

## GOVERNMENT | SEC Expands Availability of Exempt Affiliated Transactions with Certain Registered Open-End Investment Companies

In another initiative to enhance liquidity for registered investment companies during the coronavirus ("COVID-19") outbreak, the US Securities and Exchange Commission's ("Commission" or "SEC") Division of Investment Management (the "Staff") issued a [letter to the Investment Company Institute](#) on March 26, 2020, stating that it would not recommend enforcement action to the Commission if affiliates (and affiliates of those affiliates) of registered open-end investment companies, excluding money market funds and exchange-traded funds (ETFs) ("registered open-end funds"), purchase debt securities from their affiliated registered funds under certain circumstances and subject to conditions. The relief is needed because Section 17(a) of the Investment Company Act of 1940 (the "1940 Act") prohibits affiliates of registered funds, and their affiliates, from purchasing property, including debt securities, from such funds. Rule 17a-9 under the 1940 Act exempts from that prohibition purchases by affiliates (and their affiliates) of securities from registered money market funds. Due to the COVID-19 outbreak, there is a short-term dislocation in a variety of markets for debt securities such as commercial paper, corporate debt and certificates of deposit. As a result, affiliates of registered open-end funds may seek to purchase debt securities from the funds in an effort to enhance the fund's liquidity and meet shareholder redemptions.

The no-action relief granted by the Staff permits registered open-end funds other than ETFs to rely on Rule 17a-9, subject to the following conditions:

1. The purchase price is paid in cash, as is required by the rule.
2. The price of the purchased debt security is its fair market value under Section 2(a)(41) of the 1940 Act, provided that this price is not materially different from the fair market value of the security indicated by a reliable third-party pricing service. This differs from the rule's requirement that the purchase price be equal to or greater than amortized cost or market value.
3. In the event that the purchaser thereafter sells the purchased security for a higher price than the purchase price paid to the registered fund, the purchaser must promptly pay to the fund the amount by which the subsequent sale price exceeds the purchase price paid to the fund, as required by the rule. If the purchaser 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 (i) applicable banking regulations or (ii) any applicable exemption from such regulations issued by the Board of Governors of the Federal Reserve System.
4. Within one business day of the purchase of the security, the fund publicly posts on its website and informs the Staff via email to [IM-EmergencyRelief@sec.gov](mailto:IM-EmergencyRelief@sec.gov) (i) the name of the fund, (ii) the name of the purchaser, (iii) the security(ies) purchased (including a legal identifier if available), (iv) the amount

purchased, and (v) the total price paid.

For purposes of this relief, an ETF means a fund or a class, the shares of which are listed or traded on a national securities exchange and that has formed and operates under exemptive orders granted by the Commission or in reliance on Rule 6c-11 under the 1940 Act. As mentioned above, ETFs are not permitted to rely on this no-action relief. Money market funds, which are not permitted to rely on this letter, received similar relief pursuant to a Staff no-action letter dated March 19, 2020 (see [the post on our COVID-19 Blog summarizing that relief](#)).

The no-action relief will be in effect temporarily and will cease to be in effect upon notice from the Staff.

If you have any questions about this no-action letter, or about the SEC's and its staffs' responses to COVID-19 more generally, please contact Stephanie M. Monaco or Leslie S. Cruz. We are here to help with any questions of interpretation or assistance with compliance with the relief provided by the orders, including contacting the SEC staff if needed. In addition, we will continue to keep funds and advisers updated on any future significant SEC or staff announcements.

The SEC orders are part of an evolving COVID-19 response that is moving across regulatory agencies. Please visit Mayer Brown's [Coronavirus COVID-19 webpage](#) to learn more.

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