

0002

1 PARTICIPANTS:

2 CHRISTOPHER COX, Chairman

3

4 GERALD J. LAPORTE, Chief

5 Office of Small Business Policy, SEC Division of Corporation Finance

6

7 KAREN KERRIGAN, President & CEO

8 Small Business & Entrepreneurship Council

9

10 CHAD MOUTRAY, PH.D., Chief Economist & Director

11 Economic Research, Office of Advocacy, SBA

12

13 DAVID A. BOCHNOWSKI, Chairman and CEO

14 Peoples Bank SB, NorthWest Indiana Bancorp

15

16 TOM W. BURKE, Senior VP

17 National Program Director/Compliance Manager, SBA Lending,

18 Wells Fargo & Company

19

20 DANIEL M. COVITZ, PH.D., Assistant Director

21 Division of Research and Statistics, Chief, Capital Markets

22 Section, Board of Governors of the Federal Reserve System

23

24 KENNETH R. PELOWSKI, Founder & Managing Partner

25 Pinnacle Ventures

0005

1 PARTICIPANTS (cont.):

2 MIKE RIBERT, Principal

3 Focus Capital Advisors

4

5 DENNIS ROBERTS, Sr. Managing Dir.

6 The McLean Group

7

8 BRIAN T. BORDERS, ESQ.

9 Borders Law Group

10

11 DILLON TAYLOR, Assistant Chief Counsel

12 SBA Office of Advocacy

13

14 ANTHONY G. BARONE, Special Counsel

15 Office of Small Business Policy, SEC Division of Corporation Finance

16

17

18

19

20

21

22

23

24

25

0006

1	C O N T E N T S	
2		PAGE
3	Call to Order	
4	Gerald J. Laporte	7
5	Opening Remarks	
6	Christopher Cox	9
7	Panel One:	
8	Small Business Capital Formation And	
9	the Current Credit Crisis	15
10	Panel Two:	
11	Current Issues in Securities	
12	Regulation for Smaller Companies	80
13	Panel Three:	
14	Private Placement and M&A Brokers	
15	Panel and Breakout Group Discussion	151
16	Panel Four:	
17	Plenary Session to Develop Next Steps	219
18		
19		
20		
21		
22		
23		
24		
25		

1 PROCEEDINGS

2 MR. LAPORTE: Good morning, everyone, both those
3 here physically in Washington, D.C. in the auditorium of the
4 Securities and Exchange Commission headquarters and those
5 here virtually because they're listening to the webcast over
6 the Internet.

7 My name is Gerry Laporte. I'm Chief of the Office
8 of Small Business Policy in the SEC's Division of Corporation
9 Finance. I'm here this morning to call to order the 27th
10 Annual Government Business Forum on Small Business Capital
11 Formation on behalf of the Securities and Exchange
12 Commission. This event is being conducted under the mandate
13 of Section 503 of the Omnibus Small Business Capital
14 Formation Act of 1980.

15 We thank you, all of you for taking time to
16 participate today, both those here and those on-line. We at
17 the SEC learn a great deal from the discussions at these
18 forums from the insights and experiences that you share with
19 us and we look forward to receiving the recommendations that
20 will come out of today's proceedings.

21 In recent years, these forums have focused
22 primarily on improvements in securities regulation to
23 facilitate small business capital formation. But when
24 Congress in 1980 passed a statute requiring the SEC to
25 conduct the forum on small business capital formation

0008

1 annually, they clearly had more than securities regulation in
2 mind. They intended this to be a joint effort among the SEC,
3 the Small Business Administration, the Treasury Department
4 and the Federal Reserve Board. All of these agencies are
5 mentioned in the statute that calls for this meeting.

6 Recent events in the credit and financial markets
7 have taken us back to the roots of that statute and shown
8 that the cooperation of all these agencies is essential to
9 ensure robust small business capital formation in our
10 country. Each of these agencies has been active in
11 formulating today's agenda. We thank them for their
12 cooperation and for participating in today's panels.

13 My first official duty today is to introduce the
14 Chairman of the SEC Christopher Cox. Chairman Cox became
15 Chairman of the SEC a little over three years ago after
16 having served 17 years in Congress, three years in the White
17 House as Senior Associate Counsel to the President, several
18 years as a securities lawyer specializing in venture capital
19 and corporate finance, and several years as a small business
20 owner. He knows the world of small business and knows the
21 world of securities laws well, perhaps better than any SEC
22 chairman of recent memory.

23 During today's proceedings, we will talk about
24 several of the rulemakings that the SEC has finalized during
25 Mr. Cox's tenure as Chairman; but, perhaps, most important,

0009

1 Chairman Cox's willingness to tackle some of the intractable
2 problems that never seem to get resolved because they are so
3 hard to make progress on, problems that no one ever seems to
4 know how to solve, problems that seem to bedevil our
5 securities markets year after year, but areas where we could
6 have dramatic, long-term, beneficial benefits if someone took
7 the lead to make some progress. And Chairman Cox has made
8 dramatic progress in several of these areas.

9 One example of the type of initiative Chairman Cox
10 has had of this type is with an impact on small business are
11 his championing the transforming the SEC's mandated
12 disclosure system from a static form-based system to one that
13 taps the power, interactive data, to give investors
14 qualitatively better information about their investments,
15 including their investments in smaller companies.

16 I could go on and on about the difficult,
17 intractable issues that Chairman Cox has undertaken, but I'm
18 sure you'd rather hear from him yourself. So here I give you
19 SEC Chairman Charles Cox.

20 CHAIRMAN COX: Christopher.

21 MR. LAPORTE: Christopher Cox.

22 (Applause.)

23 OPENING STATEMENT

24 CHAIRMAN COX: Thank you Gerry, very much, for that
25 very generous introduction. And your slip there with Charles

0010

1 Cox is actually technically correct. That's my first name,
2 and we as you know have had a commissioner here at the SEC
3 before named Charles Cox with whom I had a discussion about
4 our potential relation when I was working in the White House
5 at the time. So you're right on both counts.

6 This is a splendid panel that we've assembled here
7 this morning. I am delighted to join with Gerry in greeting
8 all of you and welcoming you to what as he noted is the 27th
9 Annual Form on Small Business Capital Formation here at the
10 SEC. It's something that each year we take very, very
11 seriously. We think it's very important and in fact our
12 devotion to small business capital formation imbues a great
13 deal of the work that goes on in all of the divisions and
14 offices here at the Securities and Exchange Commission.

15 I think Gerry also mentioned that in addition to
16 those of us who are right here in the auditorium, we've got
17 people participating on the web. We've got people
18 participating on the web with us through "Twitter," and if
19 you are one of those, I encourage you to submit your
20 questions by e-mail and we'll try to get to as many of
21 those as we can. The SEC's mission, very formally, is to
22 protect investors, to maintain orderly markets, and to
23 promote capital formation. It's that third leg of our
24 mission that calls us together here today. The economic
25 crisis has centered on a lot of the largest players in the

0011

1 financial world, Fannie and Freddie, AIG, Lehman, WaMu, and
2 now the big three carmakers. The big players are getting a
3 great deal of attention, but this crisis is affecting the
4 entire economy including small business. I don't need to
5 tell you how rapid and severe the impact of recent events has
6 been, for at least the past two decades small businesses
7 which are 99% of all businesses, have bailed us out of every
8 recession and we are looking to small business to fulfill
9 that role once more.

10 You have generated between two-thirds and three-
11 quarters of all net new jobs, year-end and year-out, and that
12 is in relation to your overall size, your relative size,
13 truly over performing. In 2001, which was probably the most
14 extreme example of this, following the burst of the dot com
15 bubble, small business generated 100% of net new jobs in the
16 United States of America. Small business is backed up like
17 statistics such as that, is the engine of growth in America,
18 and America as always is counting on you. While the credit
19 crunch is making it difficult for small businesses to get
20 loans for inventory. Operations and expansion, your customers
21 at the same time are also feeling the pinch, and yet even
22 today according to the small business administration with
23 whom we are delighted to be partnering in this event, small
24 firms employ about half of all private sector workers.

25 You are responsible for 45% of total U.S. payroll

0012

1 and you've generated, as I said, the lions share of net new
2 jobs in the United States with that fraction of total
3 resources. Our success as a country and as an economy is
4 therefore inextricably tied to the success of small business,
5 and that's why we here at the SEC are dedicated to ensuring
6 that small businesses continue to have access to capital. If
7 we expect to exit this downturn and re-energize our economy's
8 growth as quickly as possible, we've got to smooth the way
9 for the men and women who are continuing to work, sweat, and
10 take risks and make payroll every week, every month, and
11 every year. While that fashion lately seems to be robbing
12 Peter to pay Paul, we thought it was high time someone
13 started listening to Paul for a change. We're delighted you
14 could all be here. We recognize the financial burden on
15 small business from government is even more serious than it
16 is for larger companies. The smaller the business, the more
17 true that is. Firms with fewer than 20 employees spend 45%
18 more per employee on complying with federal regulations.

19 We've been reminded once again of the important
20 role that regulation plays in protecting investors and in
21 ensuring a level playing field, and that's particularly
22 important for small business. But that in no way means that
23 the burden of regulation should be allowed to fall
24 disproportionately on small business. So as lawmakers and
25 regulators look to reform the system over the coming months,

0013

1 we've got to ensure that we do everything possible to
2 support the growth and the capital formation of small
3 business. At the SEC we've recently taken a number of steps
4 to make it easier for small businesses to comply with SEC
5 regulations.

6 Since June of last year we've revised the
7 eligibility requirements for primary securities offerings on
8 forms S3 and F3. We've enacted smaller reporting company
9 regulatory relief and simplification. We've revised rules
10 144 ad 145 with the same objective in mind. We've exempted
11 compensatory employee stock options from registration under
12 Section 12(g) of the '34 Act, and we've offered relief and
13 tailored guidance for smaller companies regarding
14 management's report on internal controls.

15 As you know, our partners at the SBA have also
16 taken steps to improve small business access to capital.
17 Some of their work includes an interim final rule earlier
18 this month that allows new SBA loans to be made with an
19 alternative base interest rate. The one-month LIBOR rate in
20 addition to the prime rate, which was previously allowed.
21 That's helping to address the recent disparity between those
22 two rates.

23 Of course there's much more that needs to be done,
24 and I know that you all here have a lot of ideas, and we want
25 to hear them and we want to get business on them right away.

0014

1 So we're going to turn to that immediately. The morning's
2 agenda features two roundtable panels. The first on small
3 business capital formation and the current credit crisis will
4 be moderated by Karen Kerrigan, the president and CEO of the
5 Small Business and Entrepreneurship Council in Oakton,
6 Virginia, and Chad Moutray, the chief economist and director
7 of economic research at the Office of Advocacy in the U.S.
8 Small Business Administration. They are going to lead seven
9 distinguished panelists in what promises to be an
10 extraordinarily timely discussion.

11 The second panel will be at 11 o'clock devoted to
12 current issues in securities regulation for smaller
13 companies. That will be moderated by our own Gerry Laporte,
14 who is of course Chief of the SEC Office of Small Business
15 Policy in the Division of Corporation Finance, and
16 co-moderated by Steve Bochner, partner at Wilson, Sonsini,
17 Goodrich & Rosati in Palo Alto, California. They will lead
18 another seven distinguished panelists, including our own Bill
19 Lutz, who directs the SEC's 21st Century Disclosure
20 Initiative.

21 After lunch we'll reassemble at 2:15 and divide
22 into more panel discussions and breakout groups to develop
23 recommendations. The moderators will include Brian Bussey,
24 Assistant Chief Counsel in the SEC's Division of Trading and
25 Markets, and Greg Yadley, who is a partner at Shumaker, Loop

