

# Memorandum

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## SEC Extends Temporary Conditional Relief to Investment Advisers Affected by the Coronavirus

March 30, 2020

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On March 25, 2020, the U.S. Securities and Exchange Commission (“SEC”) announced that it is extending the regulatory relief previously provided on March 13, 2020. This relief was granted to acknowledge that the coronavirus disease 2019 (“COVID-19”) may affect investment advisers’ operations and hamper their efforts to meet certain filing and delivery requirements, including those related to Form ADV.

### Key Takeaways

Many investment advisers are ready to file their Form ADV by the March 30 deadline and are unlikely to need to avail themselves of this relief. However, investment advisers that are behind schedule should plan on reaching out to counsel to discuss whether to seek this relief.

A long delay may prompt questions from investors regarding the effectiveness of an investment adviser’s business continuity plans. Therefore, investment advisers are advised to ensure that their Form ADV is filed as soon as practicable after the March 30 deadline.

### Overview of Relief Extension

The SEC’s [Order](#) extending the regulatory relief previously provided was issued under Section 206A of the Investment Advisers Act of 1940 (“Section 206A Order”). It provides investment advisers with additional time to meet certain filing and delivery requirements, if certain conditions are met. The Section 206A Order supersedes and extends the termination dates of the temporary relief provided by the SEC’s original March 13, 2020 order<sup>1</sup> (“Original Order”).

Under the Original Order, an investment adviser whose fiscal year ended on December 31, 2019 that was unable to file its annual amendment to Form ADV by March 30, 2020 due to the effects of COVID-19 was permitted to file the amendment as soon as practicable after March 30, 2020, but not later than 45 days after the original deadline (May 14, 2020), subject to certain SEC notification and website disclosure requirements.

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<sup>1</sup> For more information on the SEC’s March 13, 2020 order, see Simpson Thacher & Bartlett LLP, [SEC Provides Temporary Relief to Regulated Funds and Investment Advisers Affected by the Coronavirus](#), March 16, 2020.

### WHAT THE SECTION 206A ORDER DOES NOT CHANGE

The Section 206A Order does not remove the Original Order's requirements that an adviser intending to rely on this Form ADV filing relief must: (i) notify the SEC staff that it is relying on the relief; and (ii) disclose on its public website that it is relying on the relief.

The Section 206A Order also does not change the standard for advisers to rely on the relief, which continues to be those advisers that are "unable to" meet a deadline "due to circumstances related to current or potential effects of COVID-19." The Section 206A Order also does not modify the "as soon as practicable" standard for the filing to be completed.

### WHAT THE SECTION 206A ORDER DOES CHANGE

What the Section 206A Order does change is that an investment adviser that intends to rely on the relief no longer needs to: (i) include, in its email correspondence to SEC staff and on its website, a brief description of the reasons why it is unable to meet a filing deadline or delivery requirement; or (ii) provide an estimated date by which it expects to file or deliver its Form.

The Section 206A Order states that the time period for relief is limited to filing or delivery obligations which had an original due date between March 13, 2020 and June 30, 2020. Investment advisers are exempt from the following obligations, if certain conditions (discussed below) are satisfied:

- The requirements under the Advisers Act to file an amendment to Form ADV.
- The requirements related to the delivery of Form ADV Part 2 (or a summary of material changes) to existing clients.

### CONDITIONS THAT MUST BE MET TO QUALIFY FOR RELIEF

The Section 206A Order has extended the deadlines for certain obligations for which the original due date is between March 13, 2020 (the date of the Original Order) and June 30, 2020. The Original Order had extended the deadlines to April 30, 2020. Filing or delivery, as applicable, would still need to be made as soon as practicable but no later than 45 days after the original due date. Under the relief, investment advisers are exempt from the requirement to file an amendment to Form ADV and the requirement related to the delivery of Form ADV Part 2 to existing clients, and exempt reporting advisers ("ERAs") are exempt from the requirements to file reports on Form ADV, if the following conditions are met:

- The investment adviser or ERA is unable to meet a filing deadline or delivery requirement due to circumstances related to current or potential effects of COVID-19.
- The investment adviser relying on this relief 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 notifies the SEC staff via email ([IARDLive@sec.gov](mailto: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) that it is relying on this relief.

- Any investment adviser relying on this relief with respect to filing Form PF required by Rule 204(b)-1 must promptly notify the SEC staff via email ([FormPF@sec.gov](mailto:FormPF@sec.gov)) stating that it is relying on this relief.
- 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.

## Conclusion

The SEC divisions and offices that oversee investment advisers will continue to closely track developments. The SEC may provide extensions to the time period for the relief, with any additional conditions it deems appropriate, or provide additional relief as circumstances warrant. Investment advisers affected by COVID-19 are encouraged to email SEC staff ([IARDLive@sec.gov](mailto:IARDLive@sec.gov)) with questions.

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