



ASSET MANAGEMENT INSIGHTS

INSIGHTS FROM THE BDO FINANCIAL SERVICES PRACTICE

BROKER DEALERS GRANTED RELIEF BY SEC AND FINRA

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Broker-dealers have numerous regulatory reporting requirements to comply with given their role in the capital markets and interactions with customers. As a result of the COVID-19 pandemic and impact the crisis has had on the economy and business operations, we have prepared a summary of some of the relief granted to broker-dealers by the SEC and FINRA with respect to certain regulations and compliance with financial responsibility rules.¹

The U.S. Securities and Exchange Commission ("SEC") released an FAQ in April, which was revised June 26, 2020 ("Frequently Asked Questions Concerning the COVID-19 Pandemic and the Broker-Dealer Financial Responsibility Rules")² to respond to questions regarding broker-dealer's compliance with certain provisions within the financial responsibility rules.

A discussion around the relief provided to introducing broker-dealers that claim an exemption under paragraph (k)(2) of the Customer Protection Rule was included in the FAQ. Specifically, the SEC did not require enforcement of prompt transmittal of customer

¹ The term "financial responsibility rules" refers to the Securities Exchange Act of 1934 Rule 15c3-1, Net Capital Requirements for Brokers or Dealers (the "Net Capital Rule"); Exchange Act Rule 15c3-3, Customer Protection – Reserves and Custody of Securities (the "Customer Protection Rule"); Exchange Act Rule 17a-13, Quarterly Security Counts to be Made by Certain Exchange Members, Brokers and Dealers ("Quarterly Security Count Rule"); and any rule of a designated examining authority that required the broker-dealer to send account statements to customers.

² <https://www.sec.gov/tm/faq-covid-19-broker-dealer-financial-responsibility-rules>

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checks through June since broker-dealers may not be able to access their premises and therefore would be unable to forward any customer checks received due to the COVID-19 pandemic. This relief has not extended past June 2020.

The FAQ also discusses the relief granted to broker-dealers required to perform quarterly securities counts of physical securities if the broker-dealer:

- ▶ notifies the SEC's Office of Compliance Inspections and Examinations by email and its FINRA Risk Monitoring Analyst of its obstacles in performing a physical security count and an estimate of the number and value of physical securities; and
- ▶ maintains a summary of the movements of physical securities received or delivered that were not counted during the applicable period to assist it in counting the securities once it is no longer burdensome to do so.

The SEC noted it would evaluate whether additional steps related to the Quarterly Security Count Rule should be taken and extended relief until December 31, 2020.

On June 2, 2020, the SEC updated its FAQ to include relief to those broker-dealers participating in Federal Reserve Money Market Mutual Fund Liquidity Facility (MMLF), currently authorized through September 30, 2020, if the broker-dealer purchases securities for the MMLF ("MMLF eligible securities") and:

- ▶ promptly delivers the MMLF eligible securities to a Federal Reserve Bank ("FRB") for cash in an amount equal to or greater than the purchase price;
- ▶ the term of the loan transaction between the FRB and the broker-dealer is until the maturity date of the collateral pledged to the FRB;
- ▶ the loan transaction is without recourse to the broker-dealer and does not require the broker-dealer to deliver any additional margin to the FRB; and
- ▶ the loan transaction otherwise meets all the terms and conditions set forth in the MMLF as those terms and conditions may be modified from time to time by the Federal Reserve.

The SEC is also granting relief to broker-dealers with respect to submitting paper documents requiring manual signatures as well as those requiring notarization. To obtain relief, broker-dealers should:

- ▶ indicate on the face of a signed document that, based upon relief from SEC staff and difficulties arising from COVID-19, the broker-dealer is filing without a notarization; and
- ▶ notify its designated examining authority in writing that it was not able to obtain the required notarization due to difficulties arising from COVID-19 and, therefore, is making its filing without a notarization.

The SEC's statement was updated in June 2020 to offer relief to broker-dealers from March 2020 through a date to be specified in a public notice stating a termination date, which will be at least two weeks from the date of the notice.

For broker-dealers that are recipients of a covered loan under the Coronavirus Aid, Relief, and Economic Securities Act ("CARES Act") and have included it as a liability on its balance sheet can add the Forgivable Expense Amount, that is, the amount eligible for forgiveness of indebtedness equal to the sum of specific costs as defined in Section 1106(a) of the CARES Act, back to net capital. This treatment is allowed to the extent the broker-dealer has recorded expenses for costs and payments that comprise the Forgivable Expense Amount only if the add-back is not greater than the balance sheet liability for the covered loan.

The broker-dealer must establish and retain support for the add-back and Forgivable Expense Amount, including underlying details of respective calculations.

A broker-dealer may also exclude a covered loan from aggregate indebtedness if it was recorded as a liability on its balance sheet and only during the eight-week covered period after origination. The broker-dealer may subsequently exclude the amount that it can add back to net capital, as described above.

FINRA is also permitting small broker-dealers having no more than 150 registered persons additional time to pay the Gross Income Assessment and Personnel Assessment (collectively referred to as "annual assessment"); the assessment, which is generally due upon receipt in April, is allowed to be treated as though the broker-dealer received the bill as of August 1, 2020. Broker-dealers may also opt to pay 50 percent of the amount due on September 1, 2020 and the remaining 50 percent on December 1, 2020. Furthermore, broker-dealers are expected to continue applying U.S. GAAP when accruing a liability for the 2020 annual assessment and are permitted to add back to net worth the deferred amounts in computing net capital and exclude the liability from aggregate indebtedness.

Broker-dealers that terminate their membership prior to September 1, 2020 are not expected to pay the 2020 annual assessment.

For additional details and guidance from FINRA related to COVID-19 and FAQs, refer to [Frequently Asked Questions Related to Regulatory Relief Due to the Coronavirus Pandemic](#).

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