

[Securities Regulation Daily Wrap Up, TOP STORY—SEC small business advisory committee endorses exempt offerings proposal, discusses COVID-19 response, \(May 11, 2020\)](#)

Securities Regulation Daily Wrap Up

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The commissioners cited the committee's recommendations as the impetus for the SEC's recent rulemaking expediting crowdfunding offerings.

The SEC's Small Business Capital Formation Advisory Committee held a virtual meeting for the second time in two months to assess the impact of the COVID-19 pandemic on small businesses and the government's response. The committee also discussed several aspects of the Commission's proposal to harmonize the current framework of exemptions from registration, ultimately recommending that the SEC's proposal be approved.

The committee praised the Commission's recent [action](#) to provide temporary, conditional relief for small businesses to pursue Regulation Crowdfunding offerings. The commissioners, in turn, also gave credit to the committee for recommending at its [April meeting](#) that the SEC implement temporary Reg CF relief. According to Chairman Jay Clayton, the committee's recommendation spurred the Commission into action. "This exactly the way these committees should work," Clayton said.

Small Business Administration actions. The committee welcomed its newest member, Bill Manger, chief of staff and associate administrator for the Office of Capital Access at the Small Business Administration (SBA). Manger provided an overview of the SBA's Paycheck Protection Program (PPP), which was part of the [CARES Act](#) to provide relief to smaller business affected by the COVID-19 crisis. The PPP, which is a loan program designed to provide a direct incentive for small businesses to keep their workers on the payroll, received its first applications for loans on April 3, a week after the CARES Act made the funds available, according to Manger.

Manger said the first tranche of money under the PPP made almost \$349 billion in loans available in less than two weeks, what would normally take the SBA 14 years. Congress then authorized another \$310 billion in funding, segregated into two buckets for smaller lenders: those in the \$10 to \$15 billion asset class, and lenders with less than \$10 billion in assets. According to Manger, in the second round of PPP loans, the smallest asset bucket made over \$58 billion in loans, compared to \$28 billion in loans from lenders in the \$10 to \$15 billion asset class. He added that during the first round of PPP loans, the average loan size was \$206,000, while the average loan during the second round was \$74,304. According to Manger, this a good sign that the smallest businesses are getting the capital they need to make payroll.

The CARES Act also expanded other programs to small businesses to assist with the impact of the coronavirus, Manger said, including expanded microloan programs, emergency loans for disaster relief, and upfront grants. In the past six weeks, the SBA has received \$1.2 trillion for COVID-19 assistance programs, Manger added, calling it "Pentagon money."

Some members of the committee expressed that they had experienced difficulty in obtaining SBA/PPP funds for their businesses. Catherine Mott, founder and CEO of BlueTree Capital Group, said that between her venture fund and her angel group, 29 applied for PPP but only 15 were approved. She noted that the difference between who got funding and who did not seemed to be that those approved for PPP loans had a close relationship with a banker. Poorvi Patodi, CEO of Biena Snacks, echoed this sentiment, noting that her company was able to get PPP because of an existing banking relationship.

Jefferey Solomon, CEO of Cowen, Inc. added that in his own experience, banks are prioritizing those with whom they already had existing lending relationships. It makes sense to "triage" with companies to whom banks have already extended credit, he observed.

Exempt offering framework proposal. The committee also unanimously voted to recommend that the Commission approve the SEC's [proposal](#) to harmonize its exempt offering framework, which was [approved](#) by a 3-to-1 vote in March. The vote was divided into five subtopics, all of which were unopposed by members of the committee.

The first subtopic involved increasing offering limits under Regulation Crowdfunding (from \$1.07 million to \$5 million), Rule 504 of Regulation D (from \$5 million to \$10 million), and Regulation A (Tier 1 remaining unchanged at \$20 million, but raising Tier 2 offerings from \$50 million to \$75 million). Solomon, who advised that a lot of companies do not like to use Regulation A, quipping that "nobody likes sitting at the kids table," said that raising the Tier 2 offering limit might result in more issuers availing themselves of the exemption, in particular biotech companies.

The second subtopic related to relaxing restrictions on demo days and "testing the waters" communications. Mott said it would be a much-needed change, given that the rules on general solicitation were written before the Internet. Regarding demo days, Jason Seats, CIO of Austin-based Techstars, said that investors come to these events to find something to invest in, but under the current rules, talking about fundraising is constrained. While he would have liked to see the restrictions loosened even more, the current proposal would be a huge benefit to smaller businesses, he said.

The committee also approved the third subtopic: the proposed provisions that would align the financial disclosures required for non-accredited investors under Rule 506(b) with those under Regulation A. Greg Yadley of Shumaker, Loop & Kendrick called the proposal reasonable, noting that startup companies are usually based on an existing relationship with a potential investor, and not months or years of the investors' financial situation.

In addition, the committee approved three aspects of the fourth subtopic relating to crowdfunding—individual investment limits, Regulation A eligible issuers, and eligible securities—which would generally align Regulation Crowdfunding with Regulation A. Finally, the committee approved the proposal's provision related to integration by clarifying the "facts and circumstances test" on integrated offerings, as well as four different non-exclusive safe harbors where certain securities offerings will not be presumed to be integrated.

Maryland Securities Commissioner Melanie Senter Lubin, the committee's representative of the North American Securities Administrators Association (NASAA) and a non-voting member of the committee, echoed concerns raised by Commissioner Allison Herren Lee, who [dissented](#) from approving the proposal for, among other reasons, the lack of data cited in the proposing release as justification for the proposed amendments. Lubin urged regulators to make rulemaking decisions on the basis of data instead of "what we think we know." If the Commission adopts rules to expand opaque markets, it should have the data to understand them, she said.

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