

Massachusetts Securities Division

REGISTRATION, INSPECTIONS, COMPLIANCE AND EXAMINATIONS SECTION

▲ 2020 MID-YEAR NEWSLETTER ▲

A Division of William Francis Galvin, Secretary of the Commonwealth

UPDATES FROM THE MASSACHUSETTS SECURITIES DIVISION REGARDING COVID-19 PANDEMIC

COVID-19 pandemic has caused a number of significant disruptions to investment advisers' and their investment adviser representatives' normal business practices. The Massachusetts Securities Division (the "Division") is aware of the current hardships facing investment advisers and has taken steps to alleviate those hardships, while continuing to keep investor protection a priority. This Newsletter highlights relevant temporary orders and best practices for investment advisers to know.¹ ▲

¹ Investment advisers and their investment adviser representatives are encouraged to check the Division's website and NASAA's website for COVID-19 pandemic information.

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THE DIVISION'S EMERGENCY NOTICE

On March 24, 2020, the Division issued an Emergency Notice, which grants temporary relief for securities filers and registered financial professionals during the COVID-19 pandemic. This Emergency Notice will remain in effect until July 31, 2020, unless extended or rescinded. Highlights from the Emergency Notice are detailed below and a full copy of the most recent Emergency Notice extension can be found on the Division's website.¹

Relief and Accommodation for Corporate Finance Filers

The Division will accept evidence of electronic signatures or copies of signed documents for securities registration applications, exemption filings, securities notice filings, consent to service of process forms, and related corporate resolutions. The Division also waives the notarization of forms used in connection with corporate finance filings², and will accept by e-mail corporate finance filing fees paid by wire transfer. Please refer to the Emergency Notice for Corporate Finance Filers for details.³

Relief from Annual Update Filings and Document Delivery Requirements by Investment Advisers

The Division recognizes that investment advisers may have difficulty updating their Form ADV in a timely manner or meeting their Form ADV delivery requirements. Accordingly, an investment adviser may perform any of the Form ADV filing, updating, and customer delivery requirements up to 45 days after such action is due to be performed.

Relief from Requirement to Submit Criminal Offender Record Information ("CORI") Acknowledgement Form in Connection with an Application for Registration

The Division acknowledges that individuals seeking registration as investment adviser representatives in Massachusetts may have difficulty submitting notarized CORI acknowledgment forms. For those applicants who cannot submit notarized CORI acknowledgment forms, they may instead submit an affidavit which can be found on the Division's website.⁴

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¹ <https://www.sec.state.ma.us/sct/covid-19/COVID-19-Emergency-Notice-June-29-2020.pdf>

² <https://www.sec.state.ma.us/sct/covid-19/COVID-19-Emergency-Notice-June-29-2020.pdf>

³ <https://www.sec.state.ma.us/sct/covid-19/Emergency-Notice-for-Corporate-Finance-Filers.htm>

⁴ <https://www.sec.state.ma.us/sct/covid-19/2020-04-29-COVID-19-Emergency-Order-Affidavit.pdf>

REQUIRED UPDATES TO INVESTMENT ADVISER WEBSITES: TABLE OF FEES FOR SERVICES

As of January 1, 2020, if an investment adviser maintains a website available to the public or to the investment adviser's clients, the investment adviser's Table of Fees for Services must be available and easily accessible on the website.¹

¹ 950 MASS. CODE REGS. 12.205(8)(f).

NORTH AMERICAN SECURITIES ADMINISTRATORS ASSOCIATION'S ("NASAA") COVID-19 GUIDANCE

NASAA has established a resource page to collect COVID-19 related updates from State securities regulators.¹

The Division advises investment advisers and representatives to follow NASAA, Financial Industry Regulatory Authority ("FINRA"), and Securities and Exchange Commission ("SEC") guidance for non-state specific registration questions or concerns. Relevant portions of the NASAA COVID-19 guidance are discussed below.

April 27, 2020 Update – Remote Qualification Examinations

NASAA and FINRA are currently working to expedite the delivery of an online testing service. The service will allow applicants to use their personal or firm-provided, camera equipped computer to take examinations and

¹ <https://www.nasaa.org/industry-resources/covid-19-updates>



for examination proctors to monitor applicants through the camera and other online tools.²

April 17, 2020 Update – Payroll Protection Program ("PPP")³

FINRA's PPP Guidance & Form U4

FINRA has issued guidance stating that a broker-dealer agent who obtains a loan under the PPP will not be required to

² Please refer to the FINRA COVID-19 resource page for details on examinations currently offered for online testing: <https://www.finra.org/rules-guidance/key-topics/covid-19>

³ <https://www.finra.org/rules-guidance/key-topics/covid-19>

disclose such loan as a "compromise with a creditor" when answering Question 14K on Form U4, so long as the loan is wholly or partially forgiven under the terms of the PPP. The NASAA CRD/IARD Steering Committee consulted with FINRA regarding this guidance and further advises that that same guidance would apply to Question 14K on Form U4 for an investment adviser representative who obtains a PPP loan.

SEC's PPP Guidance & Form ADV Part 2

While NASAA and FINRA have taken the position that loans taken out under PPP do not need to be disclosed on the Form U4, the SEC's position is PPP need to be reported as material.⁴ ▲

⁴ Refer to the SEC's website for further information as well as frequently asked questions relating to COVID-19: <https://www.sec.gov/sec-coronavirus-covid-19-response>

CYBERSECURITY BEST PRACTICES

COVID-19 pandemic has caused significant changes in how we work and conduct business. Almost all industries have had to adopt new work procedures and systems in order to create safe working environments for employees. Many firms are now utilizing telework, remote offices, and new technologies to aid in this process. While these measures are often necessary, they present inherent security risks. For those with access to sensitive client information, addressing these risks is of utmost importance.

FINRA Information Notice – Cybersecurity Alert

On March 26, 2020, FINRA issued an information notice¹ entitled "Cybersecurity Alert: Measures to Consider as Firms Respond to the Coronavirus Pandemic (COVID-19)," acknowledging the fact that many firms are now operating remotely. The notice provides several recommended security measures and

¹ <https://www.finra.org/rules-guidance/notices/information-notice-032620>



best practices for both firms and their associated persons. While the notice is designed for broker-dealers and their associated persons, it may be helpful to investment advisers when considering their own cybersecurity risks. Although smaller firms may not have access to the same resources or technology as larger firms, periodically evaluating current security protocol and making changes where possible will decrease a firm's and its clients' exposure to cybersecurity risk. Each investment adviser firm should

review its practices to determine where it may be susceptible to cybersecurity risk and the resources or technology it may have available to mitigate such risk.

Cybersecurity Recommendations for Representatives

FINRA cybersecurity recommendations for investment adviser representatives:

- Ensure the security of both their devices and home network connection, including accessing firm information solely through a VPN connection;
- Ensure that home Wi-Fi connections are secure;
- Update all hardware devices and software programs;
- Ensure passwords are unique but memorable, such as a combination of a phrase, numbers, and special characters; and
- Be mindful of back-up policies and procedures, particularly for client information.

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BUSINESS CONTINUITY PLAN BEST PRACTICES

Now more than ever, investment advisers should have a business continuity plan in place that allows them to continue servicing their clients in light of business and personal disruptions. Investment advisers can utilize the unprecedented changes caused by COVID-19 pandemic to evaluate which parts of their business continuity plans have and have not worked and update their plans accordingly.

A business continuity plan may prove ineffective if the details are out-of-date by the time the investment adviser must implement the plan. Therefore, as part of their annual review,¹ investment advisers should ensure emergency regulatory contact information, key personnel information, and potential third-party resources remain up to date.² If a firm's business continuity plan utilizes a third-party to contact its clients in case of an emergency, the firm should consider whether the third-party will realistically be able to perform his or her new responsibilities in the event of the temporary or permanent loss of the firm's key personnel. For example, relying on a spouse may present difficulties if the spouse frequently travels with key personnel or may experience the same technological issues as key personnel.

Finally, investment advisers should consider ways in which their plans impact other aspects of their fiduciary duties, such as whether the firm has obtained the proper client consent to share information, and other privacy concerns. Information about an investment adviser's required annual privacy notice is available on the Division's website.³ ▲

¹ As required under 950 MASS. CODE REGS. 12.205(10)(c).

² Additional guidance is available in FINRA's Regulatory Notice 20-08: Pandemic-Related Business Continuity Planning, Guidance and Regulatory Relief available at: <https://www.finra.org/rules-guidance/notices/20-08>.

³ <http://www.sec.state.ma.us/sct/sctgbla/gblaidx.htm>

INVESTOR EDUCATION

The Division reminds Massachusetts residents to beware of investment scams related to the COVID-19 pandemic. The pandemic has had a significant impact on the financial markets which has caused wild swings in the U.S. stock market and markets around the world. In addition, physical isolation, job uncertainty, financial strains, and increased online engagement make investors vulnerable to fraud. Catastrophic news regarding financial markets, viral outbreaks, and the COVID-19 pandemic can be overwhelming to the ordinary investor. Some tips for investors include being aware of the following:

- Be cautious and check out claims made by companies related to the prevention, detection, or cure of COVID-19;
- Claims of high returns with little to no investment risk are often scams;
- Claims of high returns in return for a small upfront investment are often scams; and
- Beware of any investment pitch that creates a false sense of urgency that requires you to make immediate decisions.

For more information, please see the notice entitled "Protect Yourself Against COVID-19 Investment Fraud" posted on the Division's website.¹

Additionally, many other agencies have published guidance on preventing investment fraud related to the pandemic.² For example, the Federal Trade Commission has warned that scammers

¹ <https://www.sec.state.ma.us/sct/covid-19/Protect-Yourself-Against-Covid-19-Investment-Fraud.htm>

² The full text of these alerts are available on each agency's website.

are using COVID-19 to take advantage of people.³ They have also provided information regarding managing bills during the COVID-19 situation.⁴ The Federal Bureau of Investigation issued a press release stating that they expect an increase in scams related to cryptocurrency due to the current situation and they advise people to be on the lookout for such scams.⁵

Both FINRA and the SEC have also issued statements regarding COVID-19 related risks to investors. FINRA warns that media coverage of the virus can be used by scammers to promote inaccurate information.⁶ The SEC published an Investor Alert warning that companies may fraudulently promote supposed investment opportunities for products that falsely claim to cure or prevent COVID-19.⁷

Finally, NASAA has also cautioned investors about a potential increase in fraud related to COVID-19. NASAA's alert explains that there may be increases in "get rich quick" schemes and scams based on purportedly safe investments due to increased market volatility.⁸ ▲

³ https://www.consumer.ftc.gov/blog/2020/04/scammers-are-using-covid-19-messages-scam-people?utm_source=govdelivery

⁴ https://www.consumer.ftc.gov/blog/2020/04/managing-your-bills-during-covid-19?utm_source=govdelivery

⁵ <https://www.fbi.gov/news/pressrel/press-releases/fbi-expects-a-rise-in-scams-involving-cryptocurrency-related-to-the-covid-19-pandemic>

⁶ <https://www.finra.org/investors/insights/fraud-and-coronavirus-covid-19>

⁷ https://www.sec.gov/oiea/investor-alerts-and-bulletins/ia_coronavirus

⁸ <https://www.nasaa.org/54534/covid-19-related-investment-schemes-anticipated/>



RECENT ENFORCEMENT ACTIONS

Unregistered Investment Advisory Activity

In December 2019, the Division's Enforcement Section charged a Massachusetts man and his companies with violations of the Massachusetts Uniform Securities Act (the "Act"). The complaint alleges that the man and his companies engaged in unregistered investment advisory activity in violation of the Act. The individual is licensed to sell insurance in Massachusetts, but is not registered as a broker-dealer agent or investment adviser representative.

The man frequently holds "free lunch" workshops, heavily marketed toward seniors, at restaurants and hotels around the Boston area where he purports to help with retirement and social security planning. In reality, his seminars allegedly generate client leads for him and his companies to find new insurance clients. The complaint further alleges that he frequently advises his clients to liquidate their retirement accounts and then encourages them to use the proceeds of the sales of securities to purchase a specific set of fixed indexed annuity products. These sales frequently generate a seven percent commission, and the complaint alleges that in just the past few years alone the individual and his companies earned over \$4 million in commissions.

Sales Practice Violations and Unregistered Activity

In December 2019, the Enforcement Section charged a precious metals company in connection with the company's sales practices in Massachusetts. The Enforcement Section alleges that the company engaged in fraudulent and deceptive acts and practices, transacted business in Massachusetts as an unregistered investment adviser, and filed a false or misleading statement with the Division. The company allegedly convinced Massachusetts residents and assisted in facilitating transactions to liquidate more than \$3.2 million in retirement investments to purchase precious metals. Furthermore, the company never explained the differences in the types of precious metals that could be purchased, and instead only discussed and sold precious metals with the highest markup value. The Division encourages investment advisers and Massachusetts residents to conduct thorough research before liquidating retirement investments to purchase any type of precious metal.

Sales Practice Violations

In April 2020, the Enforcement Section settled a May 7, 2019 administrative complaint against a broker-dealer in connection with the firm's failure to supervise an agent who recommended mutual fund switches to his customers

in order to generate commissions. The agent recommended that his customers sell their Class A shares of mutual funds in order to fund the purchase of Class A shares of other mutual funds before the original purchases reached their typical holding period of approximately three to five years. In some cases, the agent's recommendations to sell and repurchase came only months after the initial purchase. The firm failed in the its duty to supervise while its agent made these recommendations, continued its failure to supervise after it became aware of his trading activity through their risk management system, and did not take sufficient steps to prevent him from continuing this practice. The Consent Order provides a censure of the firm, an order to offer restitution to compensate affected customers, and an order to pay an administrative fine of approximately \$300,000. ▲

THE DIVISION'S EMERGENCY NOTICE

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Relief from Requirement to Obtain Physical Signatures on Form U4

The Division understands that investment advisers may not be able to obtain physical signatures on Form U4. Investment advisers may now submit Form U4 electronically, without first obtaining physical signatures from investment adviser representatives. Please see the Emergency Notice for the actions required to comply.⁵ ▲

⁵ <https://www.sec.state.ma.us/sct/covid-19/covid-19idx.htm>

CYBERSECURITY BEST PRACTICES

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Awareness of COVID-19-Related Scams

Firms and their associated persons should be on the alert for common schemes which have emerged during COVID-19 pandemic. These include phishing emails related to COVID-19, as well as fake messages from IT or security software. Like other phishing scams, emails may request personal information such as passwords, contain malicious links, or prompt you to take urgent action. Scammers may attempt to capitalize on the current climate so it is important to be aware of these schemes and remain vigilant of all suspicious communication.

Security Policies Generally

FINRA recommends that firms implement more comprehensive security policies to enable representatives to work remotely safely. With this goal in mind firms should provide training on cybersecurity best practices and collaborate closely with IT departments and/or service providers to increase support and resources for its employees. ▲

