



## INVESTMENT MANAGEMENT | SEC Staff Issues Statement Regarding Temporary International Mail Service Suspensions to Certain Jurisdictions Related to COVID-19

On June 24, 2020, the staff in the Division of Trading and Markets and the Division of Investment Management (the “Staff”) of the US Securities and Exchange Commission (“SEC”) issued a statement with respect to the mailing of certain regulatory communications to shareholders, clients and customers (“Affected Recipients”) who: (i) have mailing addresses located in international jurisdictions (“Affected Jurisdictions”) where the United States Postal Service, other common carrier, or public or private foreign postal operator (each, a “Common Carrier”) has temporarily suspended international mail service due to impacts related to the coronavirus disease (“COVID-19”) and (ii) have not consented to electronic delivery of these regulatory communications (collectively, “Impacted International Mailings”).<sup>1</sup> The following Legal Update provides a summary of this Staff statement (the “Statement”).

### **A. Overview**

The Staff explained that this statement was in response to inquiries received from persons and entities that include broker-dealers, investment advisers, and other intermediaries (“Delivering Entities”) with clients or customers in Affected Jurisdictions, as well as registered funds that offer shares directly and who have shareholders in Affected Jurisdictions. In consideration of COVID-19’s continued impact with respect to the delivery of Impacted International Mailings,<sup>2</sup> the Staff is providing the Statement, which it noted is temporary and expires on the date, as applicable to each specific Affected Jurisdiction, that Common Carriers resume mail delivery of Impacted International Mailings to such Affected Jurisdiction.<sup>3</sup> The Staff also noted that, given the evolving nature of the pandemic, it is

committed to working with market participants to help them respond to operational and other challenges raised by COVID-19.

## B. The Statement and Its Conditions

In light of the above, the Staff stated that it will not recommend that the SEC take enforcement action against a Delivering Entity with respect to the failure to deliver Impacted International Mailings to Affected Recipients in Affected Jurisdictions if Delivering Entities:

- are unable to mail Impacted International Mailings to Affected Recipients in an Affected Jurisdiction due to mail service suspensions;
- send a notification to Staff by email to [tradingandmarkets@sec.gov](mailto:tradingandmarkets@sec.gov) (for the Division of Trading and Markets) or [IM-EmergencyRelief@sec.gov](mailto:IM-EmergencyRelief@sec.gov) (for the Division of Investment Management) identifying the specific type(s) of Impacted International Mailings that the Delivering Entity will be holding temporarily due to mail service suspensions and update that notification, as needed, to reflect any material changes;<sup>4</sup>
- prominently publish the information contained in the notification to Staff on the Delivering Entity's public website and update that information, as needed, to reflect any material changes;
- maintain contemporaneous records reflecting the Delivering Entity's satisfaction of the steps described in the Statement;
- monitor the relevant Common Carrier websites regularly for updates regarding the status of mail delivery to Affected Jurisdictions and promptly (but, in any event, not later than seven days following resumption of such service) send the Impacted International Mailing upon resumption of service to the Affected Jurisdiction if (1) the Delivering Entity was unable to deliver the Impacted International Mailing electronically or (2) the Affected Recipient requests delivery of a paper copy;
- with respect to written confirmations or alternative periodic reporting required by the Exchange Act's confirmation rule<sup>5</sup> and written statements with respect to free credit balances.<sup>6</sup>
- use reasonable best efforts to notify the Affected Recipient by telephone, email, text message, or other means that: (i) the Delivering Entity will be holding such documents due to mail service suspensions in an Affected Jurisdiction;<sup>7</sup> and (ii) the Affected Recipient may consent to electronic delivery of such documents on a temporary or permanent basis;<sup>8</sup>
- use reasonable best efforts to obtain the consent of the Affected Recipient to electronic delivery of such documents; provided that the Delivering Entity obtains the customer's consent before attempting electronic delivery of such documents; and
- if the Delivering Entity does not obtain the Affected Recipient's consent to electronic delivery of such documents, (i) hold such documents temporarily and send a paper copy of such documents upon resumption of service to the Affected Jurisdiction (as outlined in the last bullet point below) and (ii) provide the Affected Recipient with a reasonable period of time in which to respond, as needed, to such documents (e.g., to notify the Delivering Entity of any errors in such documents) after such paper copies have been sent; and
- for Impacted International Mailings *other than* written confirmations and alternative periodic reporting required by the Exchange Act's confirmation rule and written statements with respect to free credit balances required pursuant to Exchange Act Rule 15c3-3(j)(1) (e.g., shareholder

reports and prospectuses, Form ADV brochures, etc.):

- use reasonable best efforts to timely deliver such documents electronically using contact information for the Affected Recipient (e.g., an email address) that the Delivering Entity has a reasonable basis to believe is current and, in the transmittal message include an explanation regarding why the Delivering Entity is delivering such documents electronically and state that, unless the Affected Recipient elects electronic delivery of such documents going forward, the Delivering Entity will resume physical mailing once the Common Carrier has resumed service to the jurisdiction; and
- if the Delivering Entity does not have such contact information for an Affected Recipient or receives information indicating that the contact information is not current (such as an email bounce back), use reasonable best efforts to obtain current contact information for electronic delivery of such documents to the Affected Recipient (e.g., through commercially available resources).

### C. Initial Takeaways

The foregoing guidance provided in the Statement reflects the Staff's continuing initiative to respond to the impact of COVID-19. However, it should be noted that the guidance provided in the Statement, unlike some of the previous temporary relief granted by the SEC with respect to COVID-19, is a Staff statement and not an order from the SEC itself providing exemptive relief (with legal force and effect) from certain provisions of the federal securities law.<sup>9</sup> In addition, the Statement does not offer relief on behalf of the Financial Industry Regulatory Authority or other self-regulatory organizations. Nevertheless, Delivering Entities will likely find the Statement helpful in navigating certain COVID-19-related delivery issues with respect to Impacted International Mailings.

\*\*\*

If you have any questions about the Statement or about the SEC's responses to COVID-19 more generally, please contact the authors or any member of our Investment Management practice or our Broker-Dealer Regulation & Compliance practice. We are here to help with any questions of interpretation or assistance with compliance with the relief provided by the SEC, including contacting the Staff if needed. In addition, we will continue to keep funds and advisers updated on any future significant SEC or Staff announcements.

If you wish to receive regular updates on the range of the complex issues confronting businesses in the face of the novel coronavirus, please [subscribe](#) to our COVID-19 "Special Interest" mailing list.

### Authors

- [Peter M. McCamman](#)
- [Adam D. Kanter](#)
- [Marlon Paz](#)

### Related People

- [Stephanie M. Monaco](#)

- [Leslie S. Cruz](#)

---

<sup>1</sup> Staff Statement Regarding Temporary International Mail Service Suspensions to Certain Jurisdictions Related to the COVID-19 Pandemic, Securities and Exchange Commission (“SEC”), Divisions of Trading and Markets and Investment Management (June 24, 2020), *available at* <https://www.sec.gov/tm/temporary-international-mail-service-suspension>. The Staff noted that the United States Postal Service (“USPS”) has identified certain destinations for which the USPS is temporarily suspending international mail acceptance due to service impacts related to the COVID-19 pandemic (see International Mail Service Suspensions, *available at* <https://about.usps.com/newsroom/service-alerts/international/welcome.htm>).

<sup>2</sup> The Staff stated that the Impacted International Mailings covered by the Statement are the following: registered investment company reports to shareholders transmitted by such companies pursuant to Section 30(e) of the Investment Company Act of 1940 (the “Investment Company Act”) and Rule 30e-1 or Rule 30e-2 thereunder, or forwarded by broker-dealers or banks pursuant to Rule 14b-1 or Rule 14b-2 under the Securities Exchange Act of 1934 (“Exchange Act”); prospectuses and prospectus supplements for funds and registered insurance products; preliminary and final prospectuses delivered pursuant to Exchange Act Rule 15c2-8(b); the delivery of Form ADV brochures (or any summary of material changes) and brochure supplements under the Investment Advisers Act of 1940 and Investment Advisers Act Rule 204-3 to existing clients; the delivery of Form CRS to customers or clients, as well as all written disclosure obligations under Regulation Best Interest pursuant to Exchange Act Rule 15l-1(a)(2)(i)(A)-(B); written confirmations and alternative periodic reporting, as required, pursuant to Exchange Act Rule 10b-10; and the written statements with respect to free credit balances required pursuant to Exchange Act Rule 15c3-3(j)(1) that must inform the customer of the amount due to the customer by the broker-dealer on the date of the statement, and that the funds are payable on demand of the customer.

<sup>3</sup> The Staff noted that the Statement represents the views of the Staff, is not a rule, regulation, or statement of the SEC, and that the SEC has neither approved nor disapproved its content.

<sup>4</sup> The Staff noted that dual registrants (a firm that is both a SEC registered investment adviser and broker-dealer) would send notifications to both SEC Divisions.

<sup>5</sup> Exchange Act Rule 10b-10.

<sup>6</sup> Exchange Act Rule 15c3-3(j)(1). The Staff noted that different conditions are being imposed on confirmation statements and other communications under Exchange Act Rules 10b-10 and Rule 15c3-3(j)(1) because, among other things, they are typically specific to the particular recipient, may contain personalized information about the recipient, including their transaction history and account information, and may trigger certain customer rights and obligations (such as notifying the Delivering Entity of any errors in such documents). In contrast, the Staff noted that the other forms of communications (described in the other corresponding bullet point) generally are reports to

shareholders, prospectuses, or certain other documents that are typically directed to all shareholders of a particular issuer and do not contain personalized information.

<sup>7</sup> The Staff noted that the Statement does not address FINRA Rule 3150 (Holding of Customer Mail), which generally allows FINRA member firms to hold a customer's mail for a specific time period in accordance with the customer's written instructions if the firm meets several conditions.

<sup>8</sup> The Staff noted that the SEC has previously provided guidance on obtaining consent to electronic delivery, which can be found in Release Nos. 33-7856; 34-42728; IC-24426, Use of Electronic Media (Apr. 28, 2000), 65 FR 25843, 25845-46 (May 4, 2000) ("2000 Use of Electronic Media"); see also Release No. 33-7288; 34-37182; IC-21945; IA-1562, Use of Electronic Media by Broker-Dealers, Transfer Agents, and Investment Advisers for Delivery of Information (May 9, 1996), 61 FR 24644, 24647 (May 15, 1996); and Release No. 33-7233; 34-36345; IC-21399, Use of Electronic Media for Delivery Purposes (Oct. 6, 1995), 60 FR 53458, 53459-63 (Oct. 13, 1995). For such consent to be informed, the Affected Recipient must be apprised of the duration of the consent and the types of documents to be delivered electronically pursuant to the consent. See 2000 Use of Electronic Media, 65 FR at 25846 n. 26.

<sup>9</sup> The SEC has previously granted exempted relief to registrants and other persons from certain Exchange Act requirements to furnish, as applicable, Soliciting Materials and Information Materials (as those terms are defined in the SEC's order) when 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. See Order Under Section 36 of the Securities Exchange Act of 1934 Modifying Exemptions from the Reporting and Proxy Delivery Requirements for Public Companies (Mar. 25, 2020), *available at* <https://www.sec.gov/rules/exorders/2020/34-88465.pdf>. See also 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 (Mar. 25, 2020), *available at* <https://www.sec.gov/rules/other/2020/ic-33824.pdf> (providing, among other things, that a registered fund is temporarily exempt from the requirements of Section 30(e) of the Investment Company Act and Rule 30e-1 or Rule 30e-2, respectively, to transmit annual and semi-annual reports where certain conditions are satisfied, including transmitting such reports to shareholders as soon as practicable, but not later than 45 days after the original due date). For a summary of the later relief, see the Mayer Brown Legal Update on the topic, *available at* <https://www.mayerbrown.com/en/perspectives-events/publications/2020/03/covid-19-us-sec-provides-temporary-conditional-relief-to-funds-and-advisers>