



April 15, 2020

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**COMPILATION OF THE U.S. SECURITIES AND EXCHANGE
COMMISSION'S ADVISORIES IN RESPONSE TO COVID-19**

Table of Contents

| | |
|---|----|
| 1. Exemption from Certain Filing Requirements for Public Companies and Other Persons | 1 |
| 2. Staff Guidance for Conducting Annual Meeting in Light of COVID-19 Concerns (March 4, 2020 and updated April 7, 2020) | 3 |
| 3. Fund Board Meetings and Unforeseen or Emergency Circumstances Related to COVID-19 (March 4, 2020) | 4 |
| 4. Staff Statement Regarding Rule 302(b) of Regulation S-T in Light of COVID-19 Concerns (March 24, 2020) | 5 |
| 5. Relief for Registered Transfer Agents and Certain Other Persons Affected by COVID-19 | 6 |
| 6. Relief from Specified Provisions of the Investment Advisers Act and Certain Rules Thereunder..... | 8 |
| 7. Relief from Specified Provisions of the Investment Company Act of 1940 and Certain Rules Thereunder..... | 9 |
| 8. Staff Statement Regarding Requirements for Certain Paper Submissions in Light of COVID-19 Concerns (April 2, 2020) | 14 |

In light of COVID-19, the U.S. Securities and Exchange Commission (“SEC”) continues to provide updated guidance and issue limited orders on various market participants pertaining to certain federal securities rules and regulations. Below is a summary of several of those advisories issued thus far.

1. Exemption from Certain Filing Requirements for Public Companies and Other Persons

Summary

This order focuses primarily on publicly-traded companies and provides exemptions to periodic reporting requirements and the furnishing of materials to security holders. In order to avail itself of this exemption, a reporting issuer must certify that it cannot meet standard reporting deadlines because of COVID-19 and provide a detailed explanation as to why materials cannot be provided to their security holders along with an expected timeline for compliance.

Source

ORDER UNDER SECTION 36 OF THE SECURITIES EXCHANGE ACT OF 1934 GRANTING EXEMPTIONS FROM SPECIFIED PROVISIONS OF THE EXCHANGE ACT AND CERTAIN RULES THEREUNDER

Release No. 34-88318 / March 4, 2020

<https://www.sec.gov/rules/other/2020/34-88318.pdf>

ORDER UNDER SECTION 36 OF THE SECURITIES EXCHANGE ACT OF 1934 MODIFYING EXEMPTIONS FROM THE REPORTING AND PROXY DELIVERY REQUIREMENTS FOR PUBLIC COMPANIES

Release No. 34-88465 / March 25, 2020

<https://www.sec.gov/rules/exorders/2020/34-88465.pdf>

Description

From March 1, 2020 through July 1, 2020:

Filing Requirements for Registrants and Other Persons

A registrant (as defined in the Securities Exchange Act of 1934 (the “Exchange Act”) Rule 12b-2)¹ subject to the reporting requirements of Exchange Act Section 13(a) or 15(d), and any person required to make any filings with respect to such a registrant, is exempt from any requirement to file or furnish materials with the Commission under Exchange Act

¹ Rule 12b-2 defines a registrant as an issuer of securities with respect to which a registration statement or report is to be filed.

Sections 13(a), 13(f), 13(g), 14(a), 14(c), 14(f), and 15(d), Regulations 13A, 13D-G (except for those provisions mandating the filing of Schedule 13D or amendments to Schedule 13D), 14A, 14C and 15D, and Exchange Act Rules 13f-1 and 14f-1, as applicable, where the conditions below are satisfied.

(a) The registrant or any person required to make any filings with respect to such a registrant is unable to meet a filing deadline due to circumstances related to COVID-19;

(b) Any registrant relying on the Order furnishes to the Commission a Form 8-K or, if eligible, a Form 6-K by the later of March 16 or original filing deadline of the report stating:

(1) that it is relying on the Order;

(2) a brief description of the reasons why it could not file such report, schedule or form on a timely basis;

(3) the estimated date by which the report, schedule, or form is expected to be filed;

(4) if appropriate, a risk factor explaining, if material, the impact of COVID-19 on its business; and

(5) if the reason the subject report cannot be filed timely relates to the inability of any person, other than the registrant, to furnish any required opinion, report or certification, the Form 8-K or Form 6-K shall have attached as an exhibit a statement signed by such person stating the specific reasons why such person is unable to furnish the required opinion, report or certification on or before the date such report must be filed.

(c) The registrant or any person required to make any filings with respect to such a registrant files with the Commission any report, schedule, or form required to be filed no later than 45 days after the original due date; and

(d) In any report, schedule or form filed by the applicable deadline pursuant to paragraph (c) above, the registrant or any person required to make any filings with respect to such a registrant must disclose that it is relying on the Order and state the reasons why it could not file such report, schedule or form on a timely basis.

Furnishing of Proxy and Information Statements

A registrant or any other person is exempt from the requirements of the Exchange Act Sections 14(a) and (c), Regulations 14A and 14C, and Exchange Act Rule 14f-1, to furnish proxy statements, annual reports, and other soliciting materials, as applicable (the

“Soliciting Materials”), and to furnish information statements and annual reports, as applicable (the “Information Materials”), where the conditions below are satisfied.

(a) The registrant’s security holder has a mailing address located in an area where, as a result of COVID-19, the common carrier has suspended delivery service of the type or class customarily used by the registrant or other person making the solicitation; and

(b) The registrant or other person making a solicitation has made a good faith effort to furnish the Soliciting Materials to the security holder, as required by the rules applicable to the particular method of delivering Soliciting Materials to the security holder, or, in the case of Information Materials, the registrant has made a good faith effort to furnish the Information Materials to the security holder in accordance with the rules applicable to Information Materials.

2. Staff Guidance for Conducting Annual Meeting in Light of COVID-19 Concerns (March 4, 2020 and updated April 7, 2020)

Summary

This SEC Staff Guidance addresses changing the time, date and location of an annual meeting; virtual shareholder meetings; and presentation of shareholder proposals at such meetings. In sum, the Staff is allowing for modifications based on the circumstances.

Source

<https://www.sec.gov/ocr/staff-guidance-conducting-annual-meetings-light-covid-19-concerns>

Description

Changing the date, time or location of an annual meeting

This contemplates when an issuer has already mailed and filed its definitive proxy materials. The issuer can notify of the change without mailing additional soliciting materials or amending its proxy materials 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.

“Virtual” shareholder meetings

Virtual shareholder meetings are permitted as long as permitted by state law and the issuer’s governing documents. The issuer must notify its shareholders, intermediaries in the proxy process, and other market participants of such plans in a timely manner and disclose clear directions as to the logistical details of the virtual meeting. To the extent proxy materials have not been mailed, issuers should consider whether to include disclosures regarding the possibility that the date, time or location of the meeting will change due to COVID-19.

Presentation of Shareholder proposals

Exchange Act Rule 14a-8(h) requires shareholder proponents, or their representatives, to appear and present their proposals at the annual meeting. In light of the possible difficulties for shareholder proponents to attend annual meetings in person to present their proposals, the staff 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. Inability to travel given the current circumstances will be considered “good cause” for failure to attend and present the proposal.

3. Fund Board Meetings and Unforeseen or Emergency Circumstances Related to COVID-19 (March 4, 2020)

Summary

The Division of Investment Management understands that registered fund boards may have upcoming meetings that were planned anticipating in-person attendance and that boards may be concerned about potential travel restrictions or the ability of directors to travel. The staff first asserted that it would not recommend enforcement action to the Commission if a fund’s board did not conduct in-person voting due to the current COVID-19 situation. The staff then further extended this no-action position to cover all approvals and renewals (including material changes) of contracts, plans or arrangements under applicable regulations, as well as the selection of a fund’s independent accountant where the accountant is not the same accountant as selected in the immediately preceding fiscal year.

Source

<https://www.sec.gov/divisions/investment/noaction/2019/independent-directors-council-022819>

https://www.sec.gov/investment/staff-statement-im-covid-19#_edn1

Applicable Regulations

Sections 12(b), 15(c) or 32(a) of the Act or Rules 12b-1 or 15a-4(b)(2) of the Investment Company Act of 1940

4. Staff Statement Regarding Rule 302(b) of Regulation S-T in Light of COVID-19 Concerns (March 24, 2020)

Summary

This Staff Statement provides relief from the requirement for manually signing certain filings under the proper circumstances.

Source

<https://www.sec.gov/corpfin/announcement/staff-statement-regarding-rule-302b-regulation-s-t-light-covid-19-concerns>

Applicable Regulation

Rule 302(b) of Regulation S-T requires that each signatory to documents electronically filed with the Commission under the federal securities laws “manually sign a signature page or other document authenticating, acknowledging or otherwise adopting his or her signature that appears in typed form within the electronic filing.” Such documents must be executed before or at the time the electronic filing is made. Further, electronic filers must retain such documents for a period of five years and furnish copies to the Commission or its staff upon request. The Commission has stated that the requirement to retain the paper original of authentication documents was “established to provide a satisfactory means by which signatories could authenticate and adopt their typed signatures appearing on filed documents for evidentiary purposes.”

Description

The SEC advises that it “expects all persons and entities subject to Regulation S-T to comply with the requirements of Rule 302(b) to the fullest extent practicable based on their particular facts and circumstances.” (Emphasis added.) Recognizing the potential difficulty in compliance, the SEC advises it will not take enforcement action for a violation if:

- (a) a signatory retains a manually signed signature page or other document authenticating, acknowledging, or otherwise adopting his or her signature that appears in typed form within the electronic filing and provides such document, as promptly as reasonably practicable, to the filer for retention in the ordinary course pursuant to Rule 302(b);

(b) such document indicates the date and time when the signature was executed;
and

(c) the filer establishes and maintains policies and procedures governing this process.

Commentary

The SEC provides an example where if a signatory is teleworking, the signatory could execute a hard copy of the signature page remotely and hold that page for delivery to the filer upon his or her return to work.

5. Relief for Registered Transfer Agents and Certain Other Persons Affected by COVID-19

Summary

This Order provides relief for many of the technical requirements that apply to transfer agents and other regulated persons.

Source

ORDER UNDER SECTION 17A AND SECTION 36 OF THE SECURITIES EXCHANGE ACT OF 1934 GRANTING EXEMPTIONS FROM SPECIFIED PROVISIONS OF THE EXCHANGE ACT AND CERTAIN RULES THEREUNDER

Release No. 34-88448/ March 20, 2020

<https://www.sec.gov/rules/exorders/2020/34-88448.pdf>

Applicable Regulations

The Exchange Act Sections 17A and 17(f), as well as rules promulgated under Sections 17A and 17(f), contain requirements for registered transfer agents and other regulated persons relating to, among other things, processing securities transfers, safekeeping of investor and issuer funds and securities and maintaining records of investor ownership.

Description

Pursuant to the SEC's authority under Section 17A and Section 36, it provided temporary relief from certain regulatory provisions through an Order, if certain conditions are met.

The Order temporarily exempts, from March 16, 2020 to May 30, 2020:

(a) Transfer agents from the requirements of Section 17A and 17(f)(1) of the Exchange Act.

- 17A focuses on a national system of registration and regulation for clearance and settlement of securities transactions; and
- 17(f)(1) requires certain reporting requirements of national securities exchanges, members thereof, registered securities associations, brokers, dealers, municipal securities dealers, government securities brokers, government securities dealers, registered transfer agents, registered clearing agencies, participants therein, members of the Federal Reserve System, and banks whose deposits are insured by the Federal Deposit Insurance Corporation; and also requires that fingerprints of partners, directors, officers and employees of a national securities exchange, broker, dealer, registered transfer agent, registered clearing agency, registered securities information processor, national securities exchange, and national securities association be fingerprinted and submit those fingerprints to the Attorney General of the United States for identification and processing.

(b) Transfer agents from Rules 17Ad-1 through 17Ad-11, 17Ad-13 through 17Ad-20, and 17f-1

- Generally, this encapsulates recordkeeping and reporting requirements of such securities industry personnel.

(c) Transfer agents and other persons subject to the requirements of Section 17(f)(2) of the Exchange Act and Rule 17f-2 thereunder.

- Fingerprinting of securities industry personnel.

To qualify for the exemptions, the registrant or other person relying on the Order must provide written notification to the SEC by May 30, 2020 that:

- (1) The registrant or other person is relying on the Order;
- (2) A description of the specific Exempted Provisions (as such term is defined in the Order) the registrant or other person is unable to comply with and a statement of the reasons why, in good faith, the registrant or other person is unable to comply with such Exempted Provisions; and
- (3) If a transfer agent knows or believes that it has been unable to maintain the books and records it is required to maintain pursuant to Section 17A and the rules thereunder, a complete and accurate description of the type of books and records that were not maintained, the names of the issuers for whom such books and records were not maintained, the extent of the failure to maintain such books and records, and the steps taken to ameliorate any such failure to maintain such books and records.

Not Exempted

These Exempted Provisions do not include relief from Rule 17Ad-12 under the Exchange Act. Rule 17Ad-12 concerns the safeguarding of funds and securities in possession of a registered transfer agent.

The SEC's guidance here is that security holder or issuer funds that remain in the custody of the transfer agent should be maintained in a separate bank account held for the exclusive benefit of security holders until such funds are properly processed, transferred, or remitted.

6. Relief from Specified Provisions of the Investment Advisers Act and Certain Rules Thereunder

Summary

This provides relief for certain form filing requirements for registered investment advisers and exempt reporting advisers.

Source

ORDER UNDER SECTION 206A OF THE INVESTMENT ADVISERS ACT OF 1940 GRANTING EXEMPTIONS FROM SPECIFIED PROVISIONS OF THE INVESTMENT ADVISERS ACT AND CERTAIN RULES THEREUNDER

Release No. 5463 / March 13, 2020

<https://www.sec.gov/rules/other/2020/ia-5463.pdf>

Release No. IA-5469 / March 25, 2020

<https://www.sec.gov/rules/other/2020/ia-5469.pdf>

Applicable Regulations

Rule 204-4 of the Investment Advisers Act of 1940 requires registered investment advisers and exempt reporting advisers to file and deliver certain reports and disclosures on Form ADV.

Description

Subject to certain conditions, reporting advisers whose Form ADV filings are currently due between March 13, 2020 and April 30, 2020, may receive up to a forty-five day extension of time to file.

Conditions for exemption:

- (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 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 Commission 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) the following information:
 - (1) that it is relying on the Order;
 - (2) a brief description of the reasons why it could not file or deliver its Form on a timely basis; and
 - (3) the estimated date by which it expects to file or deliver the Form.
- (c) Any investment adviser relying on the Order with respect to filing Form PF required by Rule 204(b)-1 must promptly notify the Commission via email at FormPF@sec.gov stating:
 - (1) that it is relying on the Order;
 - (2) a brief description of the reasons why it could not file its Form on a timely basis; and
 - (3) the estimated date by which it expects to file the Form.
- (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.

7. Relief from Specified Provisions of the Investment Company Act of 1940 and Certain Rules Thereunder

Summary

Provides relief for certain in-person voting requirements for boards under the Investment Company Act of 1940.

Source

ORDER UNDER SECTION 6(c) AND SECTION 38(a) OF THE INVESTMENT COMPANY ACT OF 1940 GRANTING EXEMPTIONS FROM SPECIFIED PROVISIONS OF THE INVESTMENT COMPANY ACT AND CERTAIN RULES THEREUNDER; COMMISSION STATEMENT REGARDING PROSPECTUS DELIVERY

Release No. 33817 / March 13, 2020

<https://www.sec.gov/rules/other/2020/ic-33817.pdf>

Release No. IC-33824 / March 25, 2020

<https://www.sec.gov/rules/other/2020/ic-33824.pdf>

Applicable Regulations

Requirements under the Investment Company Act of 1940:

- (a) Board of directors of registered management investment companies and business development companies (“BDCs”) required to meet in-person for voting requirement under sections 15(c) and 32(a) of the Investment Company Act and Rules 12b-1(b)(2) and 15a-4(b)(2)(ii) under the Investment Company Act.
- (b) Registered management investment companies and unit investment trusts challenged with respect to preparing and transmitting:
 - (1) annual and semi-annual shareholder reports;
 - (2) timely filing Forms N-CEN and N-PORT;
 - (3) providing advance notice under Rule 23c-2 for calling or redeeming securities; and
 - (4) delivery of registered fund prospectuses.

Description

In-Person Board Meeting Requirements for Registered Management Investment Companies and BDCs

From March 13, 2020 through August 15, 2020:

A registered management investment company or BDC, and any investment adviser of or principal underwriter for such registered management investment company or BDC, is exempt from the in-voting requirements provided that:

- (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 vote cast at the next in-person meeting.

Forms N-CEN and N-PORT Filing Requirements

From March 13, 2020 through June 30, 2020:

A registered fund that is required to file Form N-CEN pursuant to Rule 30a-1 under the Investment Company Act, or Form N-PORT pursuant to Rule 30b1-9 under the Investment Company Act, is temporarily exempt from such form filing requirements where the following conditions are satisfied:

- (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 Commission staff via email at IM-EmergencyRelief@sec.gov stating:
 - (1) that it is relying on the Order;
 - (2) a brief description of the reasons why it could not file its report on a timely basis; and
 - (3) the estimated date by which it expects to file the report.
- (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 the reasons why it could not file its reports on a timely basis;
- (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.

Transmittal of Annual and Semi-Annual Reports to Investors required by the Investment Company Act and the Rules thereunder

From March 15, 2020 through June 30, 2020:

A registered management investment company is temporarily exempt from the requirements of Section 30(e) of the Investment Company Act and Rule 30e-1 thereunder to transmit annual and semi-annual reports to investors where the conditions below are satisfied.

A registered unit investment trust is temporarily exempt from the requirements of Section 30(e) of the Investment Company Act and Rule 30e-2 thereunder to transmit annual and semi-annual reports to unitholders where the conditions below are satisfied.

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 IMEmergencyRelief@sec.gov stating:
- (1) that it is relying on the Order;
 - (2) a brief description of the reasons why it could not transmit its report on a timely basis; and
 - (3) the estimated date by which it expects to transmit the report.
- (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 the reasons why it could not prepare and transmit its reports on a timely basis; 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.

Timing of Filing Form N-23-C-2 with the Commission

From March 13, 2020 through August 15, 2020:

Closed-end funds and BDCs are temporarily exempt from the requirement to file with the Commission notices of their intention to call or redeem securities at least 30 days in advance under Sections 23(c) and 63, as applicable, of the Investment Company Act and Rule 23c-2 thereunder if such company files a Form N-23C-2 (“Notice”) with the Commission 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 where the following conditions are satisfied:

The closed-end fund or BDC (“Company”) relying on the Order:

- (a) promptly notifies Commission staff via email at IM-EmergencyRelief@sec.gov stating: that it is relying on the Order; and a brief description of the reasons why it needs to file a Notice fewer than 30 days in advance of the date set by the Company for calling or redeeming the securities of which it is the issuer;
- (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;
- (c) files a Notice that contains all the information required by Rule 23c-2 prior to:
 - (1) any call or redemption of existing securities;
 - (2) the commencement of any offering of replacement securities; and
 - (3) providing notification to the existing shareholders whose securities are being called or redeemed.

Additional SEC Statement

In this release, the SEC also states that a registered fund would not be subject to an enforcement action if it does not deliver to investors the current prospectus of the registered fund because the prospectus is not able to be timely delivered because of circumstances related to COVID-19 and delivery was due on or after March 13, 2020 but on or prior to April 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 fund must notify the Division of Investment Management stating that it is relying on this SEC position, provide a brief description of the reasons, and provide the estimated date which it expects the prospectus to be delivered. It must also publish on its website why it could not be delivered and also publish its current prospectus on its website.

8. Staff Statement Regarding Requirements for Certain Paper Submissions in Light of COVID-19 Concerns (April 2, 2020)

Summary

Traditional paper filings can be avoided if the proper circumstances are demonstrated, including submissions through June 30, 2020.

Source

<https://www.sec.gov/tm/paper-submission-requirements-covid-19>

Description

Persons and entities have noted that they are experiencing logistical difficulties submitting certain documents in paper format, rather than electronically. In addition, some of these paper forms may require manual signatures and may also require those signatures to be notarized (collectively, the “Impacted Paper Submissions”). Further, broker-dealers filing their annual audited reports electronically through EDGAR may also find it impracticable to obtain notarization services as a result of COVID-19.

In light of these difficulties, Division staff is providing the following statement to those affected by COVID-19.

Staff will not recommend the Commission take enforcement action with respect to any failure to comply with the paper format submission requirement or manual signature requirement of the Impacted Paper Submissions under the following conditions:

- filers or submitters of Impacted Paper Submissions contact Division staff to discuss the appropriate process for filing or submitting the Impacted Paper Submissions electronically, in lieu of in paper format, by using, for example, a secure file transfer system (if a filer or submitter of an Impacted Paper Submission is not sure who to contact or is not able to contact a Division staff member about filing or submitting Impacted Paper Submissions electronically, the filer or submitter should submit a request for assistance and contact information to tradingandmarkets@sec.gov);
- the Impacted Paper Submissions are signed electronically, if a signature is required, by using a typed form of signature within the electronic submission that will take the position of the manual signature;
- a signatory of any Impacted Paper Submission retains a manually signed signature page or other document authenticating, acknowledging, or otherwise adopting his or her signature that appears in typed form within the electronic submission and provides such document, as promptly as practicable, upon request by Division or other Commission staff;

- such document indicates the date and time when the signature was executed; and
- the filer or submitter establishes and maintains policies and procedures governing this process.

Staff will also not recommend that the Commission take enforcement action with respect to any failure to comply with notarization requirements applicable to the Impacted Paper Submissions or in the electronic filings of broker-dealer annual reports required under paragraph (d) of Rule 17a-5 that are due to be filed at the Commission no later than June 30, 2020, under the following conditions:

- the filer indicates on the face of the signed document that, based upon relief from Commission staff and difficulties arising from COVID-19, it is making this filing without a notarization; and
- the filer notifies the Division staff in writing at tradingandmarkets@sec.gov, or, in the case of a broker-dealer filer, notifies its designated examining authority in writing (for example, using FINRA's broker-dealer notification system), that it was not able to obtain the required notarization due to difficulties arising from COVID-19 and, therefore, is making its filing without a notarization.

The staff reminds all signatories of the penalties for false and misleading statements under, among other things, 15 U.S.C. 78ff(a). The staff also reminds market participants that the Division is committed to working with them to help them respond to operational and other challenges raised by COVID-19. Staff will consider requests concerning other regulatory requirements.

Additional information can be found at: <https://www.sec.gov/sec-coronavirus-covid-19-response>

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