

DISCUSSION DRAFT

**FINAL REPORT OF THE
SECURITIES AND EXCHANGE COMMISSION
ADVISORY COMMITTEE ON SMALL AND EMERGING COMPANIES
SEPTEMBER 2017**

[COVER DESIGN]

**SECURITIES AND EXCHANGE COMMISSION
ADVISORY COMMITTEE ON
SMALL AND EMERGING COMPANIES**
Washington, DC 20549-3628

September __, 2017

The Honorable Jay Clayton
Chairman
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549-1070

Dear Chairman Clayton:

The Securities and Exchange Commission organized the Advisory Committee on Small and Emerging Companies to provide the Commission with advice on the Commission's rules, regulations, and policies with regard to its mission of protecting investors, maintaining fair, orderly, and efficient markets, and facilitating capital formation, as they relate to the following:

- (1) capital raising by emerging privately held small businesses and publicly traded companies with less than \$250 million in public market capitalization;
- (2) trading in the securities of such businesses and companies; and
- (3) public reporting and corporate governance requirements to which such businesses and companies are subject.

Established voluntarily by the SEC in 2011 in accordance with the Federal Advisory Committee Act, the Committee's third two-year term expires on September 24, 2017. We are pleased that Congress recognized the importance of the Committee's work in December 2016 by adding a provision to the Securities Exchange Act that establishes a similar advisory committee on a permanent basis. We look forward to the continuation of our worthy mission by the Small Business Capital Formation Advisory Committee.

We have prepared this Final Report to memorialize the recommendations made by the Committee over the past six years and to identify areas for continued focus. We each stand ready to lend any further assistance in carrying out these recommendations.

Thank you for the opportunity to serve, and for the generous support provided by the Commission and staff throughout.

Respectfully submitted on behalf of the Advisory Committee,

Stephen M. Graham
Committee Co-Chair

Sara Hanks
Committee Co-Chair

Current Members of the Advisory Committee

Robert Aguilar
Xavier Gutierrez
Brian Hahn
Jenny Kassar
Catherine V. Mott
Jonathan Nelson
Patrick Reardon
Lisa Shimkat
Annemarie Tierney
J.W. Verret (appointed June 1, 2017)
Gregory C. Yadley
Laura Yamanaka

Non-voting members

Michael Pieciak
Joseph Shepard (appointed May 9, 2017)

Enclosure

cc: Commissioner Michael S. Piwowar
Commissioner Kara M. Stein
William H. Hinman
Robert Evans
Elizabeth Murphy
Sebastian Gomez Abero
Julie Z. Davis

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I. History of the SEC Advisory Committee on Small and Emerging Companies

In 2011, the Commission formed the Advisory Committee on Small and Emerging Companies (ACSEC) to focus on interests and priorities of small business and smaller public companies.¹ The ACSEC was preceded by an SEC Advisory Committee on Smaller Public Companies established on December 16, 2004, to assist the Commission in examining the impact of the Sarbanes-Oxley Act and other aspects of the federal securities laws on smaller public companies.² That Advisory Committee delivered its Final Report on April 23, 2006.³

As SEC Chairman Mary Schapiro said at the first ACSEC meeting on October 31, 2011:

The regulatory decisions affecting small businesses must be informed by the real world experience of people who are building a business, raising capital, and complying with regulations. That makes your work, providing counsel to our efforts and providing a conduit through which others can contribute, vitally important. Your experience will become a vehicle for better understanding on our part of the impact a new regulation or changes to old rules might have.

The structure of this Advisory Committee is one sign of how seriously we take this task. First, it's composed of a team from a variety of backgrounds with differing perspectives that will be able to examine the issues from all angles and offer opinions based not just on what has worked in the past, but how things can work better going forward. And second, rather than being brought together to write a single report framed by a single series of issues or static marketplace conditions, the Committee is structured to provide ongoing input to the Commission. You can adjust priorities and the guidance you give us as marketplace and regulatory changes occur.⁴

In accordance with the Federal Advisory Committee Act, the ACSEC Charter adopted on October 4, 2011 provided for a two-year term. The Commission renewed the Committee for an additional two-year term on September 24, 2013 and again on September 24, 2015. The latest ACSEC Charter and Bylaws are included in Appendix A.

¹ Press release "SEC Announces Formation of Advisory Committee on Small and Emerging Companies," September 13, 2011, is available at <https://www.sec.gov/news/press/2011/2011-182.htm>. Additional information on the ACSEC is available at <https://www.sec.gov/spotlight/advisory-committee-on-small-and-emerging-companies.shtml>.

² Press release "SEC Establishes Advisory Committee to Examine Impact of Sarbanes-Oxley Act on Smaller Public Companies," December 16, 2004, is available at <https://www.sec.gov/news/press/2004-174.htm>. Additional information on the SEC Advisory Committee on Smaller Public Companies is available at <https://www.sec.gov/info/smallbus/acspc.shtml>.

³ The Final Report of the Advisory Committee on Smaller Public Companies to the Securities and Exchange Commission, April 23, 2006, is available at <https://www.sec.gov/info/smallbus/acspc/acspc-finalreport.pdf>.

⁴ Transcript of the October 31, 2011, ACSEC meeting is available at <https://www.sec.gov/info/smallbus/acsec/acsec103111-transcript.pdf>.

II. Recommendations

Between 2011 and 2017, the ACSEC met 22 times, and 35 speakers from outside of the Commission gave presentations during these meetings.⁵ The ACSEC adopted the following 17 recommendations, copies of which are included in Appendix B.

1. Recommendation Regarding Relaxing or Modifying Restrictions on General Solicitation in Certain Private Offerings of Securities (January 6, 2012)
2. Recommendations Regarding Registration Requirements and Reporting Obligations under Securities Exchange Act of 1934 (February 1, 2012)
3. Recommendation Regarding Improving Access to Public Markets for Small and Emerging Companies (February 1, 2012)
4. Recommendation Regarding Separate U.S. Equity Market for Securities of Small and Emerging Companies (February 1, 2013)
5. Recommendations Regarding Trading Spreads for Smaller Exchange-Listed Companies (February 1, 2013)
6. Recommendation Regarding Specialized Disclosure Requirements (February 1, 2013)
7. Recommendations Regarding Disclosure and Other Requirements for Smaller Public Companies (February 1, 2013)
8. Recommendation on the Proposed Amendments to Regulation D, Form D, and Rule 156 under the Securities Act (September 17, 2013)
9. Recommendations Regarding the Accredited Investor Definition (March 9, 2015)
10. Recommendation Regarding the “4(1½) Exemption” (June 11, 2015)
11. Recommendation to Modernize Rule 147 under the Securities Act of 1933 (September 23, 2015)
12. Recommendations about Expanding Simplified Disclosure for Smaller Issuers (September 23, 2015)

⁵ Agendas, transcripts, presentations, recommendations, and other materials from each of the ACSEC meetings are available at <https://www.sec.gov/spotlight/advisory-committee-on-small-and-emerging-companies.shtml>.

13. Recommendations Regarding the Regulation of Finders and Other Intermediaries in Small Business Capital Formation Transactions (September 23, 2015)
14. Recommendations Regarding the Accredited Investor Definition (July 20, 2016)
15. Recommendation Regarding Corporate Board Diversity (February 16, 2017)
16. Recommendations Regarding Secondary Market Liquidity for Regulation A Securities (May 15, 2017)
17. Recommendation Regarding the Regulation of Finders and other Intermediaries in Small Business Capital Formation (May 15, 2017)

III. Changes in the Securities Landscape since the Establishment of the ACSEC

When the Commission formed the ACSEC in 2011, small businesses had fewer options for raising capital. If a business wanted to conduct a widespread offering of its securities using general solicitation, frequently it would have been required to register the offering with the Commission.⁶ Businesses not needing to engage in a general solicitation likely would have conducted an offering under Rule 506(b), which limited purchasers to accredited investors and no more than 35 sophisticated investors.⁷ Businesses that were not ready to conduct a registered offering and did not have access to accredited or sophisticated investors had limited options.

While registered offerings and exempt offerings under Rule 506(b) continue to play a dominant role in the current market, the exempt offering framework has been expanded to allow new capital raising avenues for small businesses and updated to reflect developments in modern business practices and technology. The ACSEC's recommendations played a role in many of the changes leading to the current framework.

On April 5, 2012, the Jumpstart Our Business Startups (JOBS) Act was enacted. A few years later, on December 4, 2015, the Fixing America's Surface Transportation (FAST) Act was enacted. These legislative changes and Commission rulemakings led to significant changes to how small businesses may raise capital today, including:

⁶ While a couple exemptions from registration permitted general solicitation, including former Regulation A and Rule 504(b)(1)(i), (ii) or (iii), offerings were infrequently conducted under those exemptions.

⁷ Rule 506 is a safe harbor for offerings under what then was Section 4(2) (now Section 4(a)(2)). Other exemptions from registration that a business could have used to raise capital in the United States included Regulation A, Rules 504 and 505 of Regulation D, and intrastate offerings under Section 3(a)(11) and Rule 147. Offerings, however, were infrequently conducted under those exemptions.

- New Section 4(a)(7) of the Securities Act to exempt certain secondary sales of securities that are purchased by an accredited investor;⁸
- Amendments to Rule 506 of Regulation D to permit the use of general solicitation where the issuer takes reasonable steps to verify that each purchaser is an accredited investor and the issuer had a reasonable belief that each purchaser was an accredited investor at the time of the sale of securities;⁹
- Amendments to Regulation A to, among other things, create two tiers of public offerings, each with increased offering amounts – Tier 1 for offerings of up to \$20 million in a 12-month period; and Tier 2 for offerings of up to \$50 million in a 12-month period;¹⁰
- New Regulation Crowdfunding to enable businesses to offer and sell securities on an internet-based platform through an intermediary that is a registered broker-dealer or registered funding portal;
- Amendments to revise the rules related to the thresholds for registration, termination of registration, and suspension of reporting under Section 12(g) of the Securities Exchange Act of 1934;¹¹
- Amendments to the intrastate offering framework to update and modernize how businesses can raise money within their state;¹² and
- Amendments to Rule 504 to increase the aggregate amount of securities that may be offered and sold from \$1 million to \$5 million.

For the new and amended exemptions, it is too early to assess the extent to which these changes will affect capital formation over the long run. However, we have seen some evidence that the market is changing.¹³

⁸ The Committee’s recommendation regarding the “4(1½) Exemption,” dated June 11, 2015, is available at <https://www.sec.gov/info/smallbus/acsec/acsec-4a-one-and-a-half-recommendation.pdf>.

⁹ The Committee’s recommendation regarding relaxing or modifying restrictions on general solicitation in certain private offerings of securities is available at <https://www.sec.gov/info/smallbus/acsec/acsec-recommendation-010612.pdf>.

¹⁰ The Committee’s recommendation regarding Regulation A and improving access to the public markets for small and emerging companies, dated February 1, 2012, is available at <https://www.sec.gov/info/smallbus/acsec/acsec-recommendation-020112-improve-access.pdf>.

¹¹ The Committee’s recommendation regarding registration requirements and reporting obligations under the Securities Exchange Act of 1934, dated February 1, 2012, is available at <https://www.sec.gov/info/smallbus/acsec/acsec-recommendation-020112-registration.pdf>.

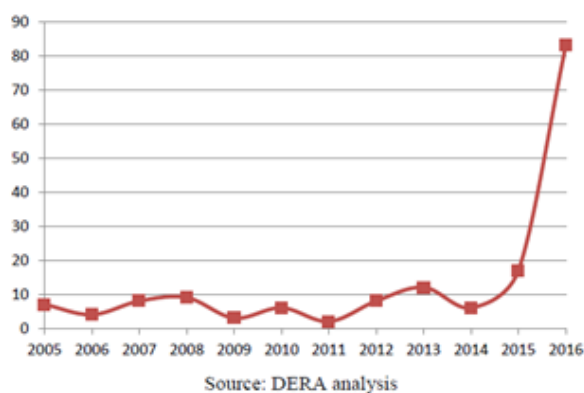
¹² The Committee’s recommendation to modernize Rule 147 under the Securities Act of 1933, dated September 23, 2015, is available at <https://www.sec.gov/info/smallbus/acsec/acsec-recommendation-modernize-rule-147.pdf>.

¹³ The Committee’s discussion about “Data on the size and scope of small business capital raising through unregistered securities offerings” is reflected on pages 35-78 of the transcript of the February 25, 2016,

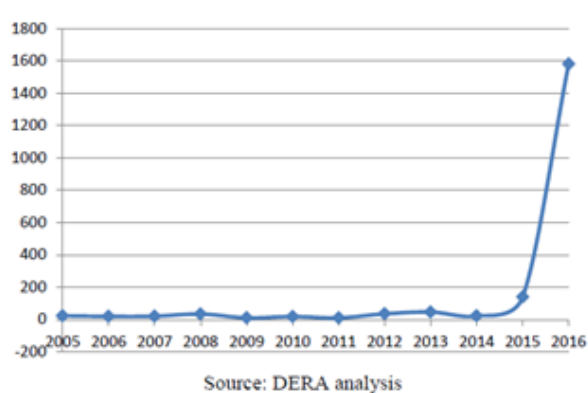
From the adoption of Rule 506(c) on September 23, 2013, until December 31, 2016, almost \$108 billion was reported sold in reliance on Rule 506(c). During that same period, \$4.1 trillion was reported sold in reliance on 506(b).¹⁴ So while the reported dollar amounts raised under 506(c) are not insignificant, issuances claiming the new exemption have accounted for only 3% of the reported capital raised pursuant to Rule 506 since becoming effective.¹⁵

With respect to Regulation A, the number of qualified offerings and the aggregate amount sought in Regulation A offerings substantially increased relative to the pre-amendment numbers. According to the DERA Access to Capital and Market Liquidity Report, “early signs indicate that amended Regulation A may offer a potentially viable public offering on-ramp for smaller issuers as an alternative to a traditional registered IPO and offer either an alternative or a complement to other securities offering methods that are exempt from Securities Act registration.”¹⁶ The following graphs are from the DERA Report:

Number of qualified Regulation A offerings, 2005-2016



Aggregate amounts sought in qualified Regulation A offerings, 2005-2016



Effective since May 16, 2016, the data available so far on Regulation Crowdfunding is limited. However, initial evidence shows that some small pre-revenue growth firms are beginning to use crowdfunding as a securities offering method.¹⁷

ACSEC meeting, which is available at <https://www.sec.gov/info/smallbus/acsec/acsec-transcript-022516.pdf>. See also “Access to Capital and Market Liquidity Report to Congress by the Staff of the Division of Economic and Risk Analysis of the U.S. Securities and Exchange Commission”(August 2017), available at <https://www.sec.gov/files/access-to-capital-and-market-liquidity-study-2017.pdf> (“DERA Access to Capital and Market Liquidity Report”).

¹⁴ DERA Access to Capital and Market Liquidity Report at 6, 65.

¹⁵ Id.

¹⁶ Id., at 47-53.

¹⁷ See Ivanov, Vladimir and Knyazeva, Anzhela, “U.S. securities-based crowdfunding under Title III of the JOBS Act” (Feb. 28, 2017) available at https://www.sec.gov/files/2017-03/RegCF_WhitePaper.pdf; see also DERA Access to Capital and Market Liquidity Report at 59.

As the exempt market continues to grow and evolve, it will be important for the Commission to continue to gather and examine data that assesses the effectiveness of these new exemptions. ACSEC members have repeatedly raised the lack of reliable data covering the exempt markets as an impediment to informed policy-making.

IV. Recommended Areas for Continued Focus

While a number of the ACSEC recommendations have been implemented, there are others that remain outstanding. We recommend these be areas of continued focus for the Commission, SEC staff, and the future Small Business Capital Formation Advisory Committee.

1. Facilitating Exempt Offerings

A. Finders

Identifying potential investors is one of the most difficult challenges for small businesses trying to raise capital. However, only 13% of Regulation D offerings reported using a financial intermediary, such as a broker-dealer or finder, between 2009 and 2012. This is due, in part, to (a) a lack of interest from registered broker-dealers given the legal costs and risks involved in undertaking a small transaction and (b) the reluctance of those not registered as broker-dealers to provide assistance because of the ambiguities in the definition of “broker.” There is significant uncertainty in the marketplace about what activities require broker-dealer registration under Section 15 of the Securities Exchange Act of 1934. Companies seeking to comply with the rules often find it hard to determine under what circumstances they can engage a “finder” or online platform that is not registered as a broker-dealer.

As documented in the findings of an American Bar Association Business Law Section Task Force in 2005,¹⁸ recognized by the SEC Advisory Committee on Smaller Public Companies in 2006,¹⁹ and endorsed in numerous Final Reports of the Congressionally-mandated annual SEC Government-Business Forum on Small Business Capital Formation,²⁰ there are a number of considerations when it comes to the topic of finders:

- a) Failure to address the regulatory issues surrounding finders and other private placement intermediaries impedes capital formation for smaller companies,

¹⁸ The Report and Recommendations of the American Bar Association Business Law Section Task Force on Private Placement Broker-Dealers, June 20, 2005, is available at <https://www.sec.gov/info/smallbus/2009gbforum/abareport062005.pdf>.

¹⁹ The Final Report of the SEC Advisory Committee on Smaller Public Companies, Recommendation IV.P.6, April 23, 2006, is available at <https://www.sec.gov/info/smallbus/acspc/acspc-finalreport.pdf>.

²⁰ The Final Reports from the annual Government-Business Forum on Small Business Capital Formation since 1993 are available at <https://www.sec.gov/info/smallbus/sbforum.shtml>.

- b) The current broker-dealer registration system and FINRA membership process is a deterrent to meaningful oversight,
- c) Appropriate regulation would enhance economic growth and job creation, and
- d) Solutions are achievable through Commission leadership and coordination with FINRA and the states.

The ACSEC made recommendations to the Commission urging action on this matter in 2015.²¹ Most recently, on May 15, 2017, the Committee recommended:²²

The Commission adopt rules in the near future to provide regulatory certainty for finders, private placement brokers, and platforms not registered as broker-dealers involved in primary and secondary transactions of unregistered securities. Pending adoption of any new rules, staff in the Division of Trading and Markets should with all deliberate speed bring clarity and certainty in this area by promulgating appropriate guidance.

The Committee considers this issue to be critical for many aspects of capital formation, and is disappointed that, despite repeated and longstanding requests, the Commission has not taken actions to help address the concerns. We urge the Commission to take prompt action on this matter and encourage the future Small Business Capital Formation Advisory Committee to carefully monitor this situation.

B. Accredited Investor Definition

While new and enhanced exemptions have become available in the past several years, the provisions in Rule 506 of Regulation D under the Securities Act of 1933 continue to be the most widely used. In 2016, issuers utilizing Regulation D raised over \$1.32 trillion,²³ an amount comparable to what was raised in registered offerings. The “accredited investor” definition is a centerpiece of Regulation D intended to encompass persons whose financial sophistication and ability to sustain the risk of loss of investment or ability to fend for themselves render the protections of the Securities Act’s registration process unnecessary.

The Dodd Frank Act of 2010 directs the Commission to review the accredited investor definition as it relates to natural persons every four years to determine whether the definition

²¹ The Committee’s recommendation regarding the regulation of finders and other intermediaries in small business capital formation transactions, dated September 23, 2015, is available at <https://www.sec.gov/info/smallbus/acsec/acsec-recommendations-regulation-of-finders.pdf>.

²² The Committee’s recommendation regarding the regulation of finders and other intermediaries in small business capital formation transactions, dated May 15, 2017, is available at <https://www.sec.gov/info/smallbus/acsec/acsec-recommendation-051517-finders.pdf>.

²³ DERA Access to Capital and Market Liquidity Report at 39.

should be modified or adjusted. In December 2015, the SEC staff published a report in connection with that review.²⁴ In 2015 and 2016 the Committee made recommendations to the Commission regarding the accredited investor definition.²⁵ The core of those two recommendations was the same: the overarching goal of any changes the Commission might consider to the definition should be to “do no harm” to the private offering ecosystem. If the individual income and net worth thresholds underlying the definition of accredited investor were raised significantly, it would considerably decrease the number of households that qualify as accredited investors. This decrease would have a disparate impact on those areas having a lower cost of living, which are areas that often coincide with regions of lower venture capital activity. The Committee also is concerned that a decrease in the accredited investor pool would have a disproportionate effect on women and minority entrepreneurs. The Committee would support expanding the definition to take into account measures of sophistication, regardless of income or net worth, thereby expanding rather than contracting the pool of accredited investors. That said, simplicity and certainty are vital to the utility of any expanded definition of accredited investor, so any non-numerical criteria should generally be ascertainable with certainty.

We urge the Commission to carefully consider the ACSEC’s recommendations if it decides to move forward with any changes to the definition, and we encourage the future Small Business Capital Formation Advisory Committee to remain engaged on this issue.

2. Reporting Companies

A. Scaled Disclosure

In addition to significant changes in the landscape for exempt offerings, a number of noteworthy developments have taken place in the reporting company space since the Committee’s establishment in 2011. The JOBS Act created a new category of company called an “emerging growth company” (EGC), which can avail itself of certain scaled disclosure and other requirements at the time of the company’s initial public offering (IPO) and, in many cases, for up to five years thereafter. An EGC is defined as a company that had total annual gross revenue of less than \$1,070,000,000 during its most recently completed fiscal year. Since the enactment of the JOBS Act, approximately 87% of the IPOs that have gone effective were for EGCs.²⁶

²⁴ The SEC Staff Report on the Review of the Definition of “Accredited Investor,” dated December 18, 2015, is available at <https://www.sec.gov/corpfin/reportspubs/special-studies/review-definition-of-accredited-investor-12-18-2015.pdf>.

²⁵ The Committee’s recommendations regarding the definition of “Accredited Investor,” dated March 9, 2015 and July 20, 2016, are available at <https://www.sec.gov/info/smallbus/acsec/acsec-accredited-investor-definition-recommendation-030415.pdf> and <https://www.sec.gov/info/smallbus/acsec/acsec-recommendations-accredited-investor.pdf>.

²⁶ Ernst & Young LLP, “Update on emerging growth companies and the JOBS Act” (November 2016), <http://www.ey.com/Publication/vwLUAssets/ey-update-on-emerging-growth-companies-and-the->

Recent years have also seen a substantial decline in the number of U.S. IPOs and publicly listed companies. The Committee has discussed multiple reasons that may factor into this decline.²⁷ One often cited reason on which the ACSEC has focused at length during each of our three terms involves the high costs of being a public company. The disclosure requirements place a disproportionate burden on smaller reporting companies in terms of the cost of, and time spent on, compliance.

In recognition of this fact, the SEC has provided for simplified disclosure and reporting for smaller issuers for over 30 years. Under current Commission rules, “smaller reporting companies” (SRCs) are companies that, among other things, have a public float of less than \$75 million in common equity, or, if unable to calculate the public float, companies with less than \$50 million in annual revenues. Similarly, a company is considered a “non-accelerated filer” if it has a public float of less than \$75 million as of the last day of the most recently completed second fiscal quarter.

EGCs are provided with a number of accommodations with respect to disclosure requirements that we believe would also be beneficial for SRCs, and we have recommended rule revisions to extend those accommodations.²⁸ Further, we believe that the current threshold for the SRC definition is too low and have recommended expanding it so that more companies could qualify.²⁹ On June 27, 2016, the Commission proposed amendments that would increase the financial thresholds in the SRC definition.³⁰

We urge the Commission to move forward with finalizing this rule, and to revise the definition of “accelerated filer” to include companies with a public float of \$250 million or more, but less than \$700 million. As a result of such revision, the requirements that apply currently to accelerated filers, including the timing of the filing of periodic reports and the requirement that accelerated filers provide an auditor attestation report under Section 404(b) of the Sarbanes

[jobs-act-november-2016/\\$FILE/ey-update-on-emerging-growth-companies-and-the-jobs-act-november-2016.pdf](#), at 6.

²⁷ We note that some reasons may differ for smaller companies that are struggling to find funding than for larger private companies that currently have more access to worldwide private capital and cheaper debt than in the past. The Committee’s discussion on “Why are more companies choosing to stay private?” is reflected on pages 110-171 of the transcript of the February 15, 2017, ACSEC meeting, which is available at <https://www.sec.gov/info/smallbus/acsec/acsec-transcript-021517.pdf>.

²⁸ The Committee’s recommendation regarding disclosure and other requirements for smaller public companies, dated March 21, 2013, is available at <https://www.sec.gov/info/smallbus/acsec/acsec-recommendation-032113-smaller-public-co-ltr.pdf>, and the recommendation regarding expanding simplified disclosure for smaller issuers, dated September 23, 2015, is available at <https://www.sec.gov/info/smallbus/acsec/acsec-recommendations-expanding-simplified-disclosure-for-smaller-issuers.pdf>.

²⁹ Id.

³⁰ The SEC Proposed Rule: Amendments to Smaller Reporting Company Definition, June 26, 2016, is available at <https://www.sec.gov/rules/proposed/2016/33-10107.pdf>.

Oxley Act, would no longer apply to companies with public float between \$75 million and \$250 million (companies with public float of less than \$75 million are already exempt).

B. Board Diversity

The ACSEC also has focused on the importance of diversity on companies' boards of directors. Board diversity has been associated with improved competitiveness and talent management, greater access to capital, more sustainable profits, and better relations with stakeholders and therefore plays an important role in capital formation for small and emerging companies.

In 2009, the Commission adopted a rule (Item 407(c)(2)(vi) of Regulation S-K (the Rule)) requiring public companies to disclose in their proxy statements whether a nominating committee considers diversity in identifying nominees for the company's board of directors, and if it is considered, how. The Rule also requires that if the company has a policy with regard to the consideration of diversity in identifying director nominees, it must disclose how that policy is implemented and how its effectiveness is assessed. The Rule does not define diversity. Among companies, definitions differ greatly and are generally vague, covering a broad range of attributes, including business, financial, accounting experience, risk management, legal, government, and other relevant expertise. Also, there may be disclosure about the age of the directors, the length of board tenure, race, gender, and ethnicity. Very few companies have disclosed a formal diversity policy and, as a result, there is very little disclosure on how companies are assessing the effectiveness of their policies.

Because the Rule has failed to generate information useful to stockholders, employees and customers in assessing board diversity, the ACSEC recommended that the Commission amend Item 407(c)(2) of Regulation S-K to require issuers to describe, in addition to their policy with respect to diversity, if any, the extent to which their boards are diverse.³¹ The recommendation states that while, generally, the definition of diversity should be up to each issuer, issuers should include disclosure regarding race, gender, and ethnicity of each member/nominee as self-identified by the individual. The Committee urges the Commission to continue moving forward with efforts to amend the Rule in order to generate disclosure more useful to investors.

3. Market Structure

The Committee has frequently expressed concern that U.S. equity markets do not always offer a satisfactory trading venue for the securities of small and emerging companies. Among

³¹ The Committee's recommendation regarding corporate board diversity, dated February 16, 2017, is available at <https://www.sec.gov/info/smallbus/acsec/acsec-recommendation-021617-corporate-board-diversity.pdf>.

other things, we have discussed that there is insufficient liquidity for those securities and that listing requirements can prove too difficult for smaller companies to meet.

A. Secondary Market Liquidity

The Committee has longstanding concerns about the limited secondary market liquidity with regard to exempt offerings. Small businesses trying to attract capital often struggle because potential investors are reluctant to invest unless they are confident there will be an exit opportunity. Capital is often more expensive or not available for issuers that are not able to provide investors with liquidity opportunities. In 2013, the ACSEC recommended that the Commission facilitate and encourage the creation of a separate U.S. equity market that would facilitate trading by accredited investors in the securities of small and emerging companies.³² On May 15, 2017, we recommended that the Commission preempt state regulation of secondary trading in securities of Tier 2 Regulation A issuers that are current in their ongoing reports.³³ Regulation A already provides for the preemption of state securities law registration and qualification requirements for securities initially offered or sold in Tier 2 offerings, and the ongoing disclosure requirements of Tier 2 Regulation A issuers mean that current information about an issuer will be available to enable parties on both sides of the trade to make an educated investment decision. We urge the Commission to move forward on this recommendation to help reduce friction in the secondary trading of Tier 2 Regulation A securities.

B. Tick Size

On March 13, 2013, the Committee recommended the Commission adopt rules that would allow smaller exchange-listed companies to voluntarily choose trading increments or tick-sizes greater than the current increment of one penny.³⁴ The recommendation was rooted in the concept that something should be done to encourage market participants to provide more trading support for the equity securities of small and mid-cap companies. Widening spreads from the current one-penny increments could provide economic incentives that would encourage the provision of trading support to the equity securities of small and mid-cap companies. That support, in turn, could increase the liquidity for these securities, which could enhance the attractiveness of the IPO market for small companies and ultimately the ability of small and mid-cap companies to raise capital.

³² The Committee's recommendation regarding a separate U.S. equity market for securities of small and emerging companies, dated March 21, 2013, is available at <https://www.sec.gov/info/smallbus/acsec/acsec-recommendation-032113-emerg-co-ltr.pdf>.

³³ The Committee's recommendation regarding secondary market liquidity for Regulation A securities, dated May 15, 2017, is available at <https://www.sec.gov/info/smallbus/acsec/acsec-recommendation-051517-secondary-liquidity-recommendation.pdf>.

³⁴ The Committee's recommendation regarding trading spreads for smaller exchange-listed companies, dated March 13, 2013, is available at <https://www.sec.gov/info/smallbus/acsec/acsec-recommendation-032113-spread-tick-size.pdf>.

Since then, the Commission has put in place a pilot to help assess the effect of tick-sizes on market quality for smaller companies. We have received various updates on the pilot from Commission staff, most recently during our May 10, 2017 meeting,³⁵ and we understand that the staff is collecting and studying data from the pilot as it becomes available. Enhancing liquidity for smaller companies is an important matter for the Commission to address, and we encourage the future Small Business Capital Formation Advisory Committee to remain engaged on this issue.

³⁵ Transcript of the May 10, 2017, ACSEC meeting is available at <https://www.sec.gov/info/smallbus/acsec/acsec-transcript-051017.pdf>.

Appendix A: Advisory Committee on Small and Emerging Companies Members 2011-2017

2015-2017 Members	2013-2015 Members	2011-2013 Members
Robert Aguilar Stephen M. Graham (Co-Chair) Xavier Gutierrez Brian Hahn Sara Hanks (Co-Chair) Kyle Hauptman Jenny Kassan Catherine V. Mott Jonathan Nelson Patrick Reardon Lisa Shimkat Tisha Tallman Annemarie Tierney J.W. Verret Gregory C. Yadley Laura Yamanaka <u>Non-voting Members:</u> Michael Pieciak Joseph Shepard Mark Walsh	Charles Baltic David A. Bochnowski John J. Borer, III Dan Chace Milton Chang Stephen M. Graham (Co-Chair) Shannon L. Greene M. Christine Jacobs (Co-Chair) Sara Hanks John Hempill Richard L. Leza Sonia Luna Catherine V. Mott David J. Paul Timothy Reese Timothy Walsh Gregory C. Yadley <u>Non-voting Members:</u> A. Heath Absure Michael Pieciak Javier Saade	David A. Bochnowski John J. Borer, III Dan Chace Milton Chang Joseph “Leroy” Dennis Stephen M. Graham (Co-Chair) Shannon L. Greene M. Christine Jacobs (Co-Chair) Kara B. Jenny Steven R. LeBlanc Richard L. Leza Paul Maeder Kathleen A. McGowan Catherine V. Mott Karyn Smith Dan Squiller Charlie Sundling Timothy Walsh Gregory C. Yadley <u>Non-voting Members:</u> A. Heath Abshure Sean Greene Pravina Raghavan

Appendix B: ACSEC Charter and Bylaws as of September 13, 2017**Appendix C: Recommendations of the ACSEC 2011-2017**