Minnesota Department of Employment & Economic Development

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# Small Business Notes

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## Pandemic's Effects Leave Many Small Businesses With No Choice But Liquidation

The U.S. Chamber of Commerce has estimated that nationally more than forty percent of small businesses will close permanently as a result of the COVID-19 outbreak. That percentage includes both businesses that have been closed by government order and those that have remained open. The tremendously high percentage reflects the fact that the pandemic has hit businesses with an extraordinary number and kind of external stressors like loss of markets, loss of revenue, supply chain and distribution chain disruption, loss of employees, customer and supplier contract defaults. These then cause internal stressors like taking on too much debt and sustaining heavier than normal expenses in an attempt to ride out the crisis. This combination puts many small businesses into financial distress to the point where they can no longer continue as going concerns.

In the past when both external and internal stressors were fewer, a financially distressed business could take advantage of Chapter 11 bankruptcy which would allow the business to remain in operation under management of the business owner as debtor-in-possession while it restructured its debts under the supervision of a court appointed bankruptcy trustee. In the present circumstances of a perfect storm of internal and external adverse events the reality is often that the business simply cannot be put back together again as an entity that can secure resources, produce and deliver products or services, and pay debts and other obligations from revenue. In that case, the business most often turns to liquidation of the business' assets under Chapter 7 of the bankruptcy code where the bankruptcy trustee takes over the assets of the business, converts them to cash, and distributes the proceeds to creditors. [The U.S. Bankruptcy Courts have an excellent and comprehensive description of processes involved in all Chapters of the Bankruptcy Act at Bankruptcy Basics. Trade associations are an excellent source of current data on the extent of and impact of external stressors on particular industries or segments. See also, for Minnesota, DEED's Monthly Economic Snapshot. For the Midwest region, see Creighton University's Mid-American Economy survey].

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A business which is currently solvent and can pay its bills but is proactively liquidating in expectation and avoidance of future distress does not need to go through the bankruptcy process. But it should engage legal counsel to assist it with closing tasks like (and this is not a complete list): notifying and paying creditors, cancelling contracts, collecting accounts receivable, filing state required notice of dissolution, complying with employment law requirements on employee termination and final wage payments, disposing of assets, paying final state and federal payroll taxes, preparing the business' final income tax return.

## U.S. Securities and Exchange Commission (SEC) Offers Temporary Relief From Some Regulation Crowdfunding Requirements in Order to Expedite Offerings

In the interest of speeding up the availability of the federal securities offering process under Regulation Crowdfunding for businesses financially distressed as a result of the COVID-19 pandemic, the SEC on May 5, 2020 issued a temporary rule extending relief from some of the main requirements of the original rules beginning May 4, 2020 and extending to March 1, 2021.

Eligibility for the temporary relief requires that the offeror have been organized and in operation for at least six months in advance of the offering date.

The new rule allows an offeror:

- To assess public interest in a crowdfunding offer before the preparation and publication of full offering materials;
- To close an offering and have access to funds earlier than would be available under the regular rule by exempting the offeror from the 21 day offer closing period;
- To provide financial data from the offeror's financial statements and federal tax returns that are certified by the principal executive of the offeror rather than by an outside accounting firm.

It is worth noting that the economic analysis contained in the rule cautions that the aggregate economic effects of the temporary exemptions are expected to be modest. It would appear that the rule is intended primarily to attract funding from family, friends, and customers of the offeror rather than from a broader investment market.

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