



COVID-19 Update

May 2020

SEC Provides Guidance on Disclosures of Registered Investment Advisers Using Paycheck Protection Program Loans

Key Notes:

- PPP loans were created under the CARES Act to help small businesses affected by the COVID-19 crisis cover their short-term operating expenses and provide incentives to retain employees.
- In a recent FAQ, the SEC advises that disclosure on Form ADV Part 2 would be required under certain circumstances, such as if an RIA is relying on PPP loans to meet certain payroll obligations, or if the RIA is experiencing financial hardships that could impair its ability to meet contractual requirements with its clients.

On April 27, 2020, the Securities and Exchange Commission's (SEC) Division of Investment Management provided guidance in its Frequently Asked Questions (FAQ), which addressed disclosure obligations for registered investment advisers (RIAs) with respect to forgivable Paycheck Protection Program (PPP) loans.

The FAQ states: "As a fiduciary under federal law, you must make full and fair disclosure to your clients of all *material facts* relating to the advisory relationship. If the circumstances leading you to seek a PPP loan or other type of financial assistance constitute material facts relating to your advisory relationship with clients, it is the staff's view that your firm should provide disclosure of, for example, the nature, amounts and effects of such assistance."

The FAQ cites specific examples of when such disclosure would be required, such as, if PPP loans are used to pay

salaries for employees involved in providing advisory services to the RIA's clients, or if the RIA is experiencing financial hardships that are reasonably likely to impair its ability to meet contractual commitments with its clients. If the RIA is experiencing such financial hardships, the RIA may be required to disclose its financial condition in Form ADV Part 2. The FAQ does not dictate that the use of PPP loans must be disclosed; therefore, RIAs should carefully consider the use of PPP loans and the financial condition of the RIA to determine if disclosure is necessary, consulting with counsel as necessary.

FOR MORE INFORMATION

For more information, please contact:

Andrew J. Davalla

614.469.3353

Andrew.Davalla@ThompsonHine.com

Ryan Wheeler

513.352.6693

Ryan.Wheeler@ThompsonHine.com

Additional Resources

We have assembled a firmwide multidisciplinary task force to address clients' business and legal concerns and needs related to the COVID-19 pandemic. Please see our [COVID-19 Task Force](#) page for additional information and resources.

This advisory bulletin may be reproduced, in whole or in part, with the prior permission of Thompson Hine LLP and acknowledgment of its source and copyright. This publication is intended to inform clients about legal matters of current interest. It is not intended as legal advice. Readers should not act upon the information contained in it without professional counsel.

This document may be considered attorney advertising in some jurisdictions.

© 2020 THOMPSON HINE LLP. ALL RIGHTS RESERVED.