

COVID-19 NEWS OF INTEREST

Update: SEC Staff Withdraws Certain COVID-19 Related Liquidity Relief For Registered Funds

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On April 15, 2021, the staff of the Securities and Exchange Commission (the “SEC”) issued a notice that certain COVID-19-related liquidity relief applicable to registered open-end management investment companies (“Funds”) and insurance company separate accounts registered as unit investment trusts (“Separate Accounts”) will terminate or be withdrawn effective April 30, 2021.¹ Provided below is a summary of the relief scheduled for termination or withdrawal.²

Termination of Relief to Obtain Short-Term Funding

On March 23, 2020, the SEC issued an exemptive order (the “Order”) granting conditional temporary relief from certain requirements of the Investment Company Act of 1940 (the “1940 Act”) to provide flexibility for Funds other than money market funds and Separate Accounts to obtain short-term funding.³ Specifically, subject to certain conditions, the Order:

1. Permitted Funds other than money market funds and Separate Accounts to borrow money from an affiliated person (or an affiliated person of such affiliated person) and permitted an affiliated person (or an affiliated person of such affiliated person) to make collateralized loans to Funds other than money market funds and Separate

¹ Division of Investment Management Staff Statement Regarding Termination Notice for Exemptive Relief and Withdrawal of Staff Letters Related to COVID-19 Response (Apr. 15, 2021), available [here](#).

² For a more detailed description of the relief, please refer to our Client Memoranda dated March 26, 2020 (available [here](#)) and Apr. 2, 2020 (available [here](#)).

³ Order Under Sections 6(c), 12(d)(1)(J), 17(b), 17(d) and 38(a) of the Investment Company Act of 1940 and Rule 17d-1 Thereunder Granting Exemptions From Specified Provisions of the Investment Company Act and Certain Rules Thereunder, IC-33821 (Mar. 23, 2020), available [here](#).

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Accounts. Such borrowings generally would have been prohibited by Sections 12(d)(3), 17(a) and 18(f)(1) of the 1940 Act.

2. Relaxed certain conditions on registered investment companies currently able to rely on an SEC order permitting an interfund lending and borrowing facility (an “Existing IFL Order”).
3. Permitted any registered management investment company that did not have an Existing IFL Order to establish and participate in an interfund lending and borrowing facility on the basis of an interfund exemptive order that the SEC had issued within the twelve months preceding the date of the Order.
4. Permitted Funds other than money market funds to enter into otherwise lawful lending or borrowing transactions that deviated from any relevant policy recited in their registration statements without prior shareholder approval, notwithstanding the requirements of Section 13(a) of the 1940 Act.

Withdrawal of Relief to Extend Benefits of Rule 17a-9 Under the 1940 Act to Additional Affiliates and Funds

On March 19, 2020 and March 26, 2020, the SEC staff issued two letters which, subject to certain conditions, provided no-action relief with respect to (i) purchases of securities from a Fund that is regulated as a money market fund by Rule 2a-7 under the 1940 Act by an affiliated person of such Fund (or affiliated person of such person) (“Affiliated Person”) that is subject to Sections 23A and 23B of the Federal Reserve Act (“FRA”)⁴ and (ii) purchases of debt securities from an Fund that is not an exchange-traded fund and that does not hold itself out as a money market fund by an Affiliated Person of the Fund that is not a registered investment company, each of which would not otherwise be permitted by Section 17(a) of the 1940 Act or Rule 17a-9 thereunder.⁵

⁴ Rule 17a-9 promulgated under the 1940 Act provides an exemption from the prohibitions of Section 17(a) of the 1940 Act to permit an Affiliated Person of a Fund that holds itself out as a money market fund to purchase distressed and non-distressed securities from the money market fund. In addition, as a result of certain conditions of Rule 17a-9, Affiliated Persons of money market funds that are subject to Sections 23A and 23B of the FRA may not rely on Rule 17a-9 to purchase securities from Money Market Funds because of conflicting banking regulations.

⁵ Investment Company Institute, SEC No-Action Letter (Mar. 19, 2020), available [here](#), and Investment Company Institute, SEC No-Action Letter (Mar. 26, 2020), available [here](#).

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If you have any questions regarding this client alert, please contact the following attorneys or the Willkie attorney with whom you regularly work.

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