

New SEC FAQs Released in Response to COVID-19

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On March 16, 2020, in response to the COVID-19 outbreak, the United States Securities and Exchange Commission (“SEC”) Division of Investment Management updated their Frequently Asked Questions (“FAQs”) relating to Form ADV and the Custody Rule. The updates were addressed specifically to the disruption caused by COVID-19, including that many investment advisers are now conducting investment advisory business at temporary locations as recommended by several federal, state and local officials. The SEC has stated through these updates that (1) no enforcement action would be recommended against an adviser who does not update their Form ADV to include their temporary working address, and (2) that advisers inadvertently receiving client assets will not be deemed to have received them until firm personnel are able to access the assets at the office location to which the adviser no longer has access.

Additional Form ADV FAQ

Item 1.F of Part 1A of Form ADV and the corresponding section to Schedule D requires disclosure of a firm’s principal office and place of business as well as “each office, other than your principal office and place of business, at which you conduct investment advisory business.” Given that COVID-19 has forced many advisers to conduct investment advisory business at remote locations via telework, questions have been raised about whether Schedule D’s Item 1.F portion needs to be updated for these temporary locations. The SEC states in the additional FAQ that enforcement action would not be taken if no updates were made to Item 1.F of Part 1A or Schedule D as long as advisers are “temporarily teleworking as part of the firm’s business continuity plan due to [the COVID-19 outbreak].” The additional Item 1.F Form ADV FAQ can be found [here](#).

Updates to Custody Rule FAQ

Rule 206(4)-2 under the Investment Advisers Act of 1940 (the “Custody Rule”), and the guidance issued by the SEC with respect to the Custody Rule, currently state that advisers inadvertently receiving client assets must either return those assets to the client within three business days, or forward them to the qualified custodian within five business days, depending on the type of assets received by the adviser. Given that many firms’ business continuity plans have restricted access to mail and deliveries at office locations, the SEC has updated the Custody Rule FAQs to note that they do not consider an adviser to have received client assets “until firm personnel are able to access the mail or deliveries at that office location.” Therefore, the clock does not start on the three or five business day requirements until firm personnel have access to the client assets. The update to the Custody Rule FAQ can be found [here](#).

Foley Hoag has formed a firm-wide, multi-disciplinary [task force](#) dedicated to client matters related to the novel coronavirus (COVID-19). For more guidance on your COVID-19 issues, visit our [Resource Page](#) or contact your Foley Hoag attorney.

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