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April 13, 2020

The Division of Investment Management Responds to COVID-19's Impact on Requests for Hearings on Exemptive Applications

In recognition of the disruptions caused by COVID-19, the Division of Investment Management (the "Division") of the Securities and Exchange Commission (the "SEC") [will require](#) interested persons to submit written hearing requests for filed exemptive applications by sending an e-mail to the SEC's Secretary at Secretarys-Office@sec.gov rather than sending a request to the SEC by physical mail. The Division will reflect this e-mail requirement in forthcoming notices. In addition, the Division is offering applicants the *option* to provide an e-mail address to be included in the SEC's notice of their application so that interested persons may serve applicants by e-mail (*instead* of by mail or personally).

Background

The SEC has [statutory authority](#) to issue exemptive orders, in response to an entity's request for relief, that allow the entity to engage in transactions that would otherwise be prohibited by the securities laws, rules, or regulations. Exemptive relief is not intended to provide unrestricted or unlimited relief from the securities laws and rules but allow the SEC to provide flexibility and accommodate situations not originally contemplated by the securities laws. Exemptive relief is different from no-action letters, where the SEC staff provides assurances that they will not recommend an enforcement action in a specific instance. No-action letters expressly represent only a position by the staff based on the facts and circumstances described in the request, and the letters expressly do not represent legal conclusions or opinions. Exemptive orders, in contrast, are granted by the Division exercising authority delegated from the SEC and thereby provide a legal exemption from compliance with the specified statutes and regulations. The SEC regularly receives applications seeking orders for exemptions or other relief under the Investment Company Act of 1940 and the Investment Advisers Act of 1940. The Division is responsible for reviewing these exemptive applications. If the exemptive request meets the applicable standards, the SEC publishes a notice of the application in the Federal Register and on its public website, stating its intent to grant the requested relief. The notice gives interested persons an opportunity to request a hearing on the application. If the SEC does not receive a hearing request during the notice period, and does not otherwise order a hearing on an application, the SEC subsequently issues an order granting the requested relief.

New Notice Requirements

When the SEC issues a notice that an application has been filed, the notice generally outlines a procedure for interested persons to request a hearing on the matter. That procedure typically includes delivering a written request to the SEC's Secretary, and the SEC's notice includes the SEC's physical mailing address. However, due to the disruptions caused by COVID-19, the SEC will be requiring interested persons to submit written hearing requests by sending an e-mail to the SEC's Secretary at Secretarys-Office@sec.gov. In addition, SEC notices generally require interested persons to serve the requesting party with a copy of any hearing request, personally or by mail. In light of COVID-19, however, the Division is offering the applicant the *option* to provide an e-mail address to be included in the SEC's notice so that interested persons may serve applicants by e-mail (*instead* of by mail or personally).

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