



Insights: Alerts

An Overview of Key COVID-19 Relief Granted to Registered Mutual Funds by the SEC

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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.

In recent weeks, financial industry regulators have released a number of guidance responding to the current COVID-19 outbreak. With respect to open-end registered investment management companies (“Registered Mutual Funds”), in particular, the Securities and Exchange Commission (the “Commission”) and its staff (the “Staff”) have published several releases and announcements in response to COVID-19, including granting temporary relief from in-person board meetings, filing and delivery requirements, and financial transactions with affiliates. With guidance and relief coming on top of previous guidance and relief, we thought it would be helpful to summarize the current available relief provided to Registered Mutual Funds, including qualifying conditions and varying deadlines.

I. Relief from In-Person Voting Requirements Through August 15, 2020. The Commission issued an order on March 25, 2020 (the “Investment Company Order”)¹ that, among other things, temporarily exempts boards of Registered Mutual Funds, and their investment advisers and principal underwriters, from certain in-person voting requirements under the Investment Company Act of 1940 (the “1940 Act”) so long as certain conditions are met.²

A. Scope of Relief: The Investment Company Order applies to the approval of the following matters:

1. Investment advisory contracts under Section 15(c) of the 1940 Act;
2. Interim investment advisory contracts under Rule 15a-4(b)(2)(ii) under the 1940 Act;
3. Principal Underwriter contracts under Section 15(c) of the 1940 Act;
4. Independent auditors under Section 32(a) of the 1940 Act; and
5. Distribution plans under Rule 12b-1(b)(2) under the 1940 Act.³

B. Conditions of Relief: In order to rely on the relief under the Investment Company Order, a Registered Mutual Fund must meet the following conditions:

1. Foregoing the in-person vote must be necessary or appropriate due to circumstances related to the current or potential effects of COVID-19;⁴
2. The votes required to be cast at the in-person meeting must instead be cast at a meeting held by any means of communication that allows all directors participating to hear each other simultaneously during the meeting;⁵ and
3. The action must be ratified by the board of directors, including a majority of the independent directors, at its next in-person meeting.⁶

C. Timeline for Relief: This relief is available through August 15, 2020.⁷

II. Postponement of Form N-CEN and Form N-PORT Filings Requirements for up to 45 Days. The Investment Company Order allows Registered Mutual Funds to delay the filing of certain Forms N-CEN and N-PORT by up to 45 days after the required deadline so long as certain conditions are met.⁸

A. Scope of Relief: The Investment Company Order applies to Forms N-CEN and N-Port for which the original due date was on or after March 13, 2020, but on or prior to June 30, 2020.⁹

B. Conditions of Relief: In order to rely on the relief under the Investment Company Order, a Registered Mutual Fund must meet the following conditions:

1. Is unable to meet the filing deadline due to circumstances related to the current or potential effects of COVID-19;
2. Promptly notify the Staff, by email at IM-EmergencyRelief@sec.gov stating reliance on the Investment Company Order;
3. Include a statement on the Registered Mutual Fund's public website that briefly states that it is relying on the Investment Company Order;
4. File such Form N-CEN or N-PORT as soon as practicable, but in no event later than 45 days after its original due date; and
5. Include in the postponed Form N-CEN or N-PORT: (a) a statement that the Registered Mutual Fund relied on the Investment Company Order, and (b) the reasons why the Registered Mutual Fund was unable to submit a timely filing.¹⁰

C. Timeline for Relief: Limited to filings for which the original due date was on or after March 13, 2020, but on or prior to June 30, 2020.¹¹

III. Delay of Transmittal of Annual and Semi-Annual of Shareholder Reports for up to 45 Days. The Investment Company Order allows Registered Mutual Funds to delay the delivery of their annual and semi-annual reports to shareholders by up to 45 days after the required deadline and postpone the filing of such reports with the Commission until 10 days after the delayed transmission to shareholders so long as certain conditions are met.¹²

A. Scope of Relief: The Investment Company Order provides a temporary exemption from the requirements under Section 30(e) of the 1940 Act and Rule 30e-1 thereunder to the transmittal of annual and semi-annual reports to shareholders where the original transmittal due date was on or after March 13, 2020, but on or prior to June 30, 2020.¹³

B. Conditions for Relief: In order to rely on the relief under the Investment Company Order, a Registered Mutual Fund must meet the following conditions:

1. Is unable to prepare or transmit the annual or semi-annual report due to circumstances related to the current or potential effects of COVID-19;
2. Promptly notify the Staff, by email at IM-EmergencyRelief@sec.gov stating reliance on the Investment Company Order;
3. Include a statement on the Registered Mutual Fund's public website that briefly states that it is relying on the Investment Company Order;
4. Transmit the applicable report to the Registered Mutual Fund's shareholders as soon as practicable, but in no event later than 45 days after the original due date; and
5. File the applicable report with the Commission within 10 days of the transmission of the report to shareholders.¹⁴

C. Timeline for Relief: Limited to annual and semi-annual reports with transmittal obligations with an original due date that was on or after March 13, 2020, but on or prior to June 30, 2020.¹⁵

IV. Delay of Prospectus Delivery for up to 45 Days. The Commission took the position (but did not issue an order) in the Investment Company Order that it would not provide a basis for a Commission enforcement action if a Registered Mutual Fund postpones the delivery of its current prospectus to an investor by up to 45 days so long as certain conditions are met.¹⁶

A. Scope of Relief: The Investment Company Order applies to the delivery of current prospectuses to existing investors for which the original due date was on or after March 25, 2020, but on or prior to June 30, 2020.

B. Conditions for Relief: In order to rely on this relief under the Investment Company Order, a Registered Mutual Fund must meet the following conditions:

1. The prospectus could not be timely delivered because of circumstances related to COVID-19;
2. The sale of shares to the investor was not the investor's initial purchase of shares of the Registered Mutual Fund;
3. Notify the Staff, by email at IM-EmergencyRelief@sec.gov stating reliance on the Investment Company Order;
4. Publish on the Registered Mutual Fund's public website that it intends to rely on the Commission's position in the Investment Company Order;

5. Publish the Registered Mutual Fund's current prospectus on its public website; and

6. Deliver the Registered Mutual Fund's current prospectus to the investor as soon as practicable, but in no event later than 45 days after the original due date for delivery.¹⁷

C. Timeline for Relief: Limited to prospectuses with delivery obligations with an original due date that was on or after March 25, 2020, but on or prior to June 30, 2020.¹⁸

V. Access to Short-Term Funding from Affiliates Through At Least June 30, 2020. The Commission issued an order on March 23, 2020 (the "Funding Order")¹⁹ that, so long as certain conditions are met, enables Registered Mutual Funds to: (1) enter into borrowing transactions with certain affiliates (the "Affiliate Borrowing Relief"); (2) engage in interfund lending arrangements that modify the terms of existing interfund lending and borrowing facilities (the "IFL Modification Relief"); (3) engage in interfund lending arrangements despite never establishing an interfund lending and borrowing facility (the "IFL Reliance Relief"); and (4) engage in lending or borrowing transactions that deviate from the Registered Mutual Fund's fundamental policies with respect to lending and borrowing (the "Fundamental Policies Relief").

Affiliate Borrowing Relief

A. Scope of Relief: The Funding Order allows a Registered Mutual Fund to borrow money (including in the form of collateralized loans) from affiliated persons or their affiliates who are neither registered investment companies nor banks, and allow such affiliated persons or their affiliates to make loans to Registered Mutual Funds without violating Sections 12(d)(3), 17(a), or 18(f)(1) of the Investment Company Act.²⁰

B. Conditions for Relief: In order to rely on the Affiliate Borrowing Relief under the Funding Order, a Registered Mutual Fund must meet the following conditions:

1. The board of directors of the Registered Mutual Fund, including a majority of the independent directors, must reasonably determine that the borrowing: (i) is in the best interests of the Registered Mutual Fund and its shareholders; and (ii) will be used to satisfy shareholder redemptions; and
2. Before relying on the Affiliate Borrowing Relief for the first time, the Registered Mutual Fund must notify the Staff, by email at IM-EmergencyRelief@sec.gov stating reliance on the Funding Order.²¹

C. Timeline for Relief: The Commission will release a termination date for the relief provided by the Funding Order at a later date, but the relief will last until at least June 30, 2020.²²

IFL Modification Relief

A. Scope of Relief: The Funding Order also allows Registered Mutual Funds that are currently permitted, by order of the Commission, to have interfund lending and borrowing facilities (each such order, an "IFL Order") to take the following actions notwithstanding contrary terms of the IFL Orders:²³

1. Make loans through the interfund credit facility that do not exceed, in the aggregate, 25% of the Registered Mutual Fund's current net assets at the time of the loan, even if the existing IFL Order provides for a lower limitation;

2. Borrow (if the existing IFL Order permits the Registered Mutual Fund to be a borrower) or make loans through the interfund credit facility for any term, even if the existing IFL Order limits the terms of such loans, provided that: (a) the term of the loan made under the IFL Modification Relief does not extend beyond the termination date of the IFL Modification Relief; (b) the board of directors of the Registered Mutual Fund, including a majority of the independent directors, reasonably determines that the maximum term for loans made under the IFL Modification Relief is appropriate; and (c) loans made under the IFL Modification Relief remain callable and subject to early repayment on the terms described in the existing IFL Order; and

3. Engage in lending or borrowing (if the existing IFL Order permits the Registered Mutual Fund to be a borrower) transactions that deviate from the fundamental restrictions that are listed in the Registered Mutual Fund's registration statement and have been incorporated into the existing IFL Order.²⁴

B. Conditions for Relief: In order to rely on the IFL Modification Relief under the Funding Order, a Registered Mutual Fund must meet the following conditions:

1. Loans made under the interfund lending and borrowing facility otherwise comply with the terms of the existing IFL Order;

2. Prior to relying on the IFL Modification Relief for the first time, the Registered Mutual Fund notifies the Staff by email at IM-EmergencyRelief@sec.gov stating reliance on the Funding Order; and

3. Prior to relying on the IFL Modification Relief for the first time, the Registered Mutual Fund discloses on its public website that it is relying on a Commission exemptive order that modifies the terms of its IFL Order to permit additional flexibility to provide or obtain short-term funding from its interfund lending and borrowing facility.²⁵

C. Timeline for Relief: The Commission will release a termination date for the relief provided by the Funding Order at a later date, but the relief will last until at least June 30, 2020.²⁶

IFL Reliance Relief

A. Scope of Relief: A Registered Mutual Fund may establish an interfund lending and borrowing facility, despite never receiving its own IFL Order, by relying on an IFL Order issued to another registered investment fund by the Commission in the last twelve months.²⁷

B. Conditions for Relief: In order to rely on the IFL Reliance Relief under the Funding Order, a Registered Mutual Fund must meet the following conditions:

1. With certain exceptions,²⁸ the interfund lending and borrowing facility complies with the terms of the precedent IFL Order, as modified by the IFL Modification Relief described above;

2. A money market fund does not participate as a borrower in the interfund lending and borrowing facility;

3. Prior to relying on the IFL Reliance Relief for the first time, the Registered Mutual Fund notifies the Staff by email at IM-EmergencyRelief@sec.gov stating reliance on the Funding Order and identifying

which precedent IFL Order the Registered Mutual Fund is relying on;

4. Prior to relying on the IFL Reliance Relief for the first time, the Registered Mutual Fund discloses on its public website that it is relying on the Funding Order in order to use an interfund lending and borrowing facility; and

5. The Registered Mutual Fund updates its disclosure regarding participation or intended participation in the interfund lending and borrowing facility in any prospectus supplement, or new or amended registration statement or shareholder report, that is filed while it is relying on the IFL Modification Relief.²⁹

C. Timeline for Relief: The Commission will release a termination date for the relief provided by the Funding Order at a later date, but the relief will last until at least June 30, 2020.³⁰

Fundamental Policies Relief

A. Scope of Relief: The Funding Order also permits a Registered Mutual Fund to engage in lending or borrowing transactions that deviate from the fundamental policies listed in the Registered Mutual Fund's registration statements.³¹

B. Conditions for Relief: In order to rely on the Fundamental Policies Relief under the Funding Order, a Registered Mutual Fund must meet the following conditions:

1. The board of directors of the Registered Mutual Fund, including a majority of the independent directors, reasonably determines that the lending or borrowing is in the best interests of the Registered Mutual Fund and its shareholders;
2. The Registered Mutual Fund promptly files a prospectus supplement notifying its shareholders of the deviation;
3. The Registered Mutual Fund promptly notifies shareholders of the deviation on its public website; and
4. Prior to entering into such a transaction for the first time, the Registered Mutual Fund notifies the Staff by email at IM-EmergencyRelief@sec.gov stating reliance on the Funding Order.³²

C. Timeline for Relief: The Commission will release a termination date for the relief provided by the Funding Order at a later date, but the relief will last until at least June 30, 2020.³³

VI. Temporary Ability to Purchase Debt Securities from Affiliates. In a no-action letter issued on March 26, 2020 (the “No-Action Letter”),³⁴ the Staff stated that it would not recommend enforcement action against a Registered Mutual Fund (excluding exchange-traded funds and money market funds) that sells debt securities to an affiliate who is not a Registered Mutual Fund, or the affiliate who purchases the debt securities, so long as certain conditions are met.³⁵

A. Conditions for Relief: In order to rely on the relief described in the No-Action Letter, a Registered Mutual Fund must meet the following conditions:

1. The purchase price for the debt securities must be paid in cash;
2. The price for the purchased debt security must be its fair market value, determined pursuant to Section 2(a)(41) of the 1940 Act, provided that this price does not materially differ from the fair market value of the security as determined by a reliable third-party pricing service;
3. Subject to certain exceptions for purchasers that are banks,³⁶ if the purchaser of the debt security later sells the debt security for a higher price than that paid to the Registered Mutual Fund, the purchaser will promptly pay the Registered Mutual Fund an amount equal to the excess; and
4. Within one day of the purchase of the debt security, the Registered Mutual Fund must publicly post on its website, and inform the Staff by email at IM-EmergencyRelief@sec.gov, the name of the Registered Mutual Fund, the name of the purchaser, the debt security that was purchased (including any legal identifier), the amount purchased, and the total price paid.

B. Timeline for Relief: The relief provided in the No-Action Letter will terminate upon notice by the Staff, which has not yet occurred.

In most cases, the relief described above (collectively, the “COVID-19 Relief”) supplements or replaces prior relief granted to Registered Mutual Funds in light of the COVID-19 pandemic, expanding the relief previously provided or relaxing conditions.³⁷ For example, in a prior version of the Investment Company Order, conditions that required notification to the Commission and on a Registered Mutual Fund's website also required that such notification include an explanation of why the relief was necessary.³⁸ In addition, the timelines for relief provided under the Investment Company Order are longer than those provided under its predecessor order.³⁹

The Commission's Office of Compliance Inspections and Examinations (“OCIE”) has assured registrants that reliance on the Commission's COVID-19-related relief will not be considered a risk factor when it makes its determinations regarding whether to examine someone.⁴⁰ However, the Staff of the Commission's Division of Investment Management recently reminded Registered Mutual Funds that providing investors with updated information in prospectuses and underlying financial statements continues to be important despite current operational challenges.⁴¹ The Commission and the Staff have reminded registrants of their disclosure obligations on multiple other occasions as well.⁴² Thus, a Registered Mutual Fund whose operations have been so impacted as to necessitate relying on any of the COVID-19 Relief should also disclose to investors how COVID-19 has impacted its operations. Even Registered Mutual Funds that do not plan to rely on the COVID-19 Relief should examine and make disclosures regarding COVID-19's current and anticipated operational impacts and consider how they can update their risk factors in response to COVID-19.⁴³

As the nation's response to and expectations regarding the effects of COVID-19 continue to evolve, so will the Commission's response. For example, whether relief timelines will again be extended will likely depend on whether and for how long government stay-at-home orders and other restrictions remain in place. Thus, Registered Mutual Funds should carefully monitor new announcements and releases regarding COVID-19 from the Commission and the Staff.

If you have any questions about the Commission's COVID-19 Relief, or about the regulation of Registered Mutual Funds generally, please do not hesitate to contact us.

By the Investment Management and Broker-Dealer Team at Kilpatrick Townsend & Stockton

Footnotes

¹SEC Release No. IC-33824 (March 25, 2020), <https://www.sec.gov/rules/other/2020/ic-33824.pdf> (hereinafter, the “Investment Company Order”).

²*Id.* at 3-4.

³*Id.* at 3.

⁴Unlike other relief under the Investment Company Order, notifying the Staff is not required. *Id.* at 3-4.

⁵Presumably, this includes via teleconference or video conference using a variety of available platforms.

⁶Investment Company Order, *supra* note 1, at 3-4.

⁷*Id.* at 2.

⁸*Id.* at 4-5.

⁹*Id.* at 4.

¹⁰*Id.* at 4-5.

¹¹*Id.* at 3.

¹²*Id.* at 5-6.

¹³*Id.* at 5.

¹⁴*Id.* at 6.

¹⁵*Id.* at 3.

¹⁶*Id.* at 8-9.

¹⁷*Id.* at 8.

¹⁸*Id.*

¹⁹SEC Release No. IC-33821 (March 23, 2020), <https://www.sec.gov/rules/other/2020/ic-33821.pdf>.

²⁰*Id.* at 2-3.

²¹*Id.*

²²*Id.* at 2.

²³*Id.* at 3-5.

²⁴*Id.* at 4.

²⁵*Id.* at 4-5

²⁶*Id.* 2.

²⁷*Id.* at 5-6.

²⁸A Registered Mutual Fund relying on the IFL Reliance Relief: (1) may rely on the relief provided under the IFL Modification Relief subject to its terms and conditions, other than the notice requirement; and (2) need not satisfy the condition in the precedent IFL Order requiring prior disclosure in its registration statement or shareholder report. *Id.* at 5-6.

²⁹*Id.*

³⁰*Id.* at 2.

³¹*Id.* at 6-7.

³²*Id.*

³³*Id.* at 2.

³⁴Investment Company Institute, SEC No Action Letter (Mar. 26, 2020), <https://www.sec.gov/investment/investment-company-institute-032620-17a> (hereinafter, “No-Action Letter”).

³⁵For more information regarding the No-Action Letter, please see our blog post, *SEC Temporarily Permits Affiliated Purchases of Debt Securities From Mutual Funds*, available at <https://www.kilpatricktownsend.com/en/Blog/Investment-Management-and-Broker-Dealer/2020/4/SEC-Temporarily-Permits-Affiliated-Purchases-of-Debt-Securities-From-Mutual-Funds>.

³⁶Specifically, if the affiliated person is subject to Sections 23A and 23B of the Federal Reserve Act, this condition does not apply to the extent that it would otherwise conflict with: (a) applicable banking regulations, or (b) any applicable exemption from such regulations issued by the Board of Governors of the Federal Reserve System.

³⁷See, e.g., SEC Division of Investment Management Staff Statement on Fund Board Meetings and Unforeseen Emergency Circumstances Related to Coronavirus Disease 2019 (COVID-19) (March 4, 2020), <https://www.sec.gov/investment/staff-statement-im-covid-19>; SEC Release No. IC-33817 (March 13, 2020), <https://www.sec.gov/rules/other/2020/ic-33817.pdf> (hereinafter, “Prior Registered Funds Order”). The SEC’s Division of Investment Management has released a helpful FAQ that summarizes the most recent version of this guidance, as well as other COVID-19-related guidance for the SEC’s various registrants. SEC Division of Investment Management Coronavirus (COVID-19) Response FAQs (April 14, 2020), <https://www.sec.gov/investment/covid-19-response-faq>.

³⁸Prior Registered Funds Order, *supra* note 37; Investment Company Order, *supra* note 1, at 8.

³⁹Prior Registered Funds Order, *supra* note 37.

⁴⁰SEC Office of Compliance Inspections and Examinations, OCIE Statement on Operations and Exams – Health, Safety, Investor Protection and Continued Operations are our Priorities (March 23, 2020), <https://www.sec.gov/ocie/announcement/ocie-statement-operations-health-safety-investor-protection-and-continued>.

⁴¹SEC Division of Investment Management, Staff Statement on Importance of Delivering Timely and Material Information to Investment Company Investors (April 14, 2020), <https://www.sec.gov/investment/delivering-timely-material-information>.

⁴²For example, the Prior Registered Funds Order specifically reminded Registered Funds “to continue to evaluate their obligations to make materially accurate and complete disclosures in accordance with the federal securities laws.” Prior Registered Funds Order, *supra* note 37, at 4. Further, recent guidance issued by the SEC’s Division of Corporation Finance has encouraged public companies to assess how COVID-19 has impacted their financial condition and business operations, among other things, and to consider whether additional disclosure regarding COVID-19 is necessary in “management’s discussion and analysis, the business section, risk factors, legal proceedings, disclosure controls and procedures, internal control over financial reporting, and the financial statements.” SEC CF Disclosure Guidance: Topic No 9 (March 25, 2020), <https://www.sec.gov/corpfin/coronavirus-covid-19>.

⁴³See *id.*

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