

[Securities Regulation Daily Wrap Up, TOP STORY—SEC allows for expedited crowdfunding during COVID-19 pandemic, \(May 4, 2020\)](#)

Securities Regulation Daily Wrap Up

[Click to open document in a browser](#)

By [Anne Sherry, J.D.](#)

New temporary rules relax the requirements for financial statements and allow issuers to close a crowdfunding offering as soon as they achieve their target.

The SEC announced temporary rules meant to allow eligible companies quicker access to capital via crowdfunding. The rules implement several suggestions that had been floated by members of the Small Business Capital Formation Advisory Committee in a meeting last month. Through August, eligible issuers can gauge interest in a Regulation Crowdfunding offering before preparing full offering materials and may close such an offering earlier than under the permanent rules. Issuers seeking less than \$250,000 that do not have audited or reviewed financial statements may proceed without them (*Temporary Amendments to Regulation Crowdfunding*, [Release No. 33-10781](#), May 4, 2020).

On April 2, the SEC Small Business Capital Formation Advisory Committee [met](#) remotely to discuss the pandemic's impact on small businesses and how regulatory relief could help. At this meeting, Commissioner Hester Peirce [remarked](#) that capital-raising over the Internet—such as crowdfunding—"is just another way of practicing social distancing." [Committee member](#) Youngro Lee brought up the idea of reducing the requirements for GAAP financial statements for smaller offerings, and Sara Hanks added that companies should be able to take the money as soon as they hit their offering target rather than waiting 21 days for disbursement.

These suggestions have now been adopted as temporary rules applicable to offerings that launch between now and the end of August. Issuers must meet the existing eligibility criteria for Regulation Crowdfunding and must have been operating for at least six months prior to the offering. Furthermore, an issuer that has sold securities in a Regulation Crowdfunding offering in the past must have complied with the regulatory requirements for that offering. SEC Chairman Jay Clayton [said](#) that the rulemaking "responds to feedback we have received from our Small Business Capital Formation Advisory Committee and others about the difficulties [small] companies may face in conducting an offering within a time frame that meets pressing capital needs, while continuing to provide appropriate protections for investors."

Gauging interest. Temporary Rule 201(z)(2) allows an issuer to begin its offering of securities through its intermediary's platform even if it does not have financial statements to provide. However, the intermediary cannot accept any investment commitments until the financials have been filed with the SEC and provided to investors. When gauging interest in this way, the issuer must prominently disclose: (1) that the omitted financial information is not otherwise available and will be provided later by amendment; (2) that no investment commitments will be accepted until it has been provided; and (3) that the investor should review the complete set of offering materials, including the financial information, prior to making an investment decision.

Threshold for reviewed financials. Under the existing rules, issuers offering between \$107,000 and \$535,000 in a crowdfunding must provide financial statements that have been reviewed or audited by an independent public accountant. Temporary Rule 201(z)(3) removes the review requirement for offerings below \$250,000. If reviewed or audited financial statements are not otherwise available, the issuer may instead provide financial statements and certain information from its federal tax returns, both certified by its CEO. The issuer must prominently disclose that the financial information has been certified by the executive officer rather than an independent accountant.

Expediting funding. Finally, the temporary rules make several timing changes to speed up the crowdfunding process. Under the existing rules, information about the issuer must be available on the intermediary's platform for 21 days before any securities are sold. The temporary rules allow sales to occur as soon as an issuer has received binding investment commitments covering the target offering amount. Furthermore, the offering may close as soon as the target amount is reached, as long as the issuer has complied with the financial statement disclosure requirements, provides notice that the target has been met, and continues to meet or exceed the target amount at the time of closing. Because investors have 48 hours to cancel, investment commitments are not considered binding until after that time has passed.

The release is [No. 33-10781](#).

MainStory: TopStory CorporateFinance Covid19 FinancialIntermediaries SecuritiesOfferings