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SEC Provides COVID-19 Relief To Business Development Cos.

By **Elise Hansen**

Law360 (April 9, 2020, 2:31 PM EDT) -- The U.S. Securities and Exchange Commission has temporarily relaxed financing rules for business development companies to allow additional financial support to portfolio companies struggling with the effects of COVID-19.

Business development companies will have more flexibility to issue and sell senior securities in order to provide capital to small and medium-sized businesses, the SEC said Wednesday. Qualifying BDCs can also make additional investments in portfolio companies alongside certain affiliated private funds, the regulator said.

The relief comes on the heels of a broader rule change for BDCs, which are vehicles that raise capital in order to invest in small to midsize companies that lack access to public markets and traditional financing. But Wednesday's order is temporary and specifically aimed at addressing the market strains caused by the pandemic.

"Many small and medium-sized businesses across the country are struggling due to the effect of COVID-19," SEC Chairman Jay Clayton said in a statement. "Today's temporary, targeted action will enable BDCs to provide their businesses with additional financial support during these times."

The relief allows BDCs to change how they calculate asset coverage ratios. Without the adjustments, BDCs could struggle to meet asset coverage requirements because of temporary markdowns in loan value, the order said.

The relief comes with conditions, including a requirement that issuances undergo an independent evaluation and a majority of independent board members vote to approve the transaction. The provisions will remain in effect until either Dec. 31 of this year or when a BDC stops relying on the order — whichever is sooner, the order said.

BDCs that are currently allowed to engage in co-investment transactions with affiliated parties can now also participate in follow-on investments alongside the affiliated funds, the SEC said.

Mayer Brown LLP counsel Brian Hirshberg said the relief provisions were tailored but could prove helpful to BDCs that qualify.

"I think it's narrow, but targeted," he told Law360. "It's pretty prescribed relief, so [BDCs] need to make sure [they] fall within the parameters of it. It's very targeted relief to make sure the liquidity is being provided to the BDC's existing portfolio companies."

Earlier on Wednesday, the SEC approved final rules that alter registration rules for BDCs and certain other funds. The changes reflect mandates set by two congressional bills passed in 2018, namely the Small Business Credit Availability Act and the Economic, Growth Relief and Consumer Protection Act.

Those changes are permanent and have been in the works for some time, Hirshberg noted. But the new temporary relief could further bolster smaller businesses' access to capital markets, he said.

"Wednesday's order ... was really providing temporary relief because of market disruption," Hirshberg said. "I think they're trying to provide targeted relief for BDCs because they do obviously have an impact on small and midsize businesses in the U.S."

Representatives for the SEC declined to comment.

--Additional reporting by Tom Zanki. Editing by Marygrace Murphy.

Update: This story has been updated to reflect a response from the SEC.