

April 30, 2020 | Business, Corporate & Securities, COVID-19, Insights

SEC Updates Guidance to Investment Advisors on Disclosure of PPP Loans

By: Rich May, Scott A. Stokes

On April 28, 2020, the Securities and Exchange Commission's Division of Investment Management ("SEC") updated its COVID-19 frequently asked questions guidance and specifically addressed the issue of whether registered investment advisors ("RIAs") should make disclosures with respect to securing a loan from the Paycheck Protection Program ("PPP") established by the U.S. Small Business Administration in connection with COVID-19. A copy of the updated FAQ can be found here. The relevant portion of the guidance is as follows:

> **Question II.4.**
> **Q. I am a small advisory firm that meets the requirements of the Paycheck Protection Program (PPP) established by the U.S. Small Business Administration in connection with COVID-19. If I receive or have received a PPP loan, what are my regulatory reporting obligations under the Investment Advisers Act of 1940 to my firm's clients?**
>
> A. 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. If, for instance, you require such assistance to pay the salaries of your employees who are primarily responsible for performing advisory functions for your clients, it is the staff's view that you would need to disclose this fact. In addition, if your firm is experiencing conditions that are reasonably likely to impair its ability to meet contractual commitments to its clients, you may be required to disclose this financial condition in response to Item 18 (Financial Information) of Part 2A of Form ADV (brochure), or as part of Part 2A, Appendix 1 of Form ADV (wrap fee program brochure).

Prior to this guidance, many RIAs were unclear as to whether they were obligated to



Related Services

Business, Corporate & Securities

Related Attorneys

Thomas H. Bilodeau, III
David Glod
Scott A. Stokes

©2026 Rich May, P.C. All Rights Reserved

disclose obtaining a PPP loan with respect to the disclosure obligation of Item 18 of Part 2A of Form ADV or otherwise. The SEC's guidance does not establish a mandatory disclosure obligation. For example, it is unclear what constitutes "material" facts which would necessitate disclosure under general fiduciary principles. Additionally, seeking a PPP loan in and of itself may not indicate circumstances or conditions "that are reasonably likely to impair [the RIA's] ability to meet contractual commitments to its clients. Finally, it's possible that an RIA could take the position that seeking the PPP loan was not strictly required for payroll, but was obtained due to general uncertainty in operations. While such an argument is possible, there is some tension in making that argument while at the same time certifying in the application for the PPP loan that "the uncertainty of current economic conditions makes necessary the loan request to support the ongoing operations of the eligible recipient."

However, in light of the provided guidance and specifically referencing use of the PPP loan to pay the salaries of employees (which is required for forgiveness of PPP loan amounts), we now recommend disclosure of securing PPP loans. From a risk management perspective, disclosure is the safest course to avoid potential future scrutiny from regulators and clients.

Rich May recommends that all of its investment management clients review their circumstances and whether disclosure is appropriate given the recent SEC guidance. If you need assistance with any such disclosure please reach out to a Rich May attorney for assistance.

Disclaimer: This summary is provided for educational and informational purposes only and is not legal advice. Any specific questions about these topics should be directed to attorneys Thomas Bilodeau III, Scott Stokes, David Glod, or Matthew Sweet.

©2026 Rich May, P.C. All Rights Reserved