

Public Statement

Statement at Open Meeting on Securities Offering Reform for Business Development Companies and Closed-End Investment Companies



Chairman Jay Clayton

April 8, 2020

Good afternoon. This is an open meeting of the U.S. Securities and Exchange Commission, under the Government in the Sunshine Act.

Thank you to everyone joining today's open meeting—the first held since the Commission and staff began working in a largely teleworking environment almost one month ago. I would like to thank my fellow Commissioners and all of the Commission staff who helped coordinate this meeting, particularly the Office of the Secretary and the Office of Information Technology. Thanks to their efforts, Commissioners and the presenting staff will be able to discuss today's recommendation, and interested individuals from across the country—including investors, representatives of market participants, and others—should be able to hear our discussion in real-time. This open meeting is also being recorded and will be accessible on the Commission's website.

Before we get to the staff's recommendation for today, I want to say again how proud I am of the 4,500 women and men of the SEC for their incredible dedication during this period of national challenge. In the face of the uncertainties caused by COVID-19 and circumstances in which we all must prioritize health and safety, they have remained committed to our mission, focusing on the interests of our long-term Main Street investors and the integrity of our markets. For example, the Commission's expert staff has worked closely with market participants and our fellow financial regulators to facilitate the continued functioning of our markets during these times of significant market volatility. They have held webinars with small businesses and investors to hear about the specific challenges they are facing, and they have worked thoughtfully and swiftly to provide guidance and relief to market participants to facilitate the implementation of their business continuity plans. They have issued detailed disclosure guidance to assist issuers as they consider their disclosure obligations in connection with their assessment of the potential effects of COVID-19 on their operations. In all of these instances, they have been laser-focused on the interests of our long-term Main Street investors. In short, the staff's COVID-19 response efforts have been exemplary, and I urge all that are listening to this meeting to take a moment to pull up SEC.gov to see a sampling of what we have been doing.^[1]

Through these times, the SEC's work continues. We continue to bring enforcement actions. We continue to conduct investor outreach. We continue to conduct examinations of registered entities. We also continue to

propose and adopt rules as we have set forth on our public rulemaking agenda, including rules that are mandated by Congress. As I mentioned, we have 4,500 incredibly talented and dedicated women and men at the SEC, and they have shown without a doubt that they are able to move quickly on COVID-19-related response initiatives while at the same time continuing to execute our mission more broadly. I have discussed these efforts at greater length in other fora and noted that as time progresses, our allocation of resources may evolve, and we will continue to allocate our resources in the best interests of investors and our capital markets. Investor protection and market integrity will continue to be at front of mind. I believe the transparent, pragmatic, open-minded, mission-focused and effective way that our work continues is important, and it is my intent to continue to apply a flexible facts-and-circumstances approach to our allocation of resources and actions during this uncertain period.

We have one item on today's agenda. This action, in response to congressional directives, addresses investment companies, including those that invest in small and mid-size businesses—businesses that are critical to our nation's economic recovery.

In 2005, the Commission adopted rules designed to modernize the securities registration, offering and communication processes under the Securities Act. At the time, investment companies, including business development companies ("BDCs") and registered closed-end funds, were excluded from those reforms. In 2018, Congress passed two bipartisan bills directing us to amend our rules to harmonize the treatment of BDCs and most registered closed-end funds with that of operating companies for purposes of these reforms.

The rules we are adopting today effectuate these congressional mandates. In addition, as a result of the excellent experience-driven work of Director Blass and her staff, these rules will tailor the disclosure and regulatory framework that Congress mandated we extend to BDCs and other funds to the structure and operation of these funds. This tailoring will enhance investor protection. For example, the rules we are adopting specify periodic reporting requirements to help ensure that funds operating under the amended framework will provide key information directly to their shareholders.

Putting aside the fact that Congress has required us to move forward with this rulemaking, a comment on why moving forward with these reforms is important. Congress established BDCs for the purpose of making capital more readily available to small, developing and financially troubled companies that do not have ready access to the public capital markets or other forms of conventional financing. Since then, many of our offering rules have been modernized. By extending to BDCs and other closed-end funds the modernized registration, offering and communication processes that are currently available to other issuers, today's rulemaking is consistent with our ongoing efforts to modernize our rules to further all three aspects of our tripartite mission. These benefits should, as Congress intended, promote capital formation with respect to both the funds themselves and the small businesses in which they invest. In addition, thanks to the work of our staff, the communications reforms proposed today should also facilitate the more timely provision of information to investors, maintain market integrity, and enhance investor protection.

Before I turn it over to the staff to present their recommendation, I would like to acknowledge the following staff members for their contribution to this effort:

- From the Division of Investment Management: Dalia Blass, Sarah ten Siethoff, Brent Fields, Brian Johnson, Michael Spratt, Jacob Krawitz, Amanda Wagner, David Marcinkus, Jacob Sandoval, Michael Kosoff, Asaf Barouk, Joel Cavanaugh, Terri Jordan, Amy Miller, Angela Mokodean, John Ganley, Christina Fettig, Ray Be, David Orlic, and Jenson Wayne;
- From DERA: S.P. Kothari, Vladimir Ivanov, PJ Hamidi, and Adam Large;
- From the Office of the General Counsel: Bob Stebbins, Meridith Mitchell, Lori Price, Natalie Shioji, and Bob Bagnall; and
- From the Division of Corporation Finance: Luna Bloom and Charles Kwon.

And now, I'd like to turn it over to Dalia Blass, our Director of the Division of Investment Management, for the staff's presentation of their recommendation. S.P. Kothari, our Chief Economist and DERA Director, will then summarize

his views on the potential economic effects of this rulemaking. Following the staff's presentations, I'll ask Commissioner Peirce, Commissioner Roisman, and Commissioner Lee for any remarks.

[1] See SEC Coronavirus (COVID-19) Response, *available at* <https://www.sec.gov/sec-coronavirus-covid-19-response>.