

May 06, 2020

SEC Relief to Small Businesses Pursuing Crowdfunding Offerings

On May 4, 2020, the Securities and Exchange Commission (SEC) announced in a Press Release that it is providing temporary, conditional relief under Regulation Crowdfunding (Regulation CF) that may aid small businesses affected by the COVID-19 pandemic. The temporary rules are aimed at getting eligible companies access to capital more quickly while relaxing some information requirements for capital raises between \$107,000 and \$250,000. The SEC provided a useful table summarizing the temporary rules vs. existing rules:

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Requirement	Existing Regulation Crowdfunding	Temporary Amendment
Eligibility	<p>The exemption is not available to:</p> <ul style="list-style-type: none"> • Non-U.S. issuers; • Issuers that are required to file reports under Section 13(a) or 15(d) of the Securities Exchange Act of 1934; • Investment companies; • Blank check companies; • Issuers that are disqualified under Regulation Crowdfunding’s disqualification rules; and • Issuers that have failed to file the annual reports required under Regulation Crowdfunding during the two years immediately preceding the filing of the offering statement. 	<p>To rely on the temporary rules, issuers must meet the existing eligibility criteria PLUS:</p> <ul style="list-style-type: none"> • The issuer cannot have been organized and cannot have been operating less than six months prior to the commencement of the offering; and • An issuer that has sold securities in a Regulation Crowdfunding offering in the past, must have complied with the requirements in section 4A(b) of the Securities Act and the related rules.
Offers permitted	After filing of offering statement (including financial statements)	After filing of offering statement, but financial statements may be initially omitted (if not otherwise available)
Investment commitments accepted	After filing of offering statement (including financial statements)	After filing of offering statement that includes financial statements or amended offering statement that includes financial statements

<p>Financial statements required when issuer is offering more than \$107,000 and not more than \$250,000 in a 12-month period</p>	<p>Financial statements of the issuer reviewed by a public accountant that is independent of the issuer</p>	<p>Financial statements of the issuer and certain information from the issuer's Federal income tax returns, both certified by the principal executive officer</p>
<p>Sales permitted</p>	<p>After the information in an offering statement is publicly available for at least 21 days</p>	<p>As soon as an issuer has received binding investment commitments covering the target offering amount (note: commitments are not binding until 48 hours after they are given)</p>
<p>Early closing permitted</p>	<p>Once target amount is reached if:</p> <ul style="list-style-type: none"> • The offering remains open for a minimum of 21 days; • The intermediary provides notice about the new offering deadline at least five business days prior to the new offering deadline; • Investors are given the opportunity to reconsider their investment decision and to cancel their investment commitment until 48 hours prior to the new offering deadline; and • At the time of the new offering deadline, the issuer continues to meet or exceed the target offering amount. 	<p>As soon as binding commitments are received reaching target amount if:</p> <ul style="list-style-type: none"> • The issuer has complied with the disclosure requirements in temporary Rule 201(z); • The intermediary provides notice that the target offering amount has been met; and • At the time of the closing of the offering, the issuer continues to meet or exceed the target offering amount.

Cancellations of investment commitments permitted	For any reason until 48 hours prior to the deadline identified in the issuer's offering materials. Thereafter, an investor is not able to cancel any investment commitments made within the final 48 hours of the offering (except in the event of a material change to the offering).	For any reason for 48 hours from the time of the investor's investment commitment (or such later period as the issuer may designate). After such 48-hour period, an investment commitment may not be cancelled unless there is a material change to the offering.
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Michael Best's Securities & Capital Markets team has experts who advise private companies on compliance with the SEC regulations. Michael Best's Venture Best® team advises private companies of various sizes through the fundraising process. Please do not hesitate to contact a member of the Securities & Capital Markets or Venture Best® team for additional information on this temporary relief how it could assist your company through the COVID-19 pandemic.

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