



Insights: Alerts

SEC Issues Guidance for Investment Advisory Firms That Accepted PPP Loans

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Please note: The below information may require updating, including additional clarification, as the COVID-19 pandemic continues to develop. Please monitor our main [COVID-19 Task Force page](#) and/or your email for updates.

Many registered investment advisers (“RIAs”) have obtained loans guaranteed by the U.S. Small Business Administration (SBA) under the Paycheck Protection Program (“PPP”).¹ Applicants for PPP loans were required to make certain certifications to the SBA, including that “Current economic uncertainty makes [the] loan request necessary to support the ongoing operations of the Applicant.”² RIAs who have received PPP loans, and made these certifications, need to be mindful of their obligation to make full and fair disclosure to clients. Further, Item 18 on Form ADV Part 2A requires RIAs to disclose any financial condition that is reasonably likely to impair your ability to meet contractual commitments to clients.

The Securities Exchange Commission (“SEC”) recently released guidance addressing the disclosure obligations of RIAs that received PPP loans.³ As part of this guidance, the SEC clarified that “[i]f the circumstances leading [a RIA] to seek a PPP loan or other type of financial assistance constitute material facts relating to [its] advisory relationship with clients, it is the [SEC’s] view that [the RIA] should provide disclosure of... the nature, amounts and effects [of the PPP loan].”⁴ As an example, the SEC specifically noted that if the assistance was used to pay the salaries of employees responsible for providing advisory functions, or if the RIA accepted a PPP loan because it is experiencing conditions that would likely impair its ability to meet contractual commitments to clients, then these material facts must be disclosed in the RIA’s Form ADV Part 2A.⁵ RIAs that obtained PPP Loans should consider whether the circumstances that gave rise to their need for the PPP loan also give rise to a disclosure obligation generally or under Item 18 on Form ADV Part 2A. RIAs should be mindful of the requirement to notify clients of material changes to Form ADV Part 2, even where the changes do not necessarily trigger the delivery of an interim amendment.

If you have any questions regarding your disclosure obligations of in light of PPP loans, or with respect to COVID-19 generally, please feel free to contact us.

Footnotes

¹See U.S. Small Business Administration, Paycheck Protection Program, available at <https://www.sba.gov/funding-programs/loans/coronavirus-relief-options/paycheck-protection-program>. For more information on all things PPP and COVID-19, visit Kilpatrick Townsend & Stockton's COVID-19 task force resource, available at <https://www.kilpatricktownsend.com/COVID-19TF>.

²See PPP loan application.

³See SEC, Division of Investment Management Coronavirus (COVID-19) Response FAQs, available at <https://www.sec.gov/investment/covid-19-response-faq>.

⁴*Id.*

⁵*Id.*

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