

U.S. SECURITIES AND EXCHANGE COMMISSION

SMALL BUSINESS ADVISORY COMMITTEE MEETING

Amended: 5/13/2025

Tuesday, May 6th, 2025

10:00 a.m.

U.S. Securities and Exchange Commission

100 F Street, N.E., Washington, D.C.

1 APPEARANCES:

2

3 Paul S. Atkins, SEC Commissioner, Chairman

4 Hester Peirce, SEC Commissioner

5 Caroline Crenshaw, SEC Commissioner

6 Mark Uyeda, SEC Commissioner

7

8 Committee Members

9 Erica Duignan, Committee Chair

10 Marcia Dawood, Committee Vice Chair

11 Jasmin Sethi, Committee Secretary

12 Davyeon Ross, Committee Assistant Secretary

13 Wemimo Abbey

14 Donnel Baird

15 Stacey Bowers

16 George Cook

17 Greg Dean

18 Bart Dillashaw

19 Herbert Drayton, III

20 Jennifer Newton

21 Laura Niklason

22 Aren Sharifi

23 Marc Oorloff Sharma

24 Rose Standifer

25

1 APPEARANCES (Cont.):

2

3 Committee Members (Cont.)

4 Wendy Stevens

5 Dennis Sugino

6

7 Panelists

8 Brian Feterolf, Securities and Exchange Commission,

9 Division of Corporate Finance, Office of Small Business
10 Policy

11 Daniel Forman, Lowenstein Sandler LLP, Partner

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13 SEC Staff

14 Timothy Collins

15 Courtney Haseley

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1 P R O C E E D I N G S

2 MS. DUIGNAN: Good morning. And welcome to
3 today's meeting of the SEC's Small Business Capital
4 Formation Advisory Committee. I call this meeting to
5 order.

6 I want to extend a warm welcome to everyone.

7 It's so good to see all of you. We also appreciate
8 members of the public who have tuned in to watch the
9 meeting via web cast on SEC.gov.

10 Courtney, do we have a quorum for the
11 meeting today?

12 MS. HASELEY: Good morning, everyone. Yes,
13 we do have a quorum. And I would also like to take
14 this opportunity to give the SEC disclaimer for the
15 meeting. For any SEC staff that speak today, any views
16 provided, are on the speaker's official capacity as
17 staff, but do not necessarily reflect the views of the
18 Commission, the Commissioners or any other members of
19 the staff. Thank you so much and have a great
20 meeting.

21 MS. DUIGNAN: Thank you, Courtney. Our
22 meetings frequently focus on ways to expand access to
23 early stage capital raising, for good reason. We are
24 the SEC's Small Business Capital Advisory Committee.
25 Not too long ago we proposed modifications to

1 regulation crowd funding. And before that, we
2 recommended changes to the definition of accredited
3 investor. All of these recommendations were made with
4 a view towards positively affecting capital raising
5 for both entrepreneurs and investors.

6 Today we'll focus on the practical market
7 considerations and regulatory challenges of Regulation
8 A. This is an area that I suspect many of us are still
9 unfamiliar with. We're really looking forward to
10 learning more about Reg A and to the committee's
11 discussion on this topic.

12 One of our goals today will be to try to
13 understand more about why some issuers pursue Reg A
14 and why more issuers do not. I know I have a number
15 of questions that I'm looking forward to exploring
16 during this meeting.

17 For example, what are the advantages and
18 limits presented by this capital raising pathway, and
19 is there anything that can be done to reinvigorate it.

20 Are there regulatory changes that could be undertaken
21 to help facilitate more capital formation pursuant to
22 Reg A or are the friction points elsewhere; and would
23 a more robust secondary trading market perhaps attract
24 more Reg A investors.

25 Before we get into that, we are so pleased

1 to have Chairman Atkins and several Commissioners join
2 us today. I want to extend a special welcome to
3 Chairman Atkins, who is joining us for the first time,
4 though he is no stranger to the SEC. On behalf of the
5 entire Committee, we look forward to working with you
6 in the coming years.

7 To all of the Commissioners, we really
8 appreciate you being with us this morning.

9 Chairman Atkins, would you please start with
10 your remarks.

11 CHAIRMAN ATKINS: Oh, great. Well, pleased
12 to see all of you today. Like Courtney said, of
13 course, the disclaimer, these views are my own and not
14 necessarily those of the Commission. But so today is
15 the sixth anniversary of the first meeting of this
16 Committee, the Small Business Capital Formation
17 Advisory Committee. Since that initial meeting, I
18 followed the discussions and recommendations by the
19 Committee, from outside the agency of course. Now it
20 gives me really great pleasure to have the opportunity
21 to address the Committee for the first time as
22 Chairman.

23 It's particularly appropriate that this
24 meeting takes place during this year's National Small
25 Business Week, when we are recognizing America's

1 entrepreneurs and small business owners. This
2 Committee serves the important function of advising
3 the Commission of achieving its three-part mission,
4 which of course is protecting investors, facilitating
5 capital formation and maintaining orderly and
6 efficient markets, in particular, as a three-part
7 mission relates to merging privately held small
8 businesses and smaller publicly traded companies.

9 The Committee's voice will be critical over
10 the years. And as I intend for the Commission to
11 focus on providing meaningful pathways for
12 entrepreneurs to obtain the capital that they need, to
13 execute their innovative ideas and grow their
14 companies in both the private and the public markets.

15 At the same time, those that provide capital have to
16 be able to continue to depend on effective enforcement
17 against fraud and other bad activities.

18 Today, this Committee will explore how
19 companies have used Reg A for capital raising. And
20 discuss improvements that can be made to facilitate
21 greater use of the rules. Companies have raised
22 approximately three times as much capital under Reg A
23 as compared to for example crowdfunding and Rule 504
24 combined. However, the amount raised in a Reg A is
25 less than 1 percent of the capital raised under Reg D

1 rules, 506(b) and 506(3) combined.

2 Although the Commission raised the offering
3 limits under Reg A from 50 million to 75 million in
4 March of '21, there has not been a significant number
5 of Reg A offerings seeking to take advantage of that
6 increased limit. In fact, the overall number of Reg A
7 offerings has declined over the past two years after
8 increases during the prior three years. Besides
9 increasing the offering limit, what else can be done
10 to incentivize greater use of Reg A?

11 In September of '22 this Committee
12 recommended that the Commission, quote, provide
13 federal preemption from state regulation for secondary
14 resales by investors of securities initially sold
15 pursuant to Tier 2 and 3. Although the Commission has
16 not acted on this recommendation, the Committee should
17 consider further evaluating federal preemptions to
18 help alleviate secondary market challenges with
19 securities pursuant to Reg A.

20 Additionally, at-the-market offerings are
21 currently not permitted under Reg A. So would
22 eliminating this prohibition provide entrepreneurs
23 with a more effective way of obtaining capital without
24 sacrificing investor protection?

25 Finally, use of Reg A has been concentrated

1 in just six states; California, Florida, Nevada, New
2 York, Texas and Washington State. Most other states
3 do not have more than two Reg A filing offerings at
4 all. So why is there a geographic concentration for
5 use of Reg A, and would decreasing the concentration
6 of rules be more viable?

7 So beyond these specific issues, Reg A
8 certainly has not been a viable regulatory framework
9 for widespread use by those offering crypto asset
10 securities to raise capital without disproportionate
11 compliance costs. As this Committee considers
12 amendments to Reg A, I encourage it to evaluate
13 broader changes, as well as, targeted revisions, with
14 a goal of making the framework an effective regulatory
15 regime for all types of issuers.

16 So I look forward to the presentation this
17 morning by Daniel Forman of Lowenstein Sandler, as
18 well as, the Committee's discussion of these and other
19 Reg A issues. I'm also excited about the opportunity
20 to hear from this Committee each quarter on important
21 issues affecting emerging privately held small
22 businesses and smaller publicly traded companies. So
23 thanks you very much. Bring it back over to you.

24 MS. DUIGNAN: Thank you so much, Chairman.
25 We really appreciate your remarks. Next I'd like to

1 invite Commissioner Uyeda for remarks, please.

2 COMMISSIONER UYEDA: Thank you, Erica. I
3 see Commissioner Crenshaw is on, I think in seniority
4 she would take precedent over me.

5 MS. DUIGNAN: Thank you for that.
6 Commissioner Crenshaw.

7 COMMISSIONER CRENSHAW: Thanks. And
8 Commissioner Uyeda and I, we spent a long time, I
9 think until perhaps four in the morning in 2015
10 working through Reg A +. And I know he and I probably
11 both feel the same way, that we are fully looking
12 forward to feedback on what may have been good about
13 our late night deliberations or what may have been
14 terrible about our late night deliberations when we
15 were working for prior Commissioners.

16 So thanks, Erica. And thanks, Commissioner
17 Uyeda. Good morning. It's a pleasure to be here with
18 all of you. Thank you to the entire Committee, as
19 well as, to Erica for hosting today's meeting. And as
20 always, for the thoughtful work that you all do in
21 helping advise the Commission on areas of importance
22 to small business. I would also like to offer my
23 gratitude to Stacey and the members to the Office of
24 the Advocate for Small Business Capital Formation, for
25 your work on today's work as well as our IT office.

1 But also for your incredibly successful annual Small
2 Business Forum. That's one of my favorite events
3 every year. It brings together small businesses of
4 all stripes to exchanges ideas, engage with regulators
5 and discuss strategies for success. I think this
6 year's conference was outstanding by every measure and
7 I'm grateful for the hard work and thoughtful
8 consideration that went into that.

9 Today we're focusing on Reg A, as you've
10 heard. And the Commission has long recognized that
11 the economic fortunes of our national economy are tied
12 inextricably to the fortunes of our small business
13 community. As a small business advocate recently
14 pointed out to Congress, roughly 80 percent of the net
15 new jobs created in this country since 2011 were
16 created by small businesses.

17 Reg A, the subject of today's discussion,
18 was first promulgated by the Commission in 1936. And
19 was an early acknowledgment that one size may not fit
20 all when it comes to the registration of securities
21 offerings, particular those of our small business
22 community. The Commission re-emphasized this
23 principle in 2015 when it implemented Reg A + pursuant
24 to a congressional directive in the JOBS Act.

25 And Reg A+, as you'll hear today and as

1 you'll hear more, comes with two tiers of offerings.
2 Tier 1 offerings which allow issuers to raise up to 20
3 million in 12 months. And Tier 2 offerings, which
4 currently allows for raises up to 75 million over that
5 same one-year period. Issuers in Tier 2 offerings are
6 required to provide investors with audited financial
7 statements and periodic reporting. Tier 2 offerings
8 also receive preemption of certain state securities
9 law requirements.

10 And Reg A+ was approved by the Commission in
11 a 5:0 vote. So it's come a long way. From 2012 to
12 2014 immediately prior to the Commissioner's
13 amendments, there were 26 Reg A offerings. From 2021
14 to 2023, those numbers were up to about 970 offerings.

15 But as you've heard, it remains significantly less
16 utilized than Regulation D. That's what brings us
17 here today. And I think with that, there are many
18 questions, erica has already raised number of them,
19 that I think deserve attention.

20 Why is Reg A less utilized than Reg D and
21 certain other exempt offerings, and what do the data
22 show? Should we amend Reg A to make it a more
23 appealing option for small businesses? Or should we
24 concentrate our efforts on other potential avenues of
25 capital formation? In other words, is Reg A the right

1 one to spend our time and attention on? We are an
2 agency of limited resources. So how should we think
3 about prioritizing those resources when it comes to
4 serving our small businesses? Should we revisit the
5 Tier 1 and Tier 2 thresholds? And if we do revisit
6 those thresholds, which we last did in 2020, what data
7 should drive our reconsideration?

8 Are there different concerns present for
9 each of the tiers? How much do we expect the
10 fundraising to increase at different potential caps?

11 Alongside, these considerations, what parallel
12 changes should we think about making to investor
13 disclosures to ensure that important information about
14 our small businesses are getting into the hands of the
15 investors who will fuel those cash needs? Burgeoning
16 businesses are by their nature riskier endeavors. How
17 can we balance the cost imposed by disclosure with the
18 very real need for honest transparency?

19 Another issue I'm sure you will visit is
20 state law preemption. As we've heard, offerings made
21 pursuant to Tier 1 remain subject to the Blue Sky laws
22 while Tier 2 offerings are granted certain preemptive
23 relief. NASAA state securities regulators and other
24 groups have worked mightily to reduce the burns
25 associated with state review of smaller businesses.

1 So what has been the experience here of both issuers
2 and the states? And what do the data show about the
3 increased burdens to issuers and the increased
4 protections afforded to investors under this current
5 regime?

6 As you answer these questions, keep in mind
7 that the balance the regulators internalize as we
8 contemplate change. We must do more to serve our
9 small businesses. And we must do so with market
10 integrity and investor protection in mind. Our
11 success is measured by the success of the communities
12 we serve and protect.

13 So thank you for your speaker today and I
14 look forward to the discussion on the important issues
15 of Reg A. And I want to just leave you with one final
16 note. We are of course in a period of rapid change.
17 And both data and anecdotal evidence indicate that
18 recent market volatility has been felt most profoundly
19 in our small businesses.

20 Many of the policy shifts behind this
21 volatility are outside the remit of this agency.
22 Changes in tariffs, immigration, tax policy, inflation
23 policy and the availability of federal grants for
24 small businesses, those all fall outside of our
25 proverbial wheelhouse. But helping our small

1 businesses survive or even thrive in times of profound
2 uncertainty does fall squarely within our ambit.

3 So the work of this Committee in providing
4 advice and recommendations as to how we best serve our
5 small communities is more important than ever. And
6 we're going to see many changes in the coming months
7 and it will often occur in the name of lifting our
8 small business communities.

9 But here is my advice to you: Hold us all
10 to account. Make sure the changes being made are in
11 fact designed with small businesses in mind.

12 If larger, more mature issuers are able to
13 use the exemptions designed to promote small business
14 capital formation, that potentially leaves less
15 capital available to the communities that we're hoping
16 to serve. So help us think through these issues and
17 help us keep us honest in our mission. So thank you
18 and really look forward to the discussion today.

19 MS. DUIGNAN: Thank you so much,
20 Commissioner Crenshaw, for those thoughtful remarks as
21 well as the guidance. We really appreciate it. We
22 have some recorded remarks from Commissioner Peirce,
23 but first I would like to invite Commissioner Uyeda
24 for remarks.

25 COMMISSIONER UYEDA: Well, thank you, Erica,

1 and good morning. I am pleased to join the second
2 meeting of 2025 for the Committee. Today I
3 particularly appreciated the Committee's focus on ways
4 to expand access to early stage and growth capital
5 raising, particularly the experience of companies
6 using Regulation A.

7 The Commission has a statutory obligation to
8 consider capital formation in our rule making. And we
9 try to have a rule book that benefits both
10 entrepreneurs and investors. But we're not always as
11 successful as we'd like to be. Conversations
12 regarding the Commission's exempt offering regulations
13 usually have two aspects. First is, how do we enable
14 private companies to obtain more capital through cost
15 effective means. Second is, how do we enable more
16 retail investors to place their capital into private
17 companies. Regulation A, if it's administered in a
18 manner that reflects the experience of entrepreneurs,
19 investors and practitioners, could help address these
20 issues.

21 In revisiting Regulation A and other rules,
22 we should consider whether the existing framework is
23 unnecessarily rigid. For example, in Regulation D,
24 the Commission takes in all or nothing approach.
25 Evaluating whether certain investors can participate

1 in private offerings. A person is either an
2 accredited investor or not. This approach, however,
3 may be an obstacle in achieving the optimal regulatory
4 outcome. A graduated framework with a wide range
5 spectrum of outcomes might be more appropriate.

6 On one end, a scenario where retail
7 investors can invest in private companies without
8 any regulatory implications. And on the other end, a
9 scenario where retail investors are functionally
10 prohibited from having exposure to private company
11 investments. Similarly, an all-or-nothing scenario
12 somewhat exists for companies seeking to raise
13 capital. They can either pursue a fully registered
14 offering under the Securities Act, with extensive
15 disclosure requirements or pursue an exempt offering
16 in a Regulation D to accredited investors and have no
17 legal obligation to provide any disclosure whatsoever.

18 I recognize there are lots of nuances in
19 this space, such as, whether a company might qualify
20 as an emerging growth company or small reporting
21 company, or non-accelerated filer. They could also in
22 the context of an exempt offering, voluntarily provide
23 a PPM, a Private Placement Memorandum or other
24 disclosure. But as the data indicates, largely today,
25 issuers effectively choose one of two paths. The all-

1 or-none situation either fully registered or fully
2 exempt in a Reg D.

3 Now, Regulation A might be a third way
4 between that gap. But it's not been frequently used,
5 even after Tier 2 was adopted after the enactment of
6 the JOBS Act. And as Commissioner Crenshaw pointed
7 out, she and I spent a lot of time in different
8 capacities working on it. And one of the things, when
9 you do work on roles is you hope they'll be utilized.

10 You hope both companies and investors will find value
11 in that. We really haven't seen, as Chairman Atkins
12 pointed out, very much use of Regulation A since then.

13 So I look in order to hearing the proposed
14 approaches in expanding opportunities for investors in
15 Regulation A deals, including the ability to expand
16 exit opportunities from those who purchase Regulation
17 A securities in a primary offering. And to evaluate
18 and take other considerations as to how we can improve
19 secondary market liquidity challenges for Reg A
20 offerings.

21 Enhancing opportunities in this space may
22 not necessitate a comprehensive evaluation of the
23 entire investment life cycle for these small
24 companies. So thank you to participants. I thank you
25 to the presenter s for today. And again, I thank the

1 public for joining us at this meeting. So thank you,
2 Erica. Back to you.

3 MS. DUIGNAN: Thank you very much,
4 Commissioner Uyeda. We appreciate the remarks.

5 Commissioner Peirce is next up. And while
6 she's not able to be with us live today due to an
7 unavoidable conflict, she was kind enough to record
8 some remarks on this important topic, which I'm
9 looking forward to hearing now.

10 COMMISSIONER PEIRCE: Good morning. And
11 thank you to the Committee members for your continued
12 service. And thank you to today's panelist.

13 I was at the grocery store the other day
14 thinking about, of course, small business capital
15 raising. I shop at several different grocery stores
16 each of which has its pluses; low prices, broad
17 selection, high quality local produce, unique items,
18 proximity to other places I need to go. Each store
19 also has its frictions; crowded parking lots and
20 aisles and annoying quarter deposits for grocery cars,
21 limited opening hours.

22 I often choose the store based as much on
23 frictions I'll face in going in there as on which one
24 has what I want that day. That quarter for a grocery
25 cart might just be the deciding factor against a

1 particular store on a particular day when I have
2 neither a quarter nor the capacity to carry everything
3 I need to buy. Just as I have choices in the grocery
4 store, small businesses have multiple capital raising
5 options. And the frictions often dictate the choices
6 that they make.

7 Reg A, the topic of today's meeting, is one
8 avenue for small companies to raise capital. But the
9 frictions are high. When an issuer decides to do a
10 Regulation A offering, it first must choose between
11 Tier 1 and Tier 2. Neither choice is completely
12 satisfying. Issuers that offer and sell securities
13 under Tier 1 of Reg A can raise up to 20 million in a
14 12-month period and have fewer ongoing disclosure
15 obligations but miss out on any form of state law
16 preemption.

17 Without state law preemption, issuers are
18 required to register or qualify their offering in any
19 state in which they seek to offer or sell securities.

20 A process that can be costly, time consuming and
21 confusing. Issuers that offer and sell securities
22 under Tier 2 of Reg A can raise up to 75 million in a
23 12-month period. And get state law preemption for
24 primary sales at least, but are subject to more
25 burdensome, ongoing reporting requirements. Perhaps

1 those frictions can help explain why from July 2023
2 through June 2024, companies raised only 1.5 billion
3 using Reg A compared to 12 billion using general
4 solicitation under Section 506(c). and 170 billion in
5 private placements under Section 506(b).

6 A discussion of Reg A is therefore timely.
7 Among the questions I have for your consideration
8 today are the following: The Small Business Advocates
9 2024 report showed that over the last several years,
10 the amounts and number of Reg A offerings have
11 continued to decline. To what do you attribute that
12 decline? By contrast, the number of offerings raising
13 more than 50 million has remained relatively stable at
14 about 20 per year. To what you attribute the fact
15 that larger offerings have not declined?

16 Would Tier 2 of Reg A be a more viable
17 avenue for raising capital if secondary trading
18 enjoyed state law preemption? If so, what conditions
19 should apply?

20 Should the Tier 1 and Tier 2 offering limits
21 be raised to make Reg A a more attractive offering for
22 a broader range of companies? And if so, what would
23 reasonable caps be?

24 How could the Commission streamline the
25 regulatory obligations under Reg A without

1 compromising investor protection? Should as one
2 commenter recently suggested, pooled investment
3 vehicles be permitted under Reg A?

4 One reason a discussion of Reg A is
5 particularly timely is that some crypto market
6 observers see it as a viable avenue for public
7 offerings of crypto assets. Former Committee member
8 Sara Hanks, for example, pointed to Reg A, in her
9 words, as the most appropriate option for public
10 offerings of either tokenized traditional securities
11 or novel crypto assets without bias to the original
12 objective of Regulation A or the need for significant
13 rulemaking; do you agree?

14 If so, should the Commission take the
15 position that crypto tokens are equity for purposes of
16 Reg A offering? Would such a position conflict with
17 how assets are treated for accounting purposes? I've
18 heard that at least one crypto asset issuer attempting
19 to use Reg A was advised that the crypto assets should
20 be treated as equity for securities law purposes and
21 debt for accounting purposes.

22 Would any other aspects of Reg A prove
23 challenging for crypto asset issuers? Hanks
24 suggested, again in her words, that the exit
25 provisions to Regulation A ongoing reporting suit

1 native digital assets that are securities at
2 inception, but cease to be securities once a specific
3 blockchain project has been sufficiently developed.
4 Should the Commission as she suggests, again in her
5 words, confirm that when an instrument that was a
6 security ceases to be such by reason of
7 decentralization, completion of a blockchain project,
8 etcetera, there are no longer 300 holders of record of
9 the applicable class of securities.

10 I welcome your insights and thoughts on the
11 frictions associated with Reg A offerings. What we
12 can do to address them. And any unique considerations
13 for the application of Reg A in the crypto context. I
14 hope you have a productive and enjoyable meeting.
15 Thank you.

16 MS. DUIGNAN: Thank you so much
17 Commissioners.

18 I loved the grocery store cart metaphor.
19 Very interesting way to frame it.

20 Thank you, Chair. Thank you Commissioners.
21 We very much appreciate your remarks. Yes, we really
22 appreciate your time.

23 Next I'd love to turn the floor over to
24 Stacey Bowers, Fellow Committee member and the
25 Director of the SEC's Office of the Advocate for Small

1 Business Capital Formation; and Brian Feterolf, staff
2 attorney, in the SEC's Division of Corporate Finance,
3 Office of Small Business Policy, who will together
4 provide an introduction to Regulation A.

5 We really appreciate each of them taking the
6 time to provide us with a stronger foundational
7 understanding of Reg A, including its history and key
8 provisions, to help ground our discussion today.

9 I know many of us around the virtual table
10 has deep experience with a variety of capital raising
11 pathways, but I think few of us are well-versed in Reg
12 A.

13 So I look forward to hearing from Stacey and
14 Brian and gaining a better understanding of this
15 capital raising pathway.

16 How it differs from a traditional IPO, and
17 the kinds of issuers it attracts. To that end, I
18 believe Stacey will also share with us some data from
19 the Small Business Advocacy Office's 2024 Annual
20 Report, which includes information on where and how
21 capital is being raised in reliance on Regulation A.

22 I think we'll all find the data and
23 information that Stacey and Brian share will be
24 particularly helpful in our later discussion of ways
25 to improve Reg A.

1 So Stacey and Brian, welcome.

2 INTRODUCTION TO REGULATION A

3 MS. BOWERS: Thanks, Erica. And I will say,
4 Brian and I are going to share the stage. I am going
5 to lead off and provide some history. I'm going to
6 give some overview of the exemption. And I'm going to
7 ask Brian at any time, to please jump in and tack on
8 or say anything that he needs to say. And then he's
9 going to talk a little more about their office. And
10 I'll wrap up with reiterating some of the data that
11 the Commissioners have generally already covered.

12 So Reg A, we often hear it referred to as a
13 Mini-IPO or an initial public offering, but it
14 actually is an exempt offering, meaning it's exempt
15 from the registration requirements of the securities
16 laws. So like other exempt offerings, regulation
17 crowdfunding or Regulation D, Reg A allows an issuer
18 to offer and sell securities in compliance with the
19 rules that govern that particular exempt offering.

20 So just to provide a little bit of history,
21 the 2012 JOBS Act, so Commissioner Uyeda and Crenshaw
22 talked about working on Reg A. But the 2012 JOBS Act
23 directed the Commission to adopt rules creating an
24 exemption for offerings up to 50 million during a 12-
25 month period. As a part of that mandate the

1 Commission expanded Regulation A into two tiers and
2 I'll talk a little bit about each of those tiers.

3 Prior to the JOBS Act, an issuer could only
4 raise up to 5 million under Regulation A. So it was
5 not used very frequently at that point in time. So
6 what are some of the general -- and feel free to pop
7 in and ask questions as well. I'll try and keep an
8 eye out for hands or I'll ask Courtney to keep an eye
9 out for hands.

10 What are just some of the general
11 requirements? First off, the issuer, the company
12 that's doing the Regulation A offering. They have to
13 be either organized in the U.S. or Canada or any
14 state, province or territory or possession of the U.S.
15 or Canada, or in the District of Columbia. Plus, the
16 issuer has to have its principal place of business in
17 the United States or Canada.

18 Another general requirement is that the
19 issuer can't be a development-stage company or a
20 company that doesn't have a business plan. So in
21 other words, what does that actually mean? So the
22 issuer doesn't have to actually be operating, but they
23 have to have a business plan. They have to know what
24 their plan of operations are going to be. And their
25 plan of operations can't be, we are doing a Reg A

1 offering because we're going to take that money and go
2 out to seek to acquire or merge with another company.

3 So that's not an option for a Reg A company, they
4 actually have to have a business plan, a business
5 purpose.

6 The other thing, and I believe Commissioner
7 Peirce referenced this, as well, the issuer cannot be
8 a registered investment company or a company that's
9 required to be registered under the Investment Company
10 Act. What does that mean? That meanings that a
11 mutual fund, an ETF or probably most REITS would not
12 be able to utilize Reg A to raise capital. The other
13 thing I want to highlight, which I don't think comes
14 into play that frequently, is that if the issuer who
15 is doing a Reg A offering is already required to file
16 34 Act reports, meaning 10-K's, 10-Q's, it has to be
17 current in those filings with the SEC if it wants to
18 use Reg A. But I would say that most Reg A issuers
19 don't fall into that category of being preexisting 34
20 Act reporting companies. So that's a little about the
21 general detail about Reg A.

22 Now I'm going to highlight just a little bit
23 about the two tiers. So Tier 1 allows for the sale of
24 up to -- or an offering of up to 20 million during a
25 12-month period. And as a part of that 20 million, it

1 includes allowing for 6 million in sales by affiliates
2 of the issuer. So the issuer can raise capital as
3 well as allow its affiliates to sell up to 6 million
4 worth in that Tier 1 offering.

5 The other thing that was highlighted in the
6 Commissioners remarks is that Tier 1 offerings are not
7 preempted from the Blue Sky laws. So that means if a
8 company does a Tier 1 Reg A offering, it has to comply
9 with the federal securities laws as well as the state
10 securities laws. A Tier 2 offering allows an issuer
11 to raise up to 75 million during a 12-month period.
12 And that includes up to 22.5 million of sales by
13 affiliates. A Tier 2 offering by the issuer is
14 actually exempt from the Blue Sky requirements. So it
15 needs to comply with the federal securities laws -- I
16 shouldn't say exempt. Preempts the State Blue Sky
17 laws.

18 The other thing I want to highlight is, if
19 you remember just a couple minutes ago I said the JOBS
20 Act said, SEC create an offering up to 50 million.
21 But as Commissioner Crenshaw referenced, in 2020 the
22 limit was actually increased from 50 million to 75
23 million for Tier 2 offerings. Just to lend some ideas
24 there.

25 Let's talk a little bit about --

1 MS. DUIGNAN: Sorry. Stacey, before we move
2 on, could I just ask you to explain like some examples
3 of what you mean by sales by affiliates.

4 MS. BOWERS: And I'll have Brian jump in as
5 well. So sales by affiliates, so affiliates is a
6 defined term within the securities laws. And I don't
7 have that definition memorized off the top of my head.

8 Maybe Brian does. Think about it, it would be the
9 idea of an officer or director would be an affiliate
10 of the issuer. So they might be able to do sales, as
11 well.

12 Brian, did you want to tack anything on
13 there?

14 MR. FETEROLF: Yeah. I would just think of
15 it as like the resale component of an offering. So
16 you have your primary offering, and then oftentimes
17 when you're looking at like an IPO, you see a resale
18 component. That's the analogy I would use.

19 MS. BOWERS: Did that help, Erica?

20 MS. DUIGNAN: Yes. Thank you.

21 MS. BOWERS: Sure. So what are some of the
22 filing requirements? So first off, the filing, it's
23 called a Form 1-A. So if an issuer is raising capital
24 on your Reg A, they're going to look up Form 1-A.
25 They can find it on SEC.gov. And what they need to do

1 is walk through that form and comply with all the
2 requirements that are part. There are detailed
3 written instructions there. And the issuer has to file
4 what's called an offering statement. And that
5 offering statement goes through a review and
6 qualification process with the SEC.

7 So I don't want to get into the nitty-gritty
8 of everything that goes into the Form 1-A, but I am
9 going to highlight it just a little bit generally. So
10 there are really three parts to Form 1-A. The first
11 part is going to require disclosure, sort of general
12 disclosures about the issuer itself and about the
13 offering. And that first, that part one of Form 1-A
14 is a little bit of a fill-in-the-blank, check-the-box
15 kind of system.

16 So think about things like; issuer's name,
17 what year it was formed, where it was organized, what
18 kind of securities are being offered, those kind of
19 things. So it's a very -- I had the form open
20 yesterday and I'm not going to remember how many
21 pages, but it's kind of a go through and fill in the
22 information. It may not matter to all of you, but
23 part of the rationale for that is it also becomes
24 searchable information. It's submitted in such a way
25 that it is searchable data.

1 Part two is more what we would think of as
2 kind of the narrative and the financial disclosures,
3 more of like the substance. So if you think about a
4 form S-1, which is what a company would use to do a
5 public offering, this is similar to that. So it's
6 going to have a very similar feel to a form S-1.
7 You're going to have that cover page.

8 The issuer is going to talk about its
9 business. It's going to talk about risk factors, you
10 know. What does its ownership structure look like,
11 what kind of stock does it have. So it's going to go
12 into all of those kind of details and that narrative
13 description about the business itself. And then
14 depending on what tier, Tier 1 or Tier 2, that is
15 going to dictate the type of financial statements that
16 the issuer has to include.

17 So if the issuer is doing a Tier 1 Reg A
18 offering, those financial statements do not have to be
19 audited unless the issuer actually already has audited
20 financial statements. So if you think back to the
21 conversation the Committee had about the Reg CF, that
22 same thing hold true. So if the issuer does have
23 audited financial statements, even if they're doing a
24 Tier 1 they would need to supply those audited
25 financial statements. On the other hand, if the

1 issuer is doing a Tier 2, those financial statements
2 that it includes as part of the Form 1-A, they must be
3 audited and they have to be audited in compliance with
4 GAAP. So very similar to what you might think of as
5 that traditional Initial Public Offering that gets
6 filed under Form S-1.

7 And then I will just say, part three is just
8 the exhibits part of the form. So I'm not going to go
9 into a lot of detail about that, but you would look at
10 Form 1-A instructions, and you would see part three.
11 The company would have to file all the material
12 exhibits that are required there.

13 So that's kind of -- again, I didn't want to
14 get into the nitty-gritty and sit here and tell you
15 line by line, everything that has to go in there. But
16 I also want to touch on a little bit, what are the
17 ongoing reporting requirements. So once a company
18 does a Reg A offering. It's qualified. They engage
19 in it. They close that offering. They do have
20 ongoing reporting requirements.

21 So for a Tier 1 issuer, and I'm going to
22 look at Brian too to jump in if I don't get it all
23 right. A Tier 1 issuer has to file an exit report on
24 form 1-Z no later than 30 days after it either
25 terminates the offering or it completes the offering.

1 So on a Tier 1 there's that exit, that form 1-Z exit
2 reporting requirement.

3 On the other hand, a Tier 2 issuer has more
4 reporting obligations. So it has to file a semiannual
5 report on what's called form 1-SA. And that
6 semiannual report does not require audited financial
7 statements. That semiannual report, really what the
8 issuers are including in that are interim financial
9 statements and management's discussion and analysis
10 disclosure.

11 A Tier 2 issuer also has to file an annual
12 report on form 1-Q. And that annual report does have
13 to require audited financial statements, and I
14 believe, for two years' worth of audited financial
15 statements. I'm going to look at Brian to shake his
16 head.

17 MR. FETEROLF: Yeah.

18 MS. BOWERS: Thank you. Then there are
19 current reporting requirements, as well. So
20 commencing in the year after the offering is qualified
21 the issuer also has to file form 1U's. So if any kind
22 of current event happens, think about it if you're
23 familiar with the public offering process, you would
24 think about it as an 8-K filing. Here we would think
25 about it as a Form 1U filing. So something current

1 that has to be told to the public happens, that
2 happens on a Form 1U.

3 Some other things just to sort of put out
4 there so the Committee has it as they're thinking
5 about Reg A. So a Reg A issuer can do what's called,
6 test the waters. So that means it can both before and
7 after it files its offering statement with the SEC, it
8 can actually communicate orally or in writing to try
9 and determine if there's an interest in this
10 particular offering.

11 Now these communications, they are offers
12 from the perspective of the antifraud provisions of
13 the SEC rules and regulations. But what it allows an
14 issuer to do is to go out there and just kind of dip
15 its toe in and say, hey, is it really going to be
16 worth it for us to undertake this Reg A offering, is
17 there enough interest out there that we want to
18 continue down this path.

19 The other thing I can note about that, one-
20 third of qualified offerings, meaning they got through
21 the SEC review process. Those issuers tested the
22 waters. So about 33 percent of the time when a Reg A
23 offering was qualified, the issuers actually did a
24 test the waters to see if they actually wanted to
25 continue forward.

1 The other thing that issuers can do is they
2 can submit a draft offering statement for non-public
3 review. So basically a confidence offering statement,
4 they can submit with the SEC and get some guidance and
5 feedback before making that offering, filing that
6 publicly. A couple of other things and this is sort
7 of in line with others of the securities laws. The
8 issuer can't make any offers unless the offering
9 statement has been filed with the Commission. And the
10 issuer can't sell any securities until that offering
11 statement is qualified. So again, very similar to
12 when we think about how an S-1 and IPO works.

13 Tier 2 has an investment limitation on non-
14 accredited investors. That is going to be 10 percent
15 of the purchaser's annual income or net worth, if
16 they're a person, or 10 percent of revenue or net
17 assets if they're an entity. So again, there's going
18 to be a limit on non-accredited investors in Tier 2.
19 And then, as I mentioned, Tier 2 preempts Blue Sky
20 laws for the issuer's offering. But when somebody who
21 purchases Reg A securities wants to resell those
22 securities, that resale is not -- it does not preempt
23 Blue Sky laws.

24 So that's one of the things that you heard
25 the Commissioners highlight. This idea of, does

1 something need to change when you're thinking about
2 the secondary transactions as far as preemption. So
3 if you hark back to the conversation we had at the
4 last meeting that Dan -- or I should say Dan Zinn
5 presented to us. He noted, I think there are 38 or 39
6 states, that OTC has worked with to sort of have that
7 exemption in place for companies that have done a Tier
8 2 Reg A offering that they can engage in secondary
9 resales, but there's still a handful of states that
10 OTC is working with. So just to kind of put that out
11 there, that that is an implication of Reg A and one of
12 the things that we hear from stakeholders is that
13 impacts the liquidity. So if an investor owns Reg A
14 shares this lack of preemption at, for the secondary
15 sales can impact liquidity.

16 So I think with that, I'm going to turn it
17 over to Brian. And then at the end he'll come back to
18 me for some data, but I'm not sure it's much different
19 than what our Commissioners already shared.

20 Brian, take it away.

21 MR. FETEROLF: Yeah, great. Thanks, Stacey,
22 for sharing that helpful background about Reg A. Now
23 that we have a basic understanding, I'm going to talk
24 briefly about three things. One; how Reg A offers
25 differ from a traditional IPO, which is a theme that

1 we've heard, how they compare to each other. Two; I'm
2 going to talk about the Corp Fin Reg A review process.

3 And three; we'll talk about the types of comments
4 that we routinely hear from the public about Reg A.

5 Before we dive in further here, let me just
6 start with a brief overview of my office at the SEC.
7 So as Stacey mentioned, I'm an attorney in the office
8 of Small Business Policy, which is within the Division
9 of Corporation Finance here. So broadly, Corp Fin has
10 two main branches, the disclosure review program, and
11 a legal and regulatory policy arm. My office, OSBP or
12 the Office of Small Business Policy sits in the legal
13 and regulatory policy portion of Corp Fin. Jeff Burn
14 is our office chief and we have four other attorneys,
15 including myself and one paralegal.

16 Our office houses the Commission's policy of
17 legal expertise on private offerings. So that
18 includes Reg D, Reg Crowdfunding and Reg A and we also
19 cover the smaller reporting company rules for public
20 companies. So what I would say that our office does
21 can be thrown into three main buckets of activity.
22 First, rulemaking and interpretations related to the
23 rules and the areas that we cover.

24 So for example here; the Reg A and the
25 harmonization releases that you might talk about later

1 today, those were written by OSBP. Second; we provide
2 internal subject matter expertise within the
3 Commission, primarily within Corp Fin. I'll note that
4 a huge component of this relates to Reg A. As you may
5 or may not be aware, the largest arm of Corp Fin is
6 the disclosure review program, which reviews the
7 filings of public companies and companies that would
8 like to go public. This group also reviews the
9 filings of the Reg A filers, which covers complex or
10 novel questions relating to Reg A compliance. And when
11 that occurs, our group OSBP, is often consulted to
12 provide our expertise on how Reg A rules should be
13 applied.

14 Then the third bucket is that we provide
15 external informal guidance. Along with many of the
16 policy offices within the SEC, we have a public-facing
17 phone number that is there for the public to reach out
18 to us with questions about the rule areas that we
19 cover. We get hundreds of calls a year from a full
20 range of callers here, from entrepreneurs who are just
21 starting out to attorneys and more established
22 companies.

23 While we have to make it clear to callers
24 that we cannot provide legal advice because we are not
25 their legal counsel, we do our best to guide people to

1 the resources that we have available. Whether that be
2 a specific portion of a regulation, a section of a
3 Commission rulemaking release or informal guidance
4 from the staff known as compliance and disclosure
5 interpretations.

6 On the point of resources here, I would also
7 like to make a quick plug for the resources page of
8 the SEC's website, which hosts a fantastic library of
9 streamlined OASB and OSBP resources for small
10 businesses that you can access on the landing page.
11 This has been a very helpful part of our own toolbox
12 when we are providing guidance to callers.

13 So with all of that said, please feel free
14 to reach out if you have any questions. Taking calls
15 from the public is one of my favorite parts about this
16 job. Our office truly we love to nerd out and think
17 about and discuss securities law questions. There is
18 absolutely no issue that is too simple or too complex.

19 And we have people that call in with no
20 understanding really of the securities laws, other
21 than knows that there are laws that must govern for
22 example someone investing in their business. And they
23 need to comply with these laws as they try to raise
24 capital. We also get calls from sophisticated big law
25 firms asking more nuanced interpretive questions on

1 our regulations. So the bottom line is here that we
2 see a huge variety of issues and we're always happy to
3 help.

4 With that overview pretty clear, let's talk
5 now about the differences between Reg A offerings and
6 an IPO. And as Stacey noted here and as you heard
7 today, there are various disclosure requirements in a
8 Reg A offering, some of which differ from the
9 requirements in a traditional IPO. Aside from those
10 disclosure differences though I want to highlight a
11 few other important distinctions.

12 As you probably know, and as I often say to
13 callers that indicate that they are not familiar with
14 the securities laws when they call in, I like to start
15 all of these conversations with the following basic
16 principle. Under Section 5 of the Securities Act,
17 every offer or sale of a security needs to either be
18 registered with the SEC or rely on an exemption from
19 federal registration.

20 A traditional IPO is registered pursuant to
21 Section 5, whereas a Reg A offering is exempt from
22 registration. This exempt nature of Reg A results in
23 two significant differences compared to a registered
24 offering. That is one; Section 5, compliance. And
25 two; Section 11, liability.

1 First here, because Reg A is an exemption
2 from Section 5 registration, it is ultimately the Reg
3 A issuer's responsibility to ensure that they are
4 complying with the requirements of Reg A. In a Reg A
5 offering, the Commission or the staff pursuant to
6 authority delegated by the Commission qualifies the
7 offering. And after qualification, the issuer must
8 continue to ensure that they meet the requirements of
9 the exemption throughout the course of the offering.
10 If they do not, an issuer would violate Section 5.

11 On the other hand, in a traditional IPO, the
12 offer and sale of securities are registered when the
13 Commission or staff pursuant to authority delegated by
14 the Commission declares the related registration
15 statement effective instead of qualifying it. Because
16 the issuer is complying with the requirements of
17 Section 5 by registering the offering, the issuer will
18 generally satisfy its Section 5 obligations for the
19 securities offered and sold under that registration
20 statement, although we do note there are still non-
21 compliance risks after effectiveness.

22 In addition to Section 5, there's also
23 Section 11 liability. In Section 11, liability does
24 not attach to offering statements on Form 1-A. So
25 what does that mean? As background here, Section 11 of

1 the Securities Act provides a private right of action
2 and imposes civil liability on the issuer and certain
3 persons for material misstatements and omissions in a
4 registration statement. Reg A offering statements are
5 not registration statements. So unlike in a
6 registered offering, Reg A issuers are not subject to
7 Section 11 liability.

8 So in summary here again, Reg A differs from
9 a traditional IPO because one; issuers are responsible
10 for complying with Section 5 by no means of satisfying
11 the exemption throughout the full course of the
12 offering. And two; there's no Section 11 liability
13 with respect to a Reg A issuer's offering statement.

14 Now, let's talk about the Corp Fin Reg A
15 review process. In connection with our selective
16 review program, in Corp Fin we see lots of different
17 types of companies and offerings and have had the
18 chance to consider a whole variety of issues. I'm
19 going to highlight just a few of the areas where we
20 issued comments recently, which apply to companies
21 under both Tier 1 and Tier 2.

22 The first main issue here or area I'll say,
23 is offering eligibility. There are certain types of
24 offerings that just are not permitted by Reg A. So
25 when we consider the question of eligibility here for

1 the issuer, we review the structure of the offering to
2 assess whether it's permissible.

3 For example, Reg A allows primary offerings
4 to be conducted on a continuous basis. But those
5 offerings have to commence within two calendar days of
6 qualification. The rules here do not allow for an
7 issuer to delay commencement of the offering or
8 otherwise treat the offering statement like a shelf
9 registration statement. In addition to these types of
10 delayed offering concerns, we also have seen filings
11 in which the issuer attempts to sell at a price that
12 is not fixed or is otherwise tied to a market price,
13 which was a point that was raised earlier in the
14 remarks today. These at-the-market offerings are not
15 permitted under Reg A.

16 The second area that we've issued comments
17 recently is issuer eligibility. So in addition to
18 offering eligibility, we'll consider whether the
19 issuer itself meets the eligibility requirements. And
20 as Stacey mentioned here, Reg A issuers, they must be
21 U.S. or Canadian. They cannot be blanket check
22 companies, investment companies or certain types of
23 development stage companies. Additionally, issuers
24 must be current in their reporting obligations if they
25 are subject to filing reports under Reg A or the

1 Exchange Act.

2 So in circumstances, for example, where we
3 see a development stage company whose plan is to
4 acquire an unidentified company, we've raised
5 questions about eligibility. We've also asked
6 questions when we see an issuer who holds or intends
7 to hold a substantial amount of investment securities.

8 In that case, we may ask for an analysis of whether
9 the issuer might be required to register as an
10 investment company, which would disqualify the issuer
11 from being able to use Reg A. Last, if an issuer has
12 not filed its required reports, we will ask them to
13 file the missing reports in order to regain
14 eligibility here.

15 And then the third area where we've issued
16 comments is generally the disclosure requirements. So
17 of course, we also review disclosure for compliance
18 with the rules and we will issue comments here. This
19 includes a review of both the narrative disclosure
20 about the company and its business, as well as the
21 financial statements disclosure.

22 So we've talked about the differences now
23 between Reg A offerings and traditional IPOs. We've
24 talked about the review process, and last, I'll just
25 briefly talk about the routine comments that we hear

1 from the public. And that includes --

2 MS. DUIGNAN: Brian, do you mind if I
3 interrupt with a quick question?

4 MR. FETEROLF: Yeah, sure.

5 MS. DUIGNAN: So you said Reg A is not
6 subject to Section 11 liability. Can we just sort of
7 understand why that's the case?

8 MR. FETEROLF: Yeah. And that's just a
9 result of the statute. So Section 11 only attaches to
10 registration statements at the time of effectiveness.

11 So if you're doing an offering that is exempt from
12 registration, Section 11 liability just does not apply
13 as a matter of law. Does that help?

14 MS. DUIGNAN: Okay, thank you.

15 MS. NIKLASON: So actually now that Erica
16 has asked a question, I'm going to jump in too because
17 I just can't help myself. Understanding the lack of
18 civil liability here, but it sounds to me if I heard
19 you correctly, that Reg A issuers effectively must
20 remain in compliance with Section 5 even though that's
21 not explicitly authorized or recognized by the SEC.
22 So it sounds like they're protected from civil
23 litigation, but a lot of the other compliance that
24 goes into an IPO, they effectively must also maintain;
25 is that correct?

1 MR. FETEROLF: So they still need to comply
2 with all the requirements of Reg A. So if they
3 don't -- on the compliance point, if they aren't
4 complying they lose the exemption. And then it could
5 be a Section 5 violation, which hopefully helps. I'll
6 just note also without getting too in the weeds, even
7 if Section 11 liability doesn't apply, I think as
8 Stacey mentioned, the antifraud provisions still do.
9 Is that helpful?

10 MS. NIKLASON: Sort of. Keep going.

11 MR. FETEROLF: So we'll wrap up here by
12 talking about the routine comments that we hear from
13 the public. So from time to time the Commission
14 receives comments regarding Reg A. And those comments
15 include issue issuers themselves, practitioners and
16 also academics. I'm just going to talk briefly about a
17 few of the more routine comments that we've received
18 over the years since adoption. First, since Reg A +'s
19 adoption in 2015, some commenters have recommended
20 preempting state securities law regulation of
21 secondary sales of Reg A Tier 2 securities, which is
22 already a common theme that we've heard today.

23 At the time that we amended Reg A in 2020,
24 the Commission noted that this recommendation merited
25 careful consideration and they were not adopting such

1 change at that time. The Commission has also received
2 comments on whether to expand preemption to Tier 1
3 issuers. But in 2020 the Commission stated that they
4 continued to believe it was appropriate for states to
5 oversee Tier 1 offerings.

6 And in addition, the Commission has
7 generally received feedback on the differing
8 requirements specific to Tier 1 and Tier 2 issuers.
9 So for example, various commenters have suggested
10 raising the \$75 million offering cap for Tier 2
11 offerings. Eliminating or lessening Tier 2 ongoing
12 reporting requirements, as well as, eliminating the
13 requirement to provide audited financials in Tier 2
14 offerings.

15 So with that brief overview of the comments
16 that we received, I'll now turn it back to Stacey to
17 discuss some of the data if there are no other
18 questions.

19 MR. DILLASHAW: Just in terms of the ongoing
20 reporting requirements, you mentioned the different
21 forms and sort of Form 1U, but how parallel is it to
22 8-K's and 10-Q's, and 10-K's; Is it the same level of
23 requirement or it a lesser standard or how does the
24 reporting requirements compare?

25 MR. FETEROLF: Yeah, that's a great

1 question. I'll just say again that the views I
2 express today are provided in my capacity as a member
3 but don't necessarily reflect the views of the
4 Commission, the Commissioners or other members of the
5 staff. So with respect to that, I would say that you
6 can think of them as analogous, but reduced to balance
7 the differing parts of our mission.

8 If you take a look at a form 1-U which is
9 the analogous current report similar to the 8-K form
10 in the registered world, you'll see similarities, but
11 you'll also see differences. And mainly that as you
12 move up in the registered context, the disclosure
13 requirements I would say are heightened. Is that
14 helpful?

15 MR. DILLASHAW: Yeah, thank you.

16 MR. FETEROLF: And another note there, we
17 have in Reg A Tier 2 offerings, they're subject to
18 annual reports and semiannual reports, but some
19 companies file 10-Q's on a quarterly basis. So that's
20 another example. I'll turn it back to you.

21 MS. DUIGNAN: Thank you so much.

22 Stacy, there was a question I wanted to ask.
23 We know your office does regular outreach and
24 engagement, what is your office hearing from small
25 business stakeholders or their advisors about Reg A?

1 MS. BOWERS: Sure. I'm happy to address
2 some of that. Some of the things that we're hearing
3 is, so we've had a chance to talk to some
4 stakeholders, attorneys, people who have done Reg A
5 offerings. One of the things we hear, there are a lot
6 of specific sort of business models that turn to Reg A
7 and things like, and this was something new to me,
8 funding independent film projects or owning a partial
9 interest in real estate or owning a partial interest
10 in a piece of art. And part of the rationale for that
11 that we heard is sort of the economies of scale. So
12 almost as a company buys a piece of artwork and goes
13 through the Reg A process multiple times, sort of that
14 ability to scale the cost of the Reg A offering can
15 start to be realized by the issuer. Something that
16 doesn't necessarily happen with crowdfunding.

17 As companies do multiple Reg A offerings
18 with subsidiaries they get the process down. They get
19 through the qualification process. So they start to
20 reap some of the benefits and the costs come down as
21 they do more Reg A offerings. So that's one of the
22 things we've heard.

23 Another thing we've heard too with that
24 particular kind of unique deals that sometimes those
25 investors, it's almost a little more like

1 crowdfunding. They're kind of loyal. They want to
2 support that particular sort of offering, whether it's
3 an independent film or to be an owner in a piece of
4 artwork, so they might be a little more patient
5 investors. They're not necessarily looking for
6 immediate liquidity when they go into some of those
7 kind of particular deals. So that can change the
8 dynamic a little bit.

9 But we do still, I mean, some of the things
10 we hear from our stakeholders, and I think some of the
11 Commissioners said this, as well, thinking about are
12 the offering limits the right offering limits; should
13 there be some scaling of the disclosure requirements
14 to make Reg A a little bit easier. One of the things,
15 and I apologize, Erica, if I'm answering more
16 questions than you actually asked as I look at my
17 notes.

18 One of the things we heard in particular
19 from the GC of a company that had done a Reg A
20 offering, was being surprised about sort of the
21 marketing aspect of it. So having to secure that
22 broker-dealer, the amount of time it took to get a
23 good broker-dealer to help with the marketing to be
24 able to make the offering a success. So that was sort
25 of one of the unanticipated aspects of the Reg A

1 offering that that particular general counsel
2 highlighted for us. So hopefully I answered your
3 question.

4 MS. DUIGNAN: Yeah, absolutely. You know,
5 definitely appreciate the marketing as kind of like an
6 unexpected challenge and that makes a lot of sense.
7 Have you gotten any feedback on the economic
8 viability, whether they say the juice is worth the
9 squeeze based on the cost of these offerings compared
10 to other capital raising pathways?

11 MS. BOWERS: I would say, I think we do hear
12 from stakeholders I mean similar to crowdfunding that
13 the costs of a Reg A are a balancing act. And whether
14 it's a cost effective method to raising capital,
15 again, I think it circles back to what I started with,
16 where sort of these more unique business
17 opportunities, where you've got a company and sort of
18 their business plan is they buy particular pieces of
19 artwork and then take investors, sort of drop a
20 subsidiary and do a Reg A offering.

21 So that's where they can sort of scale those
22 costs and make Reg A a little bit more viable. I will
23 say one of this things that we heard from an attorney
24 that we spoke with is keeping in mind, even with a
25 Tier 2 while it preempted state Blue Sky laws, they

1 still have to file with the state and pay a fee to the
2 state.

3 Even though Tier 2 doesn't have to go
4 through that review process at the state level, there
5 are still some costs associated with making the notice
6 filing with the states. And then obviously with the
7 Tier 1 additional costs would be going those Blue Sky
8 laws. So I think that's something that we hear that
9 there are definitely some costs there. And I think
10 also the costs of hiring that broker-dealer to help
11 market the deal to make it successful as well.

12 MS. NIKLASON: Well, it sounds to me overall
13 never having done a Reg A, but having done several
14 non-registered offerings with accredited investors and
15 then having gone public, I can see how Reg A might be
16 a useful vehicle for I would say sophisticated but
17 more niche companies, such as crypto, such as
18 fractional ownership of art, where you're dealing with
19 highly sophisticated and perhaps scalable small
20 business models.

21 But when I, having listened to the
22 regulation burden and just the expertise required to
23 comply and to avoid a footfall, when I think about
24 another type of small business trying to raise \$10
25 million, the hurdles, the compliance hurdles, but also

1 the inability -- the difficulty of crossing state
2 lines and the inability to sell shares. I can see how
3 that would be enough of a -- enough of an impediment,
4 that many of those potential offerers would just
5 rather work with accredited investors. Having
6 listened to all of this.

7 MS. DUIGNAN: Yeah, absolutely. That's a
8 very very good point, Laura.

9 One other quick question I just wanted to
10 cover before we move on is just, Stacey and Brian, to
11 get your perspective on the secondary market liquidity
12 concerns and challenges. Do you think that might also
13 be a deterrent from issuing Reg A, and what evidence
14 or feedback have you heard from issuers or investors
15 on that?

16 MS. BOWERS: I'll let Brian weigh in as well
17 if he would like to. That is definitely something we
18 hear from our stakeholders. That particularly with
19 the Tier 2 that not having ready liquidity for resales
20 is impacting the use of Reg A. And again, I think if
21 we circle back, Dan Zinn, when he was at our last
22 meeting talking about OTC and what they've been trying
23 to do to sort of create a little bit more liquidity, I
24 think they -- I can't remember exactly what Dan said,
25 but I would say yes, I think that's something that

1 we're all hearing. That lack of preemption
2 particularly with Tier 2 in the secondary sales is
3 impacting I think possibly the use of Reg A or at
4 least that's what our stakeholders are telling us.

5 MR. DRAYTON III: Madam Chair, I've got a
6 question, if that's okay. It's Herbert.

7 MS. DUIGNAN: Sure. Just jump in.

8 MR. DRAYTON III: Brian or Stacey, if I
9 heard you correctly, did you say if I did a Reg A
10 offering, I could not invite a fund-to-funds firm to
11 invest. And if that's true, is that any size fund-to-
12 funds, that they could not invest in a Reg A offering
13 that I put on the street?

14 MS. BOWERS: Brian, did you want to take
15 that?

16 MR. FETEROLF: The question was whether you
17 can solicit from a fund to invest?

18 MR. DRAYTON III: Fund-to-funds, yes.

19 MR. FETEROLF: I mean, as long as you're
20 meeting the investor requirement there is if they're
21 just investing. That sounds okay. But I'm happy to
22 chat offline if I'm missing something nuanced in the
23 question.

24 MR. DRAYTON III: Well, when you were
25 talking you said a at a certain level, if the fund-to-

1 funds came in and they had a majority position in the
2 offering, I thought I heard you say --

3 MR. FETEROLF: Okay. Thanks for clarifying.

4 That was on the point of issuer eligibility. And
5 that's right that if the issuer itself is holding
6 investment securities that seem like it's a
7 substantial amount, then it might raise questions
8 about whether the issuer appears to be an investment
9 company. And investment companies are not eligible to
10 use Reg A.

11 MR. DRAYTON III: And that's no matter the
12 size of that investment company?

13 MR. FETEROLF: You know, I'm not an
14 investment company lawyer.

15 MR. DRAYTON III: Okay. Okay.

16 MR. FETEROLF: Yeah. So typically what
17 we'll do, it's kind of facts and circumstances
18 analysis. If the facts start to look like they raise
19 questions about whether the issuer is an investment
20 company, then that's where we might have comments.

21 MR. DRAYTON III: Okay. And just one
22 follow-up question. I know there's the technical
23 assistance site of fin hub. Is there anything similar
24 to that for folks who want to do Reg A, because I can
25 imagine trying to present an offering and not having a

1 clue and my attorneys would love that because they'll
2 take one question at the time without summarizing
3 everything that they think I need to know at that
4 point.

5 MR. FETEROLF: That's a great question.
6 Stacey, I'll let you jump in here also. But the small
7 business resources page on the SEC website is a really
8 good resource. And there's lots of tools there,
9 including some good guides and explanations about Reg
10 A and how it works.

11 MS. BOWERS: And correct me if I'm wrong,
12 Brian, but if somebody has a specific question they
13 could also reach out to OSBP.

14 MR. FETEROLF: Definitely. Yeah. We get
15 questions all the time. You can call into our phone
16 line and someone will get back to you and we'll chat.

17 MR. DRAYTON III: Great. Thanks a lot. And
18 thank you, Madam Chair.

19 MS. DUIGNAN: Thank you, Brian and Stacey.
20 We're all going to be giving you a call whenever we
21 wanted someone to discuss securities regulation with,
22 so you put it out there, expect to get lots of phone
23 calls from us with follow-ups. Thank you so much for
24 this overview. It was really really helpful. All
25 right.

1 So as I mentioned at the outset, today we
2 plan to spend the meeting continuing the exploration
3 of ways to expand access to early stage and growth
4 capital raising by focusing on how companies have used
5 Reg A for capital raising. We just had a fantastic
6 Reg A primer and we know this pathway is less
7 frequently used than other capital raising pathways,
8 like Regulation D and is also different in some
9 significant ways from a traditional IPO.

10 I'm hopeful that with the benefit of our
11 invited speaker, we will have the opportunity to hear
12 more about some of the advantages and limits of
13 Regulation A offerings, along with practical market
14 considerations that impact the desirability of Reg A.

15 It's important to consider not just the issuer
16 perspective, but the investor perspective as well.
17 Because savvy investors are hoping for a return on
18 their investment, we need to understand how that will
19 occur in Reg A offerings.

20 To that end, we're going to consider exit
21 opportunities for investors in Reg A deals and
22 secondary market liquidity challenges. Ultimately,
23 the Committee will explore whether there are changes
24 that could help facilitate capital formation pursuant
25 to Regulation A and improve secondary liquidity for

1 investors in Reg A offerings. It is our hope that
2 we'll be in a position to culminate this discussion by
3 proposing related recommendations.

4 So to facilitate the discussion and deepen
5 the Committee's understanding of certain capital
6 raising frictions, we will be hearing from an attorney
7 who is well versed in Reg A. I'd like to now
8 introduce and welcome Daniel Forman, partner at
9 Lowenstein Sandler, LLP.

10 Daniel represents public and private
11 companies, investment banks, private equity sponsors
12 and venture funds in a wide range of capital markets'
13 transactions. Daniel also has experience advising
14 public companies, both large and small, on their SEC
15 reporting obligations and corporate governance
16 matters. He works with clients across numerous
17 industries including life sciences, technology, retail
18 and consumer brands, industrials and financial
19 institutions, among others.

20 So welcome, Daniel, and thank you so much
21 for being with us today.

22 EXPLORING REGULATION A - PRACTICAL CONSIDERATIONS AND
23 REGULATORY CHALLENGES

24 MR. FORMAN: Thank you very much, Erica.
25 Let me see if I can share my screen and that works.

1 Okay. How is that? Good. Great.

2 Good morning and thank you for having me.

3 It's an honor to speak with you today. The
4 Committee's work is incredibly important and through
5 your recommendations you provide invaluable
6 perspectives on the capital markets and how they're
7 serving the needs of small businesses and their
8 investors. The importance of regularly evaluating how
9 the capital markets are functioning and insuring
10 they're providing small businesses with the
11 opportunities to raise funds for growth and
12 investment. And individual investors with the
13 opportunities to participate in this growth is vital
14 for the long-term success and efficient allocation of
15 resources in our national and local economies.

16 Thank you again for inviting me to join your
17 discussion and considering the current state of play
18 as it pertains to the rules and regulations of capital
19 raising for small companies and I hope my experience
20 and perspectives will aid the Committee in making
21 recommendations that will facilitate capital formation
22 for small businesses while still protecting investors.
23 In particular, I look forward to focusing our
24 discussion on Regulation A and its potential and
25 limitations as a capital raising pathway.

1 As Erica mentioned, I'm a partner in the
2 capital markets and securities group at Lowenstein.
3 Our practice focuses on advising private and public
4 companies on securities offerings and capital raising
5 activities. Most of my practice supports small and
6 mid-cap companies, public companies with equity and
7 debt offerings. And private companies pursuing public
8 listings through IPOs, deSPAC's, reverse mergers,
9 direct listings and Regulation A. Our firm focuses on
10 emerging growth in small cap public companies, as well
11 as, startups and venture capital.

12 Over the years I've had numerous
13 conversations and worked on a number of Regulation A
14 offerings for a variety of types and sizes of
15 businesses. And have had many conversations about the
16 potential of and use cases for Regulation A. We've
17 worked with issuers on the Regulation A offerings.
18 And also investors participating in, considering and
19 sometimes investing alongside a Reg A capital raise.

20 As the data from the Office of the Advocate
21 for Small Business Capital Formations Annual Report
22 indicates, the number of Reg A offerings has declined
23 over time. So generally anecdotally has interest in
24 the offering type. I note that usually, what's
25 happened over the past years I guess back to 2015 is,

1 we see excitement and interest and people asking about
2 the offering.

3 When it was introduced and became effective
4 in 2015, again, when amendments were adopted and
5 became effective in 2018, and then again, when the
6 maximum offering amount for limitation under Tier 2
7 was increased to 75 million from 50 million. So
8 issuers in general and investors like what Regulation
9 A offers in concept.

10 However, it is also clear from the data and
11 the annual report, there's far more activity and
12 companies are raising far more in proceeds from
13 Regulation D, private placements, and also from
14 Initial Public Offerings and other registered equity
15 offerings.

16 So I'm happy again to feel free to interrupt
17 if you have questions while I'm going to aid in the
18 conversation. I want to start with some points why
19 companies are drawn to Reg A and when companies sort
20 of read on the SEC's website or they see another
21 company doing a Regulation A offering, there are some
22 things that stick out for them. They come and they're
23 very excited about Regulation A and there are a number
24 of things that they like when they're thinking about
25 either doing an IPO or private placements.

1 For one, the offering size limitations for
2 both Tier 1 and Tier 2 are very attractive for small
3 businesses and small companies. And for many of the
4 companies we speak with about Regulation A, the
5 ability to raise significant amounts of capital under
6 Tier 2 offering is very attractive.

7 Many smaller companies that might otherwise
8 be considering or aspiring to a smaller let's say 30
9 to \$50 million IPO, see Reg A as a really valuable
10 potential alternative. Companies also like that Reg A
11 is not an all or nothing raise like a traditional IPO.

12 So when you're doing a or traditional IPO, you
13 basically set yourself up for a two-week roadshow.
14 And you go on the road and the market window has to be
15 just right. And the securities are underwritten by an
16 underwriter in place and it's very much a momentous
17 event, but when the market window isn't there when
18 you're going public, that could also take six months,
19 one year, two years of preparation and subject it to
20 risk.

21 So what companies often like about Reg A is
22 they can qualify their registration statement and over
23 time sort of build up and raise proceeds. That can
24 though, that all-or-nothing approach can also work
25 against the issuer. I think what we often see and I

1 know we're talking about the positives here, but we
2 often see that companies go and they look to raise \$20
3 million, \$50 million, and they get comfortable with
4 what their outlay on expenses are going to be, but in
5 the end what they actually raise under the offering is
6 a fraction of that.

7 So that's something that when we're talking
8 to issuers we advise them on. We say, what's the
9 minimum that you're looking to raise here and consider
10 that in connection with what the outlay on expenses is
11 going to be.

12 What companies also like about Reg A is
13 compared to other registered offerings is, they're
14 considering an IPO and what they hear is that this is
15 a Mini-IPO or its IPO Light, and that there are
16 lighter levels of disclosure that you get with a Reg A
17 offering. That is something that's very attractive to
18 them. Most small companies do not have the resources
19 to dedicate to the preparation of extensive securities
20 disclosures. And probably more important, it's not
21 just drafting the disclosures. It's the processes
22 that go into building those disclosures.

23 So it's going and creating the data room.
24 It's working with your lawyers and investors
25 relations' team. Making sure that the information that

1 you're putting in that registration statement is
2 accurate and free of misstatements and there are no
3 material omissions.

4 So there's a significant process that goes
5 on behind the scenes as opposed to just kind of
6 putting together a document. And there's often the
7 view that companies have, particularly smaller
8 companies, that hey, my business is smaller. It's
9 relatively simple. It's straightforward. Investors
10 wouldn't necessarily get anything more of value if I
11 had another 50 pages of disclosure or 20 pages of risk
12 factors. Why do I need that.

13 So while it's true that the offering
14 circular requirements for a Reg A offering may be seen
15 as a lighter touch, when we actually get into the
16 details of it, I would say that many issuers are
17 surprised that they're closer to the requirements for
18 a registered offering, like an IPO, rather than
19 something you would find for a Reg D private placement
20 or something under the crowdfunding regulations.

21 Separately, the ongoing reporting
22 requirements for Tier 2 issuers are generally more
23 limited than they are for regular SEC Exchange Act
24 reporting companies. So as mentioned before, you have
25 annual, semiannual reporting and current reports, with

1 a form 1-U resembling a form 8-K. I would go and say
2 this is a lighter touch. Certainly you don't have the
3 quarterly reports that an Exchange Act filer is
4 required to file. And they are less demanding in
5 terms of putting them together. So it actually is
6 something that is very attractive to Tier 2 issuers.
7 As also mentioned before, Tier 1 issuers don't have
8 these ongoing reports apart from the 1-Z exit form
9 which they are required to do which is not all
10 together that demanding.

11 Something extremely important when we're
12 talking to companies about whether to go public are
13 financial statements. And financial statement
14 requirements for Reg A issuers can also be much more
15 flexible and accommodating. And I think it definitely
16 draws the interest of smaller companies. So for an
17 offering under Tier 1, issuers are not required to
18 provide audited financials unless, as mentioned
19 before, they've already prepared them for other
20 purposes.

21 And issuers in Tier 2 offerings are required
22 to include financial statements in their offering
23 circulars that are audited, but they can either be
24 audited based on AICPA standards or public company
25 accounting oversight standards. So being able to

1 elect to provide AICP audits, AICPA audits in lieu of
2 the PCOB audits can save companies thousands of
3 dollars in offering costs.

4 So to the extent that you are not
5 considering a listing or otherwise going to require a
6 PCOB audit, this can save companies thousands upon
7 thousands of dollars in offering costs and is actually
8 something very helpful in the framework. And in
9 addition, just as for regular IPO's, that transition
10 from private company accounting to public company
11 accounting takes a good deal of work and internal
12 effort by the management team. Usually companies need
13 to bring on additional resources either by hiring
14 third parties or bringing in consultants or actually
15 hiring additional personnel who have experience in
16 public company accounting. So the ability to have
17 scaled financial statements disclosures and
18 requirements is something that very much attracts
19 issuers to Regulation A.

20 Another feature of Regulation A that you can
21 find in an IPO but you can't find in other private
22 placements except Regulation crowdfunding, is that you
23 can get access to a broad investor base and there's
24 marketing flexibility. So under IPO's, with a regular
25 way traditional IPO, one of the things we focus on

1 with issuers is talking about how strict the
2 communication rules around IPO's, how gun jumping
3 works, how communications as you approach that IPO
4 period really have to be limited.

5 And for smaller companies, not only can that
6 be difficult to understand and implement, but for many
7 issuers that find Reg A attractive, it actually goes
8 against what they're trying to do in their business is
9 do more outreach, to get people to know them, to
10 increase brand exposure. Something attractive about
11 Regulation A is the allowance for general
12 solicitation. The ability for issuers to broadly
13 market their offerings to the public. It is often a
14 compelling reason to pursue a Reg A offering.

15 Sometimes we've had discussions with issuers
16 in small companies where the ability to market the
17 offering directly to their customers or their users of
18 services was extremely valuable. Not only as a means
19 to raise capital, but also as a way to connect with
20 customers and users and deepen those relationships. I
21 think that's something very unique with Reg A. And
22 actually if you look at IPO's, traditional IPO's,
23 there is a lot of effort on consumer-facing companies
24 and brands to find ways to get their shares or at
25 least to have their customers become investors as

1 well.

2 So through directed-share programs and other
3 types of outreach to retail investors there really is
4 this sort of connection that companies want to build
5 with customers who also become investors and believe
6 in the product.

7 As has been mentioned few times before, and
8 I know as this Committee has considered, unrestricted
9 securities and some help with preemption of state
10 securities laws in Tier 2 does make Reg A offerings
11 sometimes more attractive than private placements.
12 Securities sold in Regulation A are not restricted
13 securities. They generally can be freely resold by
14 non-affiliates under the federal securities laws.
15 However, that's all subject to applicable state
16 securities laws.

17 This is definitely a significant potential
18 benefit of Reg A over other exempt offerings,
19 including Reg D, since many investors want the ability
20 to have freely tradeable stock and certain investor
21 cannot hold restricted securities. However, that's
22 where things get a bit sticky because, as we've been
23 talking about, Tier 2 offerings provide for preemption
24 of state registration and qualification provisions
25 only for primary offerings of securities by the issuer

1 or secondary offerings that are qualified under Reg A.

2 As we were talking before, if the issuer is
3 doing a Reg A offering and is issuing up to \$30
4 million of shares insiders, directors, officers,
5 affiliates, sort of meaning 10 percent holders
6 generally, they can also sell at that same time. And
7 that would get preemptive treatment to get through
8 state securities laws and not have to be separately
9 registered or qualified.

10 However, once you get into the secondary
11 trading, the purchasers of those shares if they're
12 looking to sell their shares in the future, need to
13 consider how they're going to sell them and whether
14 and how they're going to comply with state securities
15 laws.

16 Many sort of Main Street investors when they
17 think about this issue, that's something that's very
18 complicated. And not only does it prevent liquidity
19 on the back end, but for investors who are making an
20 initial purchase decision, that will also prevent them
21 from making the initial purchase. So it's not just,
22 I'm going to buy the securities and then six months
23 later or a year later or five years later, what am I
24 going to do.

25 It's do I really want to purchase this

1 security that if I need to sell, I'm going to have to
2 figure out who I'm selling it to, where they live,
3 where I live, what the laws are. It's a very
4 complicated process, particularly for a retail
5 investor who I think the Committee and the SEC and
6 everyone would like to see have the opportunity to
7 participate in these types of offerings. And you add
8 on top of that, that there are not many secondary
9 trading facilities for these shares and that can
10 prevent an issue -- that can prevent an opportunity as
11 well. However, we're sort of close there, because
12 there are unrestricted securities and there is
13 preemption on that first piece.

14 A few other reasons why companies may be
15 drawn to Regulation A. Generally, Regulation A
16 offerings are typically less expensive, much less
17 expensive than a traditional IPO or other registered
18 offering. Companies don't have, you know, for a
19 traditional IPO you're looking at costs starting
20 around a million dollars, up to two million dollars at
21 the low end. That's accounting. That's legal. That
22 doesn't even take into consideration the underwriting
23 discount that investment banks will charge on a
24 traditional IPO, which is 7 percent in fees, 7 percent
25 of the proceeds raise generally. So a Regulation A

1 offering is much less expensive than that.

2 Being able to sort of think about doing a
3 Mini-IPO for a lower cost and you're raising sort of
4 the proceeds you needs to advance your business,
5 that's very attractive.

6 MS. DUIGNAN: Sorry. When you say lower,
7 can you give us some specifics on that, so minimum a
8 million for an IPO, like what would the cost structure
9 be here?

10 MR. FORMAN: So for a Reg A offering, again,
11 it's probably very different for Tier 1 and Tier 2
12 depending on the capital raised. And companies are
13 going to use a broker-dealer for Reg A. If you're
14 talking, you're starting at a million for an IPO and 1
15 to 2 million for a traditional registered IPO plus the
16 underwriting discounts, you're talking \$100,000,
17 \$200,000, more in that range, for a Reg A offering.
18 So there is a significant difference of scale.

19 I mean, it can go up. If you're doing a
20 more significant Reg A offering in Tier 2, I think
21 you're looking at probably closer to, between that 2,
22 250, 500 range. But I think that varies pretty widely
23 based on which services you're looking to build in,
24 who you're hiring for these various services and how
25 you're looking to build those costs. And whether

1 you're a repeat issuer, I think, as well.

2 MS. DUIGNAN: Okay. So just a quick
3 question on the structure there. So let's say you're
4 looking at 100 to 500 in kind of like the fixed costs
5 and then no sort of transaction fee maybe for your own
6 investors that you brought in through your customers
7 etcetera, but then you probably would still have that
8 7 percent if you're using a broker-dealer to find
9 additional investors.

10 MR. FORMAN: Yeah, so the fees for broker-
11 dealers differ. And you could go to a broker-dealer.
12 You could use -- often in Reg A offerings firms are
13 hired to help market the offering. A lot of the times
14 because of the general solicitation, the availability
15 to go out and solicit widely, you sort of bring in a
16 marketing firm and they help you and they help get the
17 word out and that also can be a cost and a number of
18 broker-dealer financial advisers can help with that as
19 well.

20 MS. DUIGNAN: Thanks.

21 MR. FORMAN: And then just two other items
22 that Stacey had mentioned that issuers really like.
23 And both with registered Initial Public Offerings as
24 well as Reg A the confidential review of the
25 registration statements that the SEC permits, that

1 confidential process where you can work on your
2 disclosure and receive comments from the SEC and get
3 feedback. Doing that in a confidential way is very
4 helpful and very attractive to issuers. And at some
5 point they decide not to do the offering they can
6 simply withdraw that confidential registration
7 statement and don't sort of have the reputational risk
8 of having gone out there and tried to do this and it
9 not working.

10 So they can explore this, move this down the
11 pathway and if a more efficient way of raising capital
12 appears, if you're working on a Reg D private
13 placement, you can pivot to that quickly without
14 putting all this disclosure about your business out
15 into the public market. So that's helpful.

16 Just an IPO's, the testing the waters
17 innovation that was mentioned before, where issuers
18 can go and speak to institutional investors about
19 their story and see how that resonates, testing the
20 waters is extremely important not only for getting
21 indications of interest or just getting feedback from
22 these investors, but sort of having a chance to tell
23 the story and refine it over time.

24 So we talked a little bit about earlier the
25 types of companies that use Regulation A or who it

1 makes the most sense for. So when companies, when we
2 speak with companies about it, a lot of the time there
3 are some companies that a Reg A offering doesn't make
4 sense for and we say you should consider these other
5 things. But there are a number of companies where a
6 Reg A offering does make sense and they can take good
7 advantage of the framework.

8 So companies that have strong brand
9 recognition, and/or a loyal customer or user base can
10 leverage general solicitation and the marketing
11 flexibility to generate investor interest. We've seen
12 this, given the growth and prominence of direct-to-
13 consumer brands, and increased interaction generally
14 by companies and their users of their products on
15 social media over the years. Customers and users can
16 be a great source for capital. And interested
17 investors who support the company's mission.

18 Many traditional consumer in tech IPO's, I
19 mentioned this before, utilize programs that work
20 within the IPO and the securities framework to reach
21 these consumers. But the ability to reach out to
22 retail investors directly is certainly an advantage
23 that Reg A has over other exempt offerings.

24 Companies that excel in self-marketing that
25 really can put out a press release or an email to

1 their customers and really have a great identity and
2 can sell themselves, often find success because not
3 only can they sell their products, they can also sell
4 the story of the company and why investing in the
5 company helps the mission. And investors and
6 customers really want to be a part of that. And often
7 those two aspects join together.

8 We talk about sometimes that every company,
9 the dream is to IPO, but for a lot of companies
10 they're not ready to IPO. They're not ready for the
11 burdens of complying with the public markets or
12 answering analyst questions every quarter. So some
13 companies just aren't ready to IPO and some don't want
14 to IPO. They want to find a way to access capital, to
15 access, maybe it's that 20, \$30 million of capital.
16 But they don't want to go to the next level. They
17 don't want to deal with the reporting obligations and
18 costs of compliance because they doesn't make sense
19 for their business.

20 There are a lot of companies out there that
21 are deterred from going public that have great
22 prospects because it's just too much for them and will
23 distract them from running their everyday business.
24 So for those companies that want to be able to raise
25 let's say 25 million up to the \$75 million limit that

1 Reg A allows, and they want to stay private. They
2 don't want to be public companies, Reg A is
3 potentially a really good choice.

4 Real estate platforms have used Regulation A
5 with a lot of success. I think that's also in the
6 annual report where you see where the offerings are
7 coming out of in terms of industries. I think real
8 estate platforms usually are administered by folks who
9 are very familiar with financial statements and
10 financial structuring and disclosures. And they also
11 benefit from, I think as Stacey was mentioning, as you
12 do more of these offerings and accumulate capital, Reg
13 A is great for that. You can fundraise, invest the
14 proceeds, and continue to fundraise and sort of build
15 up over time. So platforms that invest in real estate
16 have found I think a good deal of success and interest
17 in Reg A.

18 These offerings -- or these platforms also I
19 note, sometimes or they usually aren't as dependent
20 upon that secondary trading. They could offer a yield
21 to investors through their securities and so sometimes
22 the real interest in the securities is holding them
23 and getting dividends off of them, which you would get
24 from the real estate income, as opposed to sort of
25 secondary trading and having a secondary market. So

1 it's something where an issuer of the secondary --
2 aspects of secondary trading for Reg A aren't as
3 relevant.

4 Commissioner Peirce had mentioned sort of
5 the digital asset space. I think a few years ago
6 there was sort of like are Reg A offerings perfect for
7 like initial coin offerings in the digital asset
8 space. I think not considering sort of whether crypto
9 offerings should be done on Reg A. I think there's
10 also a lot of reason why digital asset companies who
11 are tangential to the crypto space may find Regulation
12 A attractive for fundraising.

13 Typically they do have consumers or users of
14 their platforms that are very invested in the
15 platforms and have that same brand alignment and
16 platform alignment that you would see in direct-to-
17 consumer brands that are mission driven. So I could
18 also see those issuers succeeding using the Reg A
19 offering framework.

20 MS. DUIGNAN: Sorry, could you just be a
21 little more specific there around an example, I'm not
22 sure I quite follow how the crypto company versus the
23 D to C company would have the same benefits.

24 MR. FORMAN: Yeah, sure. So for a crypto-
25 related company, so if a company is operating, so a

1 platform for trading various crypto assets or tokens
2 or coins and they're looking to capital raise to build
3 out the platform, but not necessarily sell crypto
4 assets. They would have probably a strong social
5 media presence. They would have a lot of users of
6 their platform that would be invested in the success
7 of their platform. And in that way, both users of the
8 platform would seek to be investors of the platform.
9 So they could do similar outreach to a company where
10 maybe you're selling clothing products and you have
11 this direct connection with those who are buying your
12 products who would also want to invest with you.

13 Lastly, though most of my commentary is
14 focused on Tier 2 companies or companies raising
15 capital in Tier 2, for companies look to raise more
16 capital in the crowdfunding limits but up to that \$20
17 million and for some reason they can't do it through a
18 Reg D private placement, Tier 1 of Regulation A would
19 allow them to go and try and raise those funds from
20 the general investing public.

21 I think what you'll see is sometimes
22 founders who have built up their business, maybe
23 they've used some family money, but they don't have an
24 institutional lead investor like a venture capital
25 firm in their equity capital stack. They may not be

1 able to get that traction or know how to access the
2 networks necessary to get an institutional investor in
3 to a Reg D. So if they're looking to raise \$10
4 million, maybe Reg A is a better way to do that by
5 gaining access to retail and general investors.

6 Next I want to talk a little bit about the
7 difficulties and the limitations of offerings under
8 Reg A. Some of it I think is competition, if we can
9 call it that, with sort of the other offering types.
10 And I think this goes to Commissioner Peirce's sort of
11 which supermarket should I go to and what are the
12 frictions there.

13 So when given a choice between raising
14 capital via private placement, such as through Reg D,
15 from let's say a venture capital fund, a family
16 office, a private equity firm, or even looking at bank
17 financing or private credit versus a Regulation A
18 offering where you're preparing for and taking a risk
19 on doing a basically a quasi-public offering. The
20 answer when we're talking with issuers is often that,
21 the private capital is less costly; it's quicker to
22 close; there's less if any ongoing reporting
23 obligations with which to comply. It's happening out
24 of the public space. So you can disclose what you
25 like about it. You don't have mandatory disclosures.

1 And also, to the extent you can have an
2 anchor venture capital fund on your cap table, there
3 are also benefits that that provides beyond just
4 capital raising. There's guidance. There's
5 connections to help the company grow. And in the
6 current environment or how the environment has been
7 over the last 10 years, the availability and success
8 of private capital has been so strong that it's not
9 only taken probably capital out of Reg A or diverting
10 capital that could have otherwise gone to Reg A, but
11 it has also take an bite out of the traditional IPO
12 market.

13 I'd say that notwithstanding that I'm a
14 public securities lawyer and my focus is taking
15 companies public, when we talk with companies, should
16 you take private capital or should you go public, the
17 advice is often, you should stay private for as long
18 as you can provided you can get the capital you need
19 to run your business. Unless there's another
20 compelling reason why you would want to go public and
21 a public listing makes sense.

22 That could be, my employees need to get
23 liquidity for their stock. It's really important that
24 I'm a public company because it adds credibility and
25 reputation and it will mean a different thing for

1 raising the profile of my business and getting
2 customers or securing suppliers. But private capital
3 has a number of advantages that I think we all need to
4 think about as we kind of think about where Reg A fits
5 within the framework of capital raising.

6 So assuming that a capital decides it needs
7 to go and access capital from the public markets,
8 there are some advantages to a Reg A offering. But
9 when you look at the process and potential outcomes
10 side-by-side with an IPO or other registered offering,
11 many companies come to the conclusion that a Reg A
12 offering is not the best capital pathway. And it
13 actually could be damaging to prospects of the company
14 down to road.

15 There are a number of clients who have
16 considered a Reg A, and honestly it ended up taking
17 more expensive capital from private sources to bridge
18 them to a traditional IPO or reverse merger, because
19 they didn't want to put effort into a Reg A offering
20 that they ultimately would not be able to sell.

21 So there are also complications for pursuing
22 let's say an IPO after you've completed a successful
23 Reg A offering. For example, when you're doing an IPO
24 it's usually very closely orchestrated again with
25 communications, but also with expectations around

1 valuation. And you've already put a lot of public
2 disclosure out in the market if you've done a Reg A
3 offering. If the story changes for the company since
4 that time, it sometimes becomes difficult to adjust
5 the market to those new expectations.

6 If you do have a very successful Reg A
7 offering, for example, you end up with a large
8 shareholder base that could consist of thousands upon
9 thousands of retail holders and then managing or
10 trying to manage a tightly controlled IPO after that
11 can be very difficult for issuers. So there are lots
12 of logistical considerations for the company to
13 consider with such a large shareholder base.

14 Some of the other draw backs of Reg A
15 offerings as compared to a private placement include
16 high upfront costs for the offering. It's much lower
17 than an IPO, but it is higher than for a private
18 placement or a VC round. And there is -- though it is
19 more streamlined than doing an IPO, there is still for
20 a small business, a rather complex and lengthy
21 regulatory process and ongoing reporting burdens that
22 you need external advisers to help with and that you
23 do have to pay when you call them or when you engage
24 them to help you through that process.

25 And I'll say that while there has been much

1 said about IPO underwriting fees, 7 percent is very
2 high when issuers hear that number, right, it is very
3 difficult to successfully market and sell securities
4 of small companies to retail investors. In many Reg A
5 offerings issuers do try and do this themselves and in
6 many other offerings, more so in Tier 2 offerings, you
7 have underwriters or placement agents, financial
8 advisers that are involved and there are some Reg A
9 market specialists, but generally the markets around
10 Reg A have not developed in a way where there's been
11 as much interest or participation from investment
12 banks as I think would have been hoped when it was
13 first introduced or might have been expected when the
14 offering size limitations increase.

15 MS. DUIGNAN: And I apologize, Dan, I think
16 we're bumping up against time. Thank you so much for
17 this, it's great. Hopefully we can wrap it up in the
18 next couple of minutes so everyone can get in a quick
19 break before our discussion. But thank you. This has
20 been wonderful. Is this the last slide or do you have
21 anything --

22 MR. FORMAN: I can just do a last slide for
23 some quick wrap up.

24 MS. DUIGNAN: Okay. Great.

25 MR. FORMAN: Just some thoughts quickly on

1 where to next for Reg A and certainly for the
2 Committee to think about. As has been mentioned, I
3 think preemption of state securities laws is a
4 significant topic worthy of consideration and I think
5 something for the Committee to consider.

6 Ways to improve the Reg A ecosystem and
7 involving market participants and educating them on
8 how maybe this can be improved. I think reconsidering
9 the tiers more so than even thinking about the
10 offering limitations is something that is worth
11 consideration. I think, you have a set of companies
12 where maybe they're looking to gain access to a
13 broader universe of investors, more than crowdfunding,
14 that is probably one group.

15 You probably have another group of companies
16 that have greater capital needs than 20 million, but
17 are not ready to IPO. And consideration should be
18 given to them that they should have scaled disclosure
19 requirements. And then, additional consideration
20 should be given to companies with greater capital
21 needs, but that want to use Reg A potentially as a
22 jump off to a traditional IPO or have an alternative
23 to an IPO, as has been discussed before. In order to
24 go public, you're looking at companies with market
25 valuation of one-and-a-half or \$2 billion.

1 There is a lot of white space that's been
2 left where companies that are smaller that are looking
3 to do capital raises of 100 to \$150 million, just
4 don't have the opportunity to go public. And I think
5 expanding opportunity under Regulation A could give
6 them a lot of opportunity to do so.

7 I'll stop there. Thank you, again, to the
8 Committee for the opportunity to speak. And I look
9 forward to hearing the recommendations that you put
10 forward on this important area.

11 MS. DUIGNAN: Thank you so much, Dan. That
12 was really really informative. And hopefully we can
13 get those slides from you after to continue to inform
14 our discussion. I appreciate it. And I want to thank
15 you, everyone, who has shared their perspectives this
16 morning for helping to bring these conversations to
17 the Commission. For those watching on SEC.gov, the
18 Committee will take a short break and return at 12
19 p.m. Eastern Time. We look forward to having you all
20 back at the top of the hour.

21 (Whereupon, there was a break in the meeting
22 at this time.)

23 Welcome back, everybody. Thank you for
24 joining us after that short break. We very much
25 appreciate it. Wonderful. So excited to begin some

1 discussion with the Committee around any thoughts that
2 we have on sort of these new findings that could
3 potentially lead to a recommendation. So thank you
4 all for being here.

5 I think it might be a good idea for us to
6 start off around No. 1, if anyone has a specific
7 burning idea that they would love to jump in with,
8 please let me know. Otherwise, we might want to begin
9 by tackling the question around the current offering
10 limits, particularly around Tier 2 offerings that are
11 currently set at 75 million.

12 Does anyone have thoughts on whether or not
13 that's an appropriate level or if Reg A might be made
14 more attractive by increasing that, I would love to
15 hear what you think.

16 MS. NIKLASON: I'll just jump in but, you
17 know, we could increase to 100 or whatever. But I
18 guess I feel like if you're a company that's raising
19 100 million, that does start to put you more in IPO
20 territory anyway in terms of presumed level of
21 sophistication and resources at your disposal, not in
22 all cases, but I think in many cases. I mean, we
23 could do it and I don't think there would be anything
24 wrong with it. But if the goal is to increase the
25 usage of this mechanism, I'm not sure that would do

1 it, because I don't think that the cap is what's
2 limiting usage. I think the regulatory burden, the
3 disclosure burden, the reporting burden, and the
4 inability to have secondary markets are the difficulty
5 with that. That's the friction, right.

6 But I think the larger question maybe for
7 this Committee is, what is Reg A supposed to do. If
8 Reg A is supposed to provide fairly sophisticated
9 companies with another way of IPO Light, then it's
10 doing its job. If Reg A is supposed to be doing
11 something else, helping the average Joe guy raise
12 capital for his little company, then it's not doing
13 that.

14 MS. STANDIFER: Yeah, I agree with Laura.
15 And I put a distinction from our last conversation
16 where we did raise the limits for qualified venture
17 funds. Reg A is for operating company. So if we
18 start with the premise that we're talking about
19 operating companies. And if you're an operating
20 company that's going to raise 100 million, we're
21 firmly in small cap IPO territory.

22 So are we trying to take Regulation A and go
23 into that territory? I don't know that you have the
24 cost benefit there because you get a lot more --
25 there's a lot more work from an IPO. But you get a

1 lot more benefit in terms of access to markets,
2 liquidity, throwing up offerings to your public that
3 aren't necessarily going to be available to if someone
4 chooses to raise 100 million under a Reg A.

5 So I agree. I don't think it's the 75
6 million threshold that's limiting it. Maybe you're
7 going to bring in a few people that are like, okay,
8 the cost analysis of doing an IPO where average fees
9 are now 2 million in legal fees alone, percentage
10 basis I want to at least raise 100. So maybe there's
11 that pocket between 75 and 100, but I don't think
12 that's why people are looking at this and saying, it's
13 not for me.

14 MS. DUIGNAN: Rose, thank you for that, and
15 Laura. I definitely think that based on the
16 information that was presented, my type of way is that
17 the \$75 million limit is not what's creating the
18 friction. So we can maybe take that as sort of a
19 given, but if anyone on the Committee feels otherwise
20 and would like to advocate for a reason to increase
21 it, we'd love to allow you to speak or chime in.

22 MR. DRAYTON III: So I'm not advocating for
23 an increase, however, I will suggest that there may be
24 a squishy middle in there. If you just look at the
25 reporting, I believe with Reg A it's a semiannual

1 reporting plus an annual report. And then when you go
2 IPO, now you're looking at quarterly reporting so
3 you're increasing the burden. So I don't know what
4 the ROI is. At what point does it make sense to go IPO
5 and not do a Reg A. So that's just a question that's
6 floating in the back of my mind, if you will.

7 MS. DUIGNAN: Okay. Great.

8 MS. STANDIFER: I'll just add on that. But
9 I think once you're in that territory of 75 to a
10 million, if you're thinking of the compliance program
11 that you're setting up and the cost, the incremental
12 cost of doing 10-Q's versus a semiannual under a Reg
13 A. I just don't think that that cost burden is now
14 determinative. Again, I think it's going to depend on
15 the company. I think there are going to be corner
16 pieces. But for the average operating company, the
17 compliance program, especially if you qualify as an
18 emerging growth company under lighter disclosure
19 rules, right.

20 For a public company disclosure rules are
21 not one size fits all in terms of, yes, you have a
22 quarterly report, but in terms of what's in that
23 quarterly report. I just think there's maybe a corner
24 case, but it's not necessarily going to be okay, I'm
25 going to do Reg A because I only have to have a

1 compliance function for lighter compliance on a
2 semiannual basis versus I'm an emerging growth company
3 and I have a quarterly compliance department that I
4 have to set up.

5 MR. DRAYTON III: Thank you, Rose. I agree
6 with that.

7 MS. NIKLASON: Yeah, agree with that.

8 MS. DUIGNAN: Okay great. So on the topic
9 of moving the Tier 2 offering limit, it doesn't seem
10 likes we feel any action on that would dramatically
11 change the number of folks doing a Reg A offering. Is
12 anyone vehemently opposed to leaving that part of it
13 alone?

14 MS. STANDIFER: I mean, I would say let's
15 talk about everything else. If there's a package,
16 part of the package is taking it from 75 to 100, sure.
17 But if all we're doing is increase, I don't see the
18 utility in that.

19 MS. DUIGNAN: Okay. Great. So I think
20 we're all in, a little bit in agreement that that's
21 probably not the friction point there, is that
22 offering limit.

23 Okay. Moving onto another area of friction,
24 which is the ongoing reporting requirements. Do we
25 think that there might be benefit in adjusting any of

1 the ongoing reporting or disclosure requirements? If
2 so, what do you think might be helpful? How do we
3 feel about the reporting frequency for Tier 2? And
4 would any member support a reduction or other change
5 in ongoing reporting requirements for Tier 2
6 offerings, which currently are required to file annual
7 audited, and I believe, semiannual unaudited reports
8 with the Commission?

9 MR. DILLASHAW: I can kick that off. I do
10 think from what we heard and looking at the reporting
11 requirements to see if there are ways to either scale
12 them so more appropriately mirror the underlying
13 security type. I thought it was sort of an
14 interesting concept to explore when they were talking
15 about whether or not we look at the tiers based more
16 on the business type than the security offering. For
17 example, I think if you're doing secured assets or
18 sort of REITS there probably is a different type of
19 disclosure regime that you could look at. The full
20 scope of that is probably beyond the scope of what we
21 can do on this Committee, but I thought that was a
22 really interesting thing.

23 I think one of the difficulties is, like
24 Rose was saying, the gap between the ongoing reporting
25 requirements as a full S-1 registered company and a

1 Reg A company is not all that much. So if the juice
2 is worth the squeeze, you're going to have to be
3 subject to all these ongoing reporting requirements,
4 you might as well go and take the next leap up to the
5 S-1. So some sort of reduction in the ongoing
6 reporting requirements I think is a topic worth
7 discussing, maybe specifically the time of the 8-K
8 equivalent ones would probably be a pretty big
9 reduction of internal compliance for a company. So do
10 you think that's a topic worth discussing?

11 MS. STANDIFER: Yeah. I'll also add, I
12 almost think of this, in a lot of the secondary
13 markets by the way, that allow trading for Regulation
14 A also go to CF, crowdfunding. And I do think of
15 these similarly in terms of the ongoing disclosure
16 requirements. Because I'm thinking about the fact
17 that we now have the participation from the non-
18 accredited investors. So we're very firmly in the
19 world of balancing the issue of ease of raising by the
20 issuer with disclosures that are protecting our non-
21 accredited investors.

22 So right now we have these 10 percent limits
23 for non-accredited investors in our Tier 2 offerings.

24 So I don't have a solution, but if we scale that
25 back, are we still comfortable with the scale-back

1 disclosure when we have a non-accredited investor with
2 the ability to put up to 10 percent of their annual
3 income in one stock. Great.

4 And in that way maybe it is better on
5 industry, right, can you make assumptions and
6 guardrails because the types of folks that are going
7 to put money into fractional share of an art piece,
8 right, or that are going to go all in on crypto, are
9 we going to sort of make some assumptions and
10 guardrails around who is investing in what types of
11 businesses. I just think it's a very sticky issue
12 because we are allowing a non-trivial investment
13 amount by non-accredited investors.

14 MS. SETHI: So would it make sense to have
15 the disclosures be comparable to Reg CF, sort of like
16 the idea of the simplicity of kind of applying the
17 same disclosures, for example, have to make certain
18 disclosures as well, I don't know what they are
19 offhand, but there is something to be said for kind of
20 mirroring.

21 MS. STANDIFER: But I think appropriate
22 scaling, right. The amount that anyone can invest in
23 a Reg CF offering versus what you could invest as a
24 non-accredited investor in Reg A Tier 2, there could
25 be a significant delta in that amount.

1 MR. COOK: To clarify, it's the same amount,
2 it's 10 percent.

3 MS. DUIGNAN: Okay. So I think investor
4 suitability restrictions is a good topic and one that
5 we can think about. But on the disclosures and
6 reporting, the one thing that stood out to me as sort
7 of a possible area of friction is the state level
8 reporting under the Blue Sky laws for Tier 1 offerings
9 and how that might create an additional cost or
10 regulatory burden that could perhaps be eliminated. I
11 don't know if folks have thoughts on that one.

12 MS. SETHI: I was thinking about the
13 preemption just because the majority of cases of
14 federal security laws do preempt. So this sort of
15 stands out as an area where it doesn't. I don't know
16 how many states actually regulate in this area. I
17 know with crypto, since that's an area of interest
18 here, there are a couple of states that do have their
19 own requirements. So I imagine that does get
20 complicated. I liked the idea. I think it came up in
21 some of the pre-materials. Maybe just a state where
22 the company is registered or headquartered, maybe
23 those laws should be relevant. But it did seem that
24 having to comply with any state that passes the rules,
25 like if they do have customers in all 50 states or

1 potentially all 50 states because they're soliciting
2 on the internet, it does seem rather burdensome and
3 kind of not typical in the securities world.

4 So I think preemption to some degree. I'm
5 not sure yet if I think it should be complete or if it
6 should be in conjunction with following the rules of
7 your headquarter state. I haven't given that enough
8 thought yet but I'd be interested to get people's
9 thoughts if anyone has expertise in this area.

10 MS. STANDIFER: When we talk about numbers,
11 Rule 506 -- Regulation D in itself, it's Rule 506.
12 The reason why there's so much under Rule 506 is
13 because you have preemption. If anyone remembers 505,
14 it didn't have preemption. It was not used. So it is
15 not a given that in Rule 701, which is used for
16 employee benefits, that doesn't have preemption. So
17 it's not a given that a federal securities law will
18 have preemption.

19 I think Stacey and her office can probably
20 give us the numbers that show that those with
21 preemption are highly used. Or where there's a
22 regime, most states have put in user friendly Blue Sky
23 laws that align with Rule 701 because there's a public
24 policy underlying that for equity incentive plans for
25 employees.

1 So we have to be mindful that it's not a
2 given and it's a big going to the states and saying,
3 we're now going to take this over and we're going to
4 take over protection of the investors in your state.
5 So I think it's needed. I think for the primary
6 offering where you have that in Tier 2, that's already
7 similar to your preemption in a 506 that you still
8 have to file with the states and give them a little
9 bit of money, but you have to tell them you did it. I
10 think the biggest change, and I don't know if you
11 could get there, would be preemption of the secondary
12 markets. That would be the uptick. If you could --
13 if this became a more freely tradeable security on OTC
14 or on any ATS, now people are using it.

15 MS. NIKLASON: I think that's probably
16 correct. I think that's probably correct. I think
17 the lack of liquidity, I think the downsides of Reg A
18 when you have sort of the reporting burdens and the
19 regulatory burdens and the cost with that on one side
20 and then the lack of liquidity on the other side, make
21 it not attractive. And so I think relieving one of
22 those burdens, either the liquidity burden or the
23 reporting burden, I agree would increase uptake. And
24 if this Committee is not comfortable with decreasing
25 reporting burden, and there's a lot of different sides

1 on that, but it would seem, I agree, that increasing
2 liquidity would increase use of the mechanism.

3 MR. DILLASHAW: I'll just sort of chime in
4 and echo everything as well. At least from, I
5 practice more in the -- the single biggest point of
6 for example is dealing with the regulatory agencies,
7 especially as you go across multiple states. Part of
8 that is lack of preemption and part of that is lack of
9 development overall. I think as Daniel sort of
10 mentioned or Stacey you said, there's very few states
11 that these Reg A's are even done in. So it's not just
12 a lack of sort of dovetailing between the state
13 regulations and a lot of state regulators are sort of
14 grasping with issues of first impression themselves.

15 I think that goes across the offering
16 exemptions, but also the sort of adviser broker-dealer
17 regulatory aspect as well. George, I'm sure you run
18 into this with like the platform regulation stuff. I
19 think a lot of these are done through some sort of
20 platform. So guidance from the SEC to try to unify
21 and create an ecosystem I think is definitely an
22 aspect that could be helpful to the overall market.

23 MS. DAWOOD: So if we could wave a magic
24 wand here, maybe the Reg CF limits need to be
25 increased. And there needs to be some type of

1 liquidity for Reg A so it's not so definitive that Reg
2 CF is one thing and Reg A is another and they're kind
3 of similar and they're kind of not. But we could
4 actually make it so it was easier if people wanted to
5 do Reg CF and maybe could go to 10 million instead of
6 the 5 it is now. And then could we get some kind of
7 liquidity on the Reg A side so it would be more
8 different. That make sense?

9 MS. DUIGNAN: Yeah.

10 MR. COOK: And one thing I'll point out
11 just, and I know and we've already discussed this on
12 the Reg CF side, but to raise over a million dollars
13 in regular CF you need audited financials. And in Reg
14 A you can raise up to \$20 million without audited
15 financials. So I think what you're saying makes
16 sense, Marcia, but without getting rid of the
17 requirement for audited financials or at least raising
18 the requirement for audited financials, I think will
19 be prelimited movement.

20 MS. DAWOOD: That's a very good point.

21 MS. DUIGNAN: Okay. Great. I would love to
22 just sort of like dive into specifics, because I do
23 think that the secondary trading preemption issue is
24 perhaps one that we're all on board with and could
25 sort of free up some reservations around doing a Reg

1 A. So across the Committee, would love to get
2 perspectives on whether we think there should be
3 federal preemption from state regulation for secondary
4 sales sold in Tier 2 Reg A offerings. And what we
5 think the impact there might be.

6 MS. NIKLASON: I would preempt for Tier 1
7 and Tier 2. I would try to increase liquidity for
8 both tiers.

9 MS. NEWTON: I would agree with that, as
10 well.

11 MS. STANDIFER: I mean, Stacey, maybe for
12 you or the staff, preemption requires a statute,
13 correct?

14 MS. BOWERS: Yes. That would be a statutory
15 change. At least that's my understanding. I would
16 need to double-check that, but yes, I think that would
17 require a statutory change.

18 MS. STANDIFER: So we have the Uniform
19 Offering Act that underlines the preemption for Rule
20 506 under Reg D. It's a statute that underlines that
21 preemption. Could there be a change to Rule 144 on
22 the holding period, if you don't have current periodic
23 reports under the Exchange Act?

24 MS. SETHI: We can make recommendations. It
25 just won't be to the SEC, but we can make

1 recommendations to Congress or we can see to work with
2 Congress on making the change to a statute. And this
3 Congress may be particularly, maybe more sympathetic
4 than other Congresses to that kind of change. So I
5 don't think we should take that off the table.

6 MS. NIKLASON: And I think we have in years
7 past, I think we have made those recommendations to
8 work with Congress. At least I seem to remember that
9 we've done that in the past.

10 MS. DUIGNAN: All right. Great. I think
11 there are a few different avenues that we can go down.
12 But it sounds like -- it's much harder when everyone
13 is not in the room for me to get a sense of what
14 everybody is kind of most enthusiastic about. But it
15 sounds like people are in favor of exploring federal
16 preemption for Tier 1 and Tier 2 secondary offerings.
17 Yes? Okay, I'm sensing some thumbs up going around.
18 Okay. Wonderful.

19 Moving onto another --

20 MS. SETHI: We can do the vote. We were, I
21 believe, in person in July. We can do as we've done
22 before where we get the pulse and circle back with the
23 group with the transcript and recap and do the vote in
24 July. That might be easier in person.

25 MS. DUIGNAN: Yes. That's definitely what I

1 was thinking. Just that today we kind of get a sense
2 of what we would like our recommendation to be. And
3 in July we can vote on something and move forward with
4 it.

5 Stacey and Courtney, does that sound like a
6 good plan to you guys as well?

7 MS. HASELEY: No problem on our end as well.

8 MS. DUIGNAN: Okay. Great. Thank you for
9 clarifying, Jasmin.

10 MS. STANDIFER: So one of the things that I
11 was mentioning on the secondary piece, and I would
12 like some corrections from folks that might know this
13 better than I do, but in a lot of cases if you're
14 doing a resale, so secondary transaction. Under Rule
15 144, you're a covered security, which does have
16 preemption at a state level. So if you made a change
17 to Rule 144 specific to Reg A, such that shares that
18 had been issued would now qualify as covered
19 securities under 144, they would be more freely
20 tradeable. So you're still on OTS or ATS. But
21 perhaps there would be more clarity in that space.
22 Would that be within, yes, we should take preemption
23 and a request to Congress, but I'm also thinking about
24 what can happen at the SEC level.

25 MS. DUIGNAN: You know, I'm not really sure

1 what the easiest pathway would be. Maybe Stacey or
2 Courtney, you could weigh in on that. I don't know if
3 us trying to impact Rule 144 is more efficient than
4 just focusing on the recommendation around Reg A, but
5 you know.

6 MS. BOWERS: Courtney, were you going to say
7 something, please go ahead.

8 MS. HASELEY: I was just going to say, I
9 mean, you could approach it either way. All I would
10 say is that in terms of background material and a
11 working knowledge of Rule 144, that hasn't been
12 something we presented to all Committee members on.

13 MS. STANDIFER: Understood.

14 MS. HASELEY: So that may or may not be a
15 pathway that everyone would be fully understanding and
16 involved with right now. And then often the Committee
17 takes a high level, conceptual approach to, you know,
18 what we're hoping to achieve and leave the weeds and
19 work of it to both Congress and the Commission.

20 MS. DUIGNAN: Absolutely. And I think
21 that's probably a good strategy. Wonderful.

22 The other aspect that we have not discussed,
23 which would be great for us to evaluate, is the
24 concept of at-the-market offerings. So currently Reg
25 A issuers are not permitted to conduct at-the-market

1 offerings, which is defined as the offering of equity
2 securities into an existing trading market for shares
3 of the same cost at anything other than a fixed price.

4 So being able to sell your shares over time at the
5 current market price when it's advantageous to the
6 issuer. So these at-the-market offerings are
7 advantageous to issuers, but present a little bit more
8 risk to the purchasing shareholders.

9 Would love to get folks thoughts on whether
10 we think the SEC should reconsider the prohibition of
11 at-the-market offerings, why or why not. And if
12 there's a benefit to issuers in permitting these
13 offerings, are there any investor concerns that we
14 might want to consider around allowing that?

15 MR. DILLASHAW: So I can start on this one,
16 I guess. I think this is somewhat linked to the last
17 discussion because it dovetails with what is the
18 secondary market like. And even more so even the
19 dovetailing back to the discussion about the OTC
20 general markets, whether or not it's on the national
21 market or not. I think the question of whether or not
22 you can sue an at-the-market offering really depends
23 on how robust is that market, how good is that pricing
24 signal that you're getting to the really robust market
25 that the SEC is probably fulfilling or has greater

1 confidence in fulfilling its role for investor
2 protection, to the extent that it's not a robust
3 secondary market, then there's probably more concern
4 about protecting retail investors there.

5 So it's probably a long way of saying, I
6 think it is a good thing to look at, but probably
7 needs to be made in connection with the broader
8 discussion about the secondary markets. Easy answer
9 is probably if it's listed on a national exchange,
10 then for sure you ought to be able to do at-the-market
11 offerings. But I don't know how many Reg A's are
12 leaked by companies that are listed on the national
13 exchange, probably very very few.

14 MS. NIKLASON: It's an interesting quandary
15 because if liquidity does increase and if the
16 secondary market does grow for a particular stock, you
17 can imagine that the value of that stock might
18 appreciate in the secondary setting. And then the
19 offerer can only offer at the original price, which
20 then creates sort of an artificial arbitrage. It can
21 go either way. That feels like a distortion. It
22 feels like if you're going to allow to open up
23 secondary trading, then probably you need to allow the
24 issuer to issue shares at market. But again, that
25 could be wrong and simplistic.

1 MS. STANDIFER: I agree. Because you've
2 offered the market by the price, but you've locked out
3 the issuer from participating in the market. I would
4 point out that right now the default limit, I guess,
5 for a public company if you are listed for an at-the-
6 market is 75 million or there's rules that if you have
7 less than a 75 million, there's limits on how much of
8 your securities you can offer in an at-the-market
9 offering.

10 So because we're talking about our current
11 75 million limit or maybe going up to 100, I would, a
12 proposal here I think has to have those limits. So
13 allowing the company to participate in this market
14 that we're trying to create, but I just looked it up
15 because I didn't remember, it's 1/3 of their public
16 float in any 12-month period that a public company
17 with less than 75 in a float can offer. So I think we
18 should be thinking about scales limitations to align
19 with that.

20 MS. DUIGNAN: Okay. What do we think? Do
21 we think that the benefits outweigh the costs and do
22 we think that this has actually been an impediment to
23 people using Reg A?

24 My particular opinion is that, yes,
25 obviously there is some benefit for the issuers to be

1 able to do this, but also I kind of wonder how
2 material is the inability to do at-the-market
3 offerings in terms of whether people decide to do Reg
4 A or not. Would love to get some thoughts there. Do
5 we think that's actually been an impediment or would
6 this just sort of be like a bonus to the issuers?

7 MS. STANDIFER: You mean a bonus to the
8 issuers that would use it regardless as opposed to
9 bringing in new issuers?

10 MS. DUIGNAN: I just mean a bonus that
11 okay -- I guess that's what we're trying to figure out
12 here. Do we think that companies that have been
13 restricted from doing at-the-market offerings has
14 prevented them from choosing the Reg A pathway and
15 folks who may not have chosen the Reg A pathway would
16 now be more likely to do it because they could do at-
17 the-market issuances?

18 MR. DRAYTON III: Just a clarifying question
19 for some of you. If I'm hearing this correctly, if we
20 do the at-the-market offering, we're basically
21 offering at a significant discount based on the
22 current regulations. Am I hearing that right? We're
23 forced to discount the offering. No, okay. Can you
24 clarify that or am I asking a question that doesn't
25 make sense to you?

1 MR. DILLASHAW: I think, and someone correct
2 me if I'm wrong, but at-the-market -- being able to
3 sell the shares at-the-market means you don't have to
4 say what the price for the securities you're going to
5 sell is. You can do it at whatever the market is. So
6 if the market goes up or down, either one could
7 happen, a company can just sell into that whatever the
8 fluctuating price is --

9 MR. DRAYTON III: Okay.

10 MR. DILLASHAW: -- versus the way that it's
11 done right now is you set a price and the company just
12 sells at that price and then the trading market is
13 sort of independent of that price.

14 MS. DUIGNAN: Yeah, and so I think some of
15 issues there. Either the price goes up or down,
16 there's less visibility for investors around dilution,
17 in terms of how much is going to be raised. There's
18 just greater uncertainty for investors that are coming
19 into the round when the company has the ability to
20 sell at the market. And if folks have sort of other
21 perspectives on how this essentially transfers some
22 risk from the company to the investor cost, which is
23 kind of where we're moving risk when we shift
24 regulations, would love to hear those perspectives.

25 MS. STANDIFER: My perspective on that is,

1 if we have a robust secondary market why the risk of
2 dilution is still a risk, it has been mitigated
3 because now an investor has the ability to exit and
4 get liquidity short of an exit event for the company
5 itself where that investor's ownership percentage is
6 now critical.

7 So we're now closer, I think this, the baby
8 IPO concept is more relevant in that analysis. So I
9 would say that they go hand-in-hand. If you have a
10 robust liquidity for your investors in the secondary
11 market, then you're allowing the company to also
12 participate with guardrails to a certain degree. I
13 think having an at-the-market without the secondary
14 trading, I agree with you, Erica, I think that would
15 be shifting too much of the risk to the investors.

16 MS. DUIGNAN: Great, thank you, Rose.
17 Wonderful. Let's see. I think a couple of the other
18 aspects that we should probably discuss include a
19 little bit about any mechanisms that we could consider
20 to help reduce the cost of the offering. So on the
21 audited financials, would love to get people's
22 thoughts on the requirement for that. I believe, it
23 was two years of historical audited financials plus
24 ongoing annual audited financials.

25 Would love to hear creative solutions or

1 anyone who has real-world experience with this maybe
2 being a hurdle for people who otherwise might have
3 been interested in doing a Reg A offering.

4 And the other things that we didn't really
5 discuss yet, but there is an option in certain cases
6 of getting like reviewed but not audited financial
7 statements, which is kind of like another slightly
8 less costly option that can give people a little bit
9 of comfort in the accuracy. I would love to get folks
10 perspective on that.

11 MS. STEVENS: So Erica, it's Wendy. I'll
12 weigh in. I thought we said earlier that really the
13 financial statements although it was sometimes
14 mentioned as a burden, it's kind of a common complaint
15 that even issuers make, there's too much requirements.

16 In my experience in my firm the two years of audited
17 financial statements under AICPA standards has not
18 been a challenge. Typically any really well, a good
19 operating company has sought financing elsewhere and
20 has had to have audited financial statements so there
21 really isn't a burden.

22 The big complaint comes in when they want to
23 move up, but they're still small and all the controls
24 that are required and the PCAOB audit, that's where it
25 incrementally becomes very costly. The company

1 typically has to hire more people. So I think some of
2 the other things that we're talking about, and I'll
3 just throw in here, I don't understand how to relieve
4 the state burden. I don't know how that works from
5 between federal and state requirements, but that to me
6 along with the secondary offering seems like, or the
7 liquidity piece seems like the way to go. And really
8 spending time on the financial statements is probably
9 not going to be a good use of time.

10 MS. STANDIFER: I agree. I mean, the cost
11 of a 50-state Blue Sky analysis based on the
12 circumstances of your -- I mean, I don't know that we
13 have to get into numbers, but for a well-oiled
14 operating company, that might be right up there with
15 your financials. That's a very comprehensive
16 analysis. States are all over the map, literally in
17 terms of how they regulate securities and how it's
18 codified, and whether or not you can pick up the
19 phone, like we heard, pick up the phone and call the
20 SEC. Whether or not you can pick up the phone and
21 call somebody. And a state securities regulator,
22 whether or not they're willing to talk to you if you
23 can even get them on the phone. That's a very -- in a
24 legal practice when you're talking to clients about,
25 are we truly doing a 50-state offering and do you want

1 to have clarity on your pathway across every 50 state
2 and DC, very expensive. So preemption I think goes to
3 use and cost.

4 MS. NEWTON: Yeah, I just would have to
5 agree with that, Rose, but that's what I've seen in my
6 experience just even when clients have thought of the
7 idea of using or leveraging Regulation A, just the
8 analysis alone with looking at each state law is just
9 a deterrent. Because while they're leveraging the
10 marketing piece of being able to market freely, that's
11 great, but that also means that they're going to be
12 encountering investors across the plethora of states.

13 And so once they hear about that, the conversation
14 changes to other offering types. So it's a huge
15 disincentive that I've seen in my experience.

16 MS. STANDIFER: And it's an evolving
17 landscape. One of the -- I think there is leverage in
18 some states and practitioners that do that because
19 they are iterating on prior analysis. But the states
20 change at inconsistent and widely varying frequencies
21 in terms of both their actual regulation and case law
22 interpreting those regulations. So you can't even --
23 I would say that most experienced securities
24 practitioners wouldn't even be comfortable picking up
25 something off the shelf from last month and saying

1 it's still good in all 50 states. There's still an
2 incremental cost involved.

3 MR. DILLASHAW: Other significant areas of
4 cost is the internal retooling you have to do as a
5 company to be prepared for reporting, just because
6 that effectively means you probably need internal
7 counsel and more sophisticated financial systems and
8 operations. So even just the ongoing -- just being
9 able to get tooled up internally to be in a position
10 where you can comply with these ongoing reporting
11 requirements, you hire probably one or two full-time
12 employees, as well. So that's a cost associated with
13 that.

14 MS. DUIGNAN: Bart, if you have some
15 perspective on that, would love to dig a little bit
16 deeper. I'm curious. It does seem to me that with
17 current resources and technology, and if you're
18 raising 10 million or however much it is, even if it's
19 just one person that needs to be in charge of that, I
20 mean, is that such a burden or is that something that
21 we feel that the investors are entitled to? That you
22 do have at least one person in your company who is
23 sort of really going to stay on top of all this stuff.
24 So would love to get a perspective, A; is the burden
25 really so high given sort of the current state of

1 technology and financial reporting software and tools
2 available. And B; is it too much to ask that there
3 definitely is somebody within the organization who is
4 going to take serious responsibility for tracking and
5 reporting financial results to all investors.

6 MR. DILLASHAW: Yeah, I think great
7 questions and great points. I think depending on the
8 amount of raise, certainly probably should be an
9 obligation to do that. My only point was, if you are a
10 company and are evaluating whether or not to raise
11 money to Reg A or Reg D, and one of them says, you
12 don't have to do anything, you don't have to retool,
13 you don't have to get any new accountants. And one
14 says, oh, by the way, you're going to have to hire
15 internal PC and get an internal compliance system.
16 Like that probably does factor into the equation. Not
17 saying that's not the way it should be, but if we're
18 looking at the reasons of why Reg A isn't more
19 utilized, I think that does probably factor into it.

20 MS. STANDIFER: I think this also goes back
21 to what we heard that Reg A is mostly being uptaken by
22 niche businesses, because if you are that business
23 that does have the one head count or more in terms of
24 compliance and operations, maybe you don't have a huge
25 network of funds, but you probably are able to tap

1 into that network. So a Reg D offering is on the
2 table for you because you're hitting metrics that a
3 fund would be looking for to allow you to raise the
4 dollars you need in sort of that more closed universe
5 Reg D.

6 Where in a niche business, you're
7 intentionally going broader to folks in that ecosystem
8 that you're not necessarily connected to or want the
9 non-accredited that are passionate about that area.
10 So I don't think you can completely sort of untangle
11 the quality of the general operating business, which
12 means the likelihood that Reg D is a viable path for
13 you with its lower burdens from sort of that niche
14 business of why you would go to Reg A.

15 MS. DUIGNAN: All right. Great. One more
16 question on cost control that we might want to think
17 about for Tier 1 versus Tier 2. Right now under Tier
18 1 you do still need the audited annual financial
19 statements. But do we think that there's any
20 excessive burden created by that or no? It sounded
21 like Wendy said probably not. I just sort of want to
22 see if that's one that we don't feel that we need to
23 look at. And if there are any other specific ones
24 that we could form a recommendation around that we
25 think are meaningful.

1 MS. BOWERS: I'll just weigh in there. The
2 issuer does not need audited financial statements to
3 do a Tier 1 offering.

4 MS. DUIGNAN: So after they've done the Tier
5 1 offering it does not need to have an annual audit?

6 MS. BOWERS: I don't believe so. I would
7 need to double-check but I think when you do a Tier 1
8 you just file the 1-Z at the completion or termination
9 of the offering. I'm looking at Rose --

10 MS. STANDIFER: That's my understanding and
11 I think that's what we heard today.

12 MS. STEVENS: That's my understanding as
13 well.

14 MS. BOWERS: Sorry, I just wanted to add one
15 thing while you're in this discussion too that I
16 didn't share earlier. The data we have does show that
17 most of the offerings and proceeds are coming in under
18 Tier 2. So as you're thinking about this difference
19 between Tier 1 and Tier 2, I would say Reg A Tier 2 is
20 the one that is predominantly used. Which I don't
21 think is a surprise to anyone.

22 MS. DUIGNAN: Okay. Fantastic. So I think
23 we don't have any particular incentive around
24 addressing cost through whether the financials are
25 audited or not. It seems like the current reporting

1 requirements, we don't have that motivation to sort of
2 change that cost structure.

3 MS. STEVENS: So Erica, I don't know if
4 there's any information on this, but what I was trying
5 to say before as well, I don't think the financial
6 statement requirements are necessarily incremental for
7 any of the people that might be taking advantage of
8 Reg A. So for the teeny-tiny population that it is,
9 it's probably not worth the energy.

10 MS. DUIGNAN: Agreed. Definitely agree,
11 just want to make sure nobody else has an important
12 dissenting opinion there.

13 MS. STANDIFER: And I think one of the
14 reasons why Tier 2 is used more than Tier 1, and this
15 goes further into preemption, I truly do believe that
16 the cost savings is in preemption. I think that's why
17 you're seeing people use Tier 2 because it has
18 preemption for the primary offering. And just for
19 those that aren't familiar with the patchwork of state
20 securities laws, you offer to unaccredited investors
21 in a primary offering in a non-preemption in states at
22 your own risk.

23 I mean it is, the disparity of requirements
24 and regulators at the state level, if you were going
25 to an investor that does not qualify as an accredited

1 investor can be, depending on where you are, it may be
2 super easy depending on where you are. It can be very
3 costly. You're giving disclosures akin to an IPO
4 sometimes in terms of financial statements. Cannot
5 underscore enough, preemption and cost savings do go
6 hand-in-hand, as well as, with uptake in my
7 experience.

8 MS. DUIGNAN: Okay. Great. Thank you,
9 Rose. So it does feel like everyone is, we're fairly
10 on the same page around a recommendation for federal
11 preemption from state regulation for secondary sales
12 by investors in Tier 2.

13 Are we also considering recommending federal
14 preemption from state regulation for Tier 1 offerings?

15 Yes. I see heads shaking yes. All right,
16 great. I think those are some pretty meaty areas for
17 recommendations. Anyone who maybe has a dissenting
18 opinion on that?

19 MR. COOK: I'll just say I'm Tier 1 because
20 there is more limited ongoing reporting. To think
21 about a secondary market in Tier 1 is a little harder
22 with non-accredited investors. I'm 100 percent
23 supportive on the Tier 2 side. Tier 1, I need to
24 unpack a little bit further.

25 MS. STANDIFER: I agree. I was shaking my

1 head no on that. I would want to discuss that further
2 because the secondary market is presuming some level
3 of available information as we heard in our last
4 meeting, right. About how the OTC has evolved and the
5 information that they're able to gather from companies
6 as an investor protection mechanism.

7 MS. BOWERS: I would tack onto Rose and just
8 remind everyone, with OTC secondary trading is for
9 Tier 2 companies as well, because of that very reason,
10 because the disclosures exist.

11 MS. DUIGNAN: All right. Wonderful. Do we
12 have any thoughts around -- I mean I guess, we don't
13 really have to worry about Tier 1 it sounds like
14 because it's not being very used. So maybe we will
15 just focus on the Tier 2 liquidity improvements.

16 Any other sort of ideas or thoughts beyond
17 federal preemption for secondary trading of Tier 2
18 issuances that we think could help either improve
19 liquidity or decrease costs that haven't been
20 discussed already?

21 MS. NEWTON: I was just going to mention
22 this, back on the Tier 1 thing. If the idea was for
23 Tier 1 to be used, I just think we should give
24 consideration to the state law exemption because I
25 think that's one of the primary reasons why Tier 1 is

1 not being used. So to the extent that we are
2 interested in increasing the use of Tier 1, then
3 that's probably something that we should reassess.

4 MS. STANDIFER: And that would be preemption
5 for the primary offering, right?

6 MS. NEWTON: Right.

7 MS. STANDIFER: I agree. I could be more
8 comfortable with that than on the secondary piece.

9 MS. DUIGNAN: All right. Great. Well I
10 think -- go ahead.

11 MR. BAIRD: This is Donnel. I was for four
12 or five years doing Tier 2 with my startup, and I
13 think the cap table management piece of Tier 2
14 offering was the primary blocker. I just wanted to
15 mention that. I'm about to take off and I wanted to
16 make sure I got that in. So having Tier 2 on the cap
17 table, then thinking about doing an IPO post Tier 2
18 Reg A offering, was kind of the barrier that stopped
19 us in ultimately implementing, if that makes sense.

20 MS. DUIGNAN: Could you be specific around
21 what aspect of the Tier 2 offering you think would
22 have made future transactions difficult for your
23 company?

24 MR. BAIRD: I think the thing that we've
25 spoken to about the kind of secondary market, the

1 kinds of constraints around secondary market. And
2 then I think the traditional tension between the
3 venture capitalists and having crowdfunding, generally
4 were the fundamental constraints. And I think, I can
5 speak to strategically that was the issue we kept
6 running into. I'm sorry, I don't recall which of the
7 point that's we've gone through today could unwind or
8 fix that, but I just wanted to mention that
9 overarching issue for us.

10 And for other similarly situated VC-backed
11 startups who were kind of looking at Tier 2 as, all
12 right, we're not fully ready to IPO. We don't want to
13 continue on the venture capital track, which is like a
14 series C, a lot of climate tech companies actually
15 needed to become more tech-enabled services companies,
16 frankly, in highly regulated spaces that are for VC.
17 But also the possibility isn't there for PE and so
18 Tier 2 Reg A seems like a good option.

19 But this issue of having being VC-backed and
20 then doing a Tier 2 offering and precluding the IPO
21 was the issue that we all kept run into. I will dig
22 into the notes and circle back via email. I have a
23 couple questions for the counsel both in Lowenstein &
24 Sandler and others and get more specific, but I just
25 wanted to mention that for the folks on the call.

1 MS. DUIGNAN: Thank you. We really
2 appreciate it.

3 MS. STANDIFER: Sorry, I'm mindful of our
4 time. But just one minute and I'll put my investor
5 experience hat on for this. One of the reasons in my
6 experience that investors don't like having the crowd,
7 and I would use the crowd here under both CF and
8 potentially under Reg A, is now controlled going into
9 those IPOs and controlling the destiny of when you're
10 going to get liquidity.

11 As we're seeing companies stay private
12 longer, one of the biggest complaints from the
13 investment community is where is my liquidity and
14 where is my exit. I think if you marry this with a
15 robust secondary market that you now have the fund's
16 ability to get liquidity and distribute out to LP at
17 perhaps prices that are truly being made into a market
18 because you both have the secondary and to a limited
19 extent the company being able to do at-the-market. I
20 think you can actually address some of those concerns.

21 I think you could probably bring the investors on
22 board because they see an exit pathway.

23 MR. BAIRD: I concur. I think that's
24 exactly right.

25 MS. DUIGNAN: So perhaps these

1 recommendations around improving avenues for secondary
2 liquidity might help to solve some of this VC bias
3 that you're bringing up here. All right. Wonderful.

4 Well, I just want to thank everybody for
5 joining today. We really appreciate this incredibly
6 thoughtful discussion. And I also want to give
7 everybody some visibility into our upcoming meetings.

8 So we've selected the following dates for the
9 Committee's quarterly meetings in 2025; July 22nd 2025
10 and November 4th 2025. We aim to be meeting in person
11 in July. So looking forward to seeing you all in
12 person.

13 Committee members, please mark your
14 calendars. And this is a friendly reminder to log off
15 of this WebEx call and log into the separate WebEx
16 that was provided for our executive session which will
17 begin right after we adjourn. So I hereby move to
18 adjourn the meeting.

19 All right, I hope everyone is in favor. I
20 will see you in the executive session. Thank you.

21 (Whereupon, at 1:00 p.m., the meeting was
22 adjourned.)

23 * * * * *

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PROOFREADER'S CERTIFICATE

In The Matter of: SMALL BUSINESS ADVISORY
COMMITTEE MEETING
File Number: OS-0001
Date: Tuesday, May 6th, 2025
Location: Washington, D.C.

This is to certify that I, Kyleigh McGinnis,
(the undersigned), do hereby swear and affirm that the
attached proceedings before the U.S. Securities and
Exchange Commission were held according to the record
and that this is the original, complete, true and
accurate transcript that has been compared to the
reporting or recording accomplished at the hearing.

Kyleigh McGinnis
5/12/2025
(Date)

CERTIFICATE OF REPORTER

I, DEBRA GOODFRIEND, a Certified Shorthand Reporter and Notary Public of the State of New York, certify that the foregoing is a true and accurate transcript of the stenographic notes of the deposition of said witness who was first duly sworn by me, on the date and place hereinbefore set forth.

I FURTHER CERTIFY that I am neither attorney, nor counsel for, nor related to or employed by, any of the parties to the action in which the deposition was taken, and further that I am not a relative or employee of any attorney or counsel in this case, nor am I financially interested in this case.

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