securities. If associated persons are unavailable to service their customers, member firms are encouraged to promptly place a notice on their websites indicating whom affected customers may contact regarding executing trades and their accounts and to access funds or securities.

(f) **Communicating with FINRA**. FINRA encouraged member firms to review their emergency contact information with FINRA. As most of FINRA's staff is working remotely due to the pandemic, if a member firm is unable to contact FINRA through its usual contact, FINRA advises it to call FINRA's call center at (301) 590-6500.

(g) **Regulatory Filings and Responses to Inquiries, Matters and Investigations**. In the event member firms have difficulty making timely regulatory filings or responding to regulatory inquiries or investigations and require extra time, FINRA advises them to contact their Risk Monitoring Analysts or the relevant FINRA department to seek extensions. Late fees may be waived depending on the circumstances. If data communications are disrupted, member firms should retain the relevant data until it can be transmitted to FINRA.

2. **Company-Related Action Submission under FINRA Rule 6490(c).** On March 12, 2020, FINRA issued Uniform Practice Advisory No. 06-20, which provided notice that it may deem a Company-Related Action submission as not "late" for purposes of assessing the late fees prescribed in FINRA Rule 6490(c) where, due to the COVID-19 outbreak, an issuer of a class of publicly traded securities is unable to provide notice sufficiently in advance of the record or effective date. Rule 6490 requires that issuers provide FINRA with notice of an SEA Rule 10b-17 Action in line with the timeframe set forth in SEA Rule 10b-17 and, similarly, requires that issuers provide FINRA with timely notice of an Other Company-Related Action at least 10 days prior to the effective date of the Company-Related Action.

3. **Arbitration Hearing Postponements.** In response to COVID-19, on March 16, 2020, FINRA has decided to administratively postpone all in-person arbitration and mediation proceedings scheduled through May 1, 2020. If a member firm has an in-person hearing or mediation session that is postponed as a result of this decision, the firm will be contacted by FINRA staff to reschedule or discuss remote scheduling options. In some cases, the original hearing date is being converted into a status and rescheduling call. This decision does not affect other case deadlines.

4. **Exam Cancellations.** FINRA has agreed to grant a courtesy cancellation of an upcoming exam appointment and/or extend the candidate's existing enrollment period to take a FINRA exam.

5. **Temporary Relief Relating to Rule 1010.** Rule 1010(c) requires that every initial and transfer electronic Form U4 filing be based on a manually signed Form U4 provided to the member firm or applicant for membership by the

individual on whose behalf the Form U4 is being filed. However, due to COVID-19, FINRA is providing temporary relief from this requirement as FINRA will permit member firms to electronically file an initial or transfer Form U4 without obtaining the individual applicant's manual signature if the firm:

- provides the applicant with a copy of the completed Form U4 prior to filing;
- obtains the applicant's written acknowledgment (which may be electronic) prior to filing that the information has been received and reviewed, and that the applicant agrees the content is accurate and complete;
- retains the written acknowledgment in accordance with SEC Rule 17a-4(e)(1) and makes it available promptly upon regulatory request; and
- obtains the applicant's manual signature as soon as practicable.

## SEC Relief from Item 1.F of Form ADV Part 1A

Item 1.F of Form ADV Part 1A requires information about a registered investment adviser's principal office and place of business and Section 1.F of Schedule D requires information about "each office, other than your principal office and place of business, at which you conduct investment advisory business." In light of the COVID-19 pandemic, the SEC announced on March 16, 2020 that it will not recommend enforcement action if an investment adviser does not update either Item 1.F of Part 1A or Section 1.F of Schedule D in order to list the employees' temporary teleworking addresses as long as the employees are temporarily teleworking as part of the firm's business continuity plan.

## Conclusion

In light of COVID-19, the SEC and FINRA have undertaken several actions to help funds, advisers and member firms, respectively, address the potential effects of the coronavirus on their operations. Both the SEC and FINRA have indicated a willingness to provide additional relief or guidance as may be necessary.

## For More Information

If you would like further information concerning the matters discussed in this Client Alert, please contact a member of the Investment Management Group or visit us online at chapman.com.

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