

U.S. SECURITIES AND EXCHANGE COMMISSION

REPORT ON THE

39TH

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ANNUAL

small
business

FORUM

The U.S. Securities and Exchange Commission annually hosts the Government-Business Forum on Small Business Capital Formation. The recommendations contained in this report were developed by the 2020 Forum participants. The recommendations are not endorsed by the SEC and, as with the remarks of SEC Commissioners and staff published in this report, do not necessarily reflect the views of the SEC, its Commissioners, or any of the SEC's staff members.



Digital copies of the 2020 Forum materials are available online. Scan here to learn more.



Digital copies of the prior reports and other materials relating to previous Forums, dating back to 1993, are available online. Scan here to learn more.

■ ■ ■ MESSAGE FROM THE ADVOCATE

Last year's Small Business Forum began with an introduction of the SEC's newest office—our [Office of the Advocate for Small Business Capital Formation](#)—which was charged with planning and executing the Commission's marquee annual event. We were not planning for the 2020 Forum to be another "first." However, the challenges posed by COVID-19 required us to pivot our plans and reimagine the event, just like every business and investor has been forced to do with their own plans this year. The pandemic opened the door for an entirely virtual event, making this year's Small Business Forum another year of "firsts."

To describe this year's Forum in a nutshell: public engagement was amplified and more inclusive than ever. When we shifted to a virtual Forum, we also changed the event's format and balance of content. We knew from feedback that our participants want to hear from more thought leaders. Our team began planning this year's Forum by engaging insightful founders, investors, and entrepreneurial ecosystem builders who would spark meaningful discussions on how the capital formation rulebook could change to work better for all founders and investors, no matter gender, sexuality, race or ethnicity, geography, or other unique characteristic. When you read the biographies of our speakers, you will immediately notice the breadth of perspective each person brought to the Forum discussion. That breadth of perspective is made all the more meaningful by the recent spotlight on racial inequality and the need to evaluate how well-intentioned rules may result in disparate outcomes across different groups.

In the pages that follow, you will find a summary of this year's Forum, including recommendations developed by Forum participants for changes needed to the capital raising framework. In converting to an all-virtual environment, we had to change our strategy for how we engage with Forum participants, from gathering in classrooms on university campuses to deploying technology to enable participants to weigh in on a wide spectrum of topics from across the country. Our Forum participants provided feedback in real time on the new process, repeatedly referring to this year's structure as inclusive, engaging, and constructive.

Thank you to our speakers, participants, advisory planning group, Commissioners, and SEC colleagues who collaborated to make this year's Forum our best one yet. Time is each person's most important asset, and I am grateful to each of you for dedicating your time to improving capital raising opportunities for all.

Sincerely,
MARTHA LEGG MILLER



Director
Office of the Advocate for
Small Business Capital Formation

OVERHEARD DURING SPOTLIGHT: EMPOWERING WOMEN ENTREPRENEURS



SAMARA MEJIA HERNANDEZ

Founding Partner, Chingona Ventures

“We need to get more women and minorities in investor roles. Even if it’s not at the general partner level, coming in at the junior level, mentoring them and then giving them opportunities to bring in investments to the fund, but then also putting more women and minorities on these boards.”



ERICA DUIGNAN MINNIHAN

Founder and Managing Partner, Reign Ventures

“We have to feel more comfortable supporting each other with capital, you know, taking a chance on each other; taking risks on each other; and also educating ourselves so that we can support those around us, whether we’re doing it in the role of entrepreneur, or we’re doing it in the role of investor.”

■■■ CONTENTS

MESSAGE FROM THE ADVOCATE.....	i
FORUM HIGHLIGHTS.....	1
Engaging Public Participants.....	2
Speakers.....	4
FORUM PARTICIPANTS' RECOMMENDATIONS.....	14
Exempt Offerings and the Capital Formation Proposal	15
The Path to IPO and Small Cap Companies.....	23
APPENDICES	33
Appendix A Agenda.....	33
Appendix B Advisory Planning Group	35
Appendix C SEC Officials' Remarks.....	37
Appendix D About the Office of the Advocate for Small Business Capital Formation	44
ENDNOTES	46

OVERHEARD DURING SPOTLIGHT: RURAL AND THRIVING



NATHAN OHLE

CEO, Rural Community Assistance Partnership, Inc.

“What we know first-hand is that rural communities, at their core, are innovative. They have to be because in many cases, there’s less resources, less people, less market hours you may say. You’ve got to be willing to embrace that culture. You’ve got to be willing to understand the culture and the community, but you’ve also got to be willing to look at different investment models that fit the opportunities in those communities.”

CHRISTY LAXTON

Executive Director, Wyoming County Economic Development Authority

“We don’t look at their normal ROI or their debt to equity, or just the traditional credit score. We look at the package as a whole to see how many jobs is it going to bring to the community, how is that business going to affect the community.... We definitely take a very different approach and we all collaborate together to make sure that we kind of fill the gaps that others cannot fill.”



WIL JENKINS

Investor and Entrepreneur, Uptown Salon and Boutique

“I’m really looking forward to the future and what it holds for Pine Bluff. With it being a rural town that’s going to come back, it’s going to take the mom and pops to bring it back, not the big box stores.”



FORUM HIGHLIGHTS

The Office of the Advocate for Small Business Capital Formation hosted the SEC's 39th annual Small Business Forum on June 18, 2020 in a completely virtual format. The full agenda for the event is included in [Appendix A](#), and additional information on the Office is included in [Appendix D](#). Video archives of the keynote addresses and spotlight discussions are available [online](#).

BACKGROUND

The SEC has conducted the Forum annually since 1982,¹ hosting a unique event where members of the private and public sectors converge to identify and highlight issues they experience in accessing capital and investing in small business and then formulate solutions on which the SEC and Congress can take action. While the Forum has previously been accessible online for attendees unable to attend in person, hosting the Forum virtually offered new opportunities to increase engagement with diverse thought leaders from across the country, which boosted attendee interest in and the impact of the event.

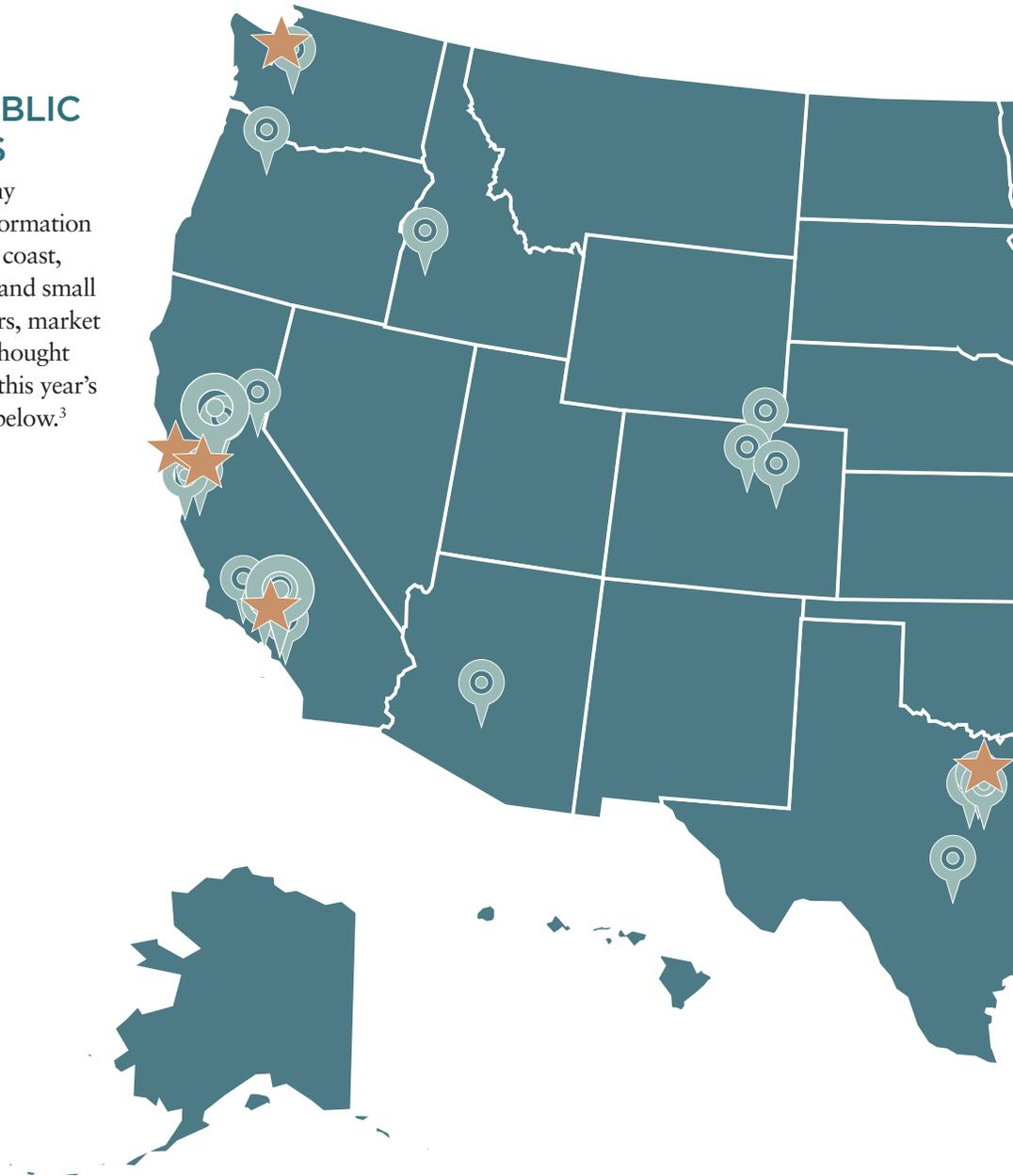
In 2019, the new Office of the Advocate for Small Business Capital Formation took over hosting the Forum for the SEC.² Consistent with prior fora, the Office convened an advisory planning group to provide strategic input on the Forum. The group's members are listed in [Appendix B](#) and include representatives from organizations active in small business capital formation, other federal government agencies, the North American Securities Administrators Association, and prior forum speakers.

FORUM OBJECTIVE

The Forum was established to convene members of the private and public sectors of the small business community to discuss small businesses' and their investors' experiences in capital raising, highlighting successes as well as areas for policy improvement. The Forum provides an opportunity to hear fresh perspectives on capital formation directly from diverse thought leaders with broad marketplace experience, from early stage founders and investors, to smaller public companies and their professional advisors. Throughout the event, speakers engage in thoughtful discussions about capital formation issues, after which participants collaborate to develop recommendations to address pressing issues facing companies and their investors.

ENGAGING PUBLIC PARTICIPANTS

The Forum engages many segments of the capital formation ecosystem from coast to coast, including entrepreneurs and small business leaders, investors, market participants, and other thought leaders. Information on this year's participants is included below.³



ECOSYSTEM ROLE



39%

ENTREPRENEUR OR
BUSINESS LEADER



31%

PROFESSIONAL
ADVISOR



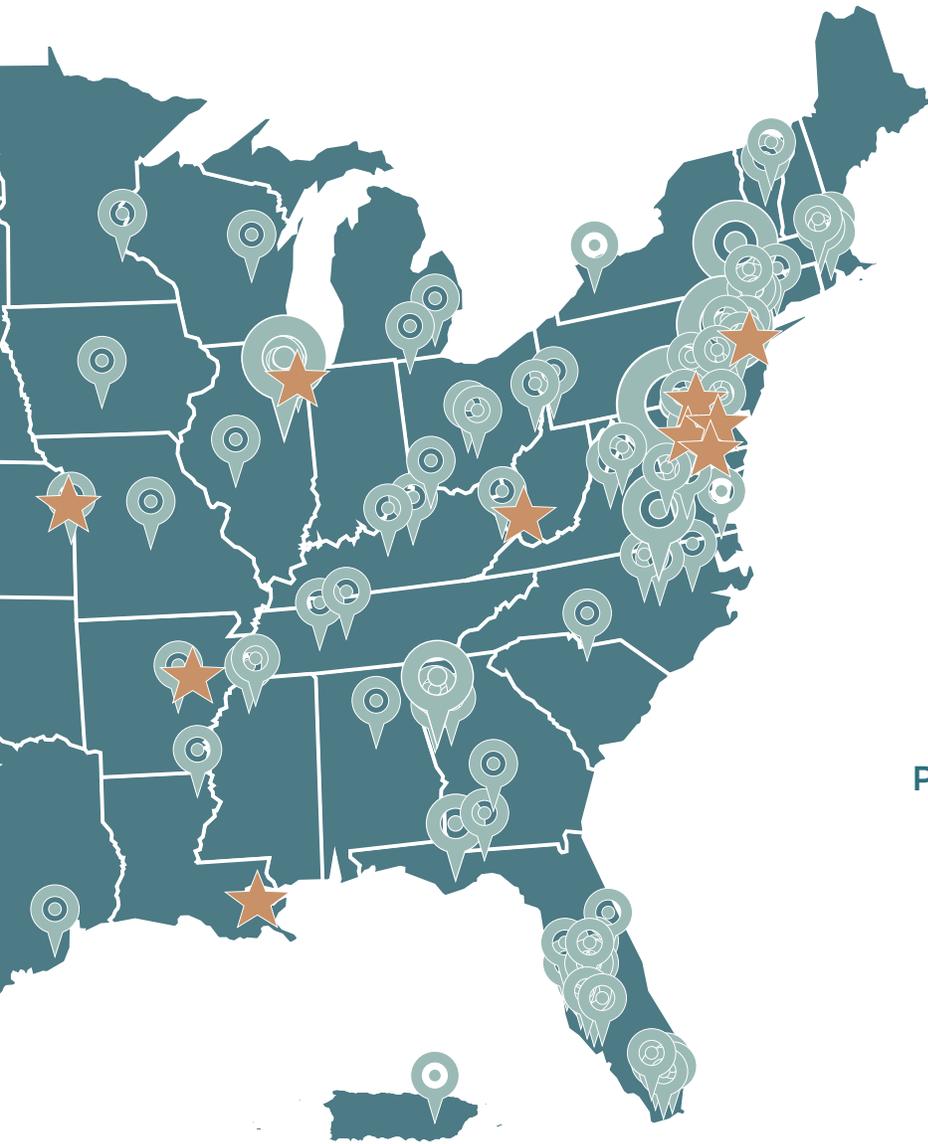
22%

GOVERNMENT



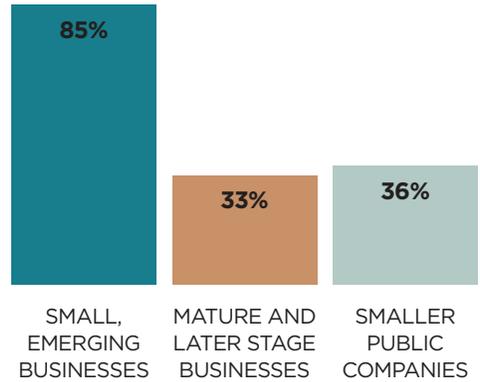
13%

INVESTOR

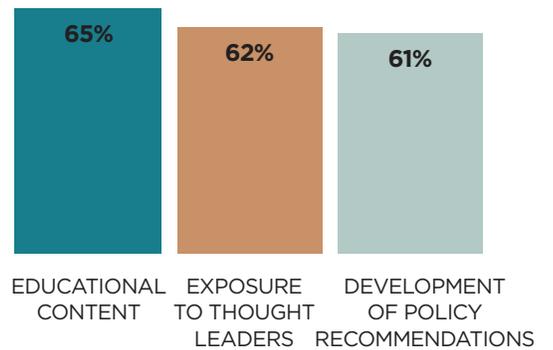


Q&A WITH PARTICIPANTS

LIFE CYCLE STAGE OF INTEREST



WHAT ASPECT OF THE FORUM PROVIDES THE GREATEST VALUE?



11%

COMMUNITY/
NONPROFIT LEADER



6%

ACADEMIA



3%

TRADE ASSOCIATION



7%

OTHER

SPEAKERS

The 2020 Forum engaged a diverse group of speakers with experience ranging from the earliest stages of seed funding to the reporting obligations of smaller public companies. The Forum featured spotlight discussions engaging speakers in direct conversation with one another, interspersed with keynote addresses from thought leaders. Biographies are included below.



JOVITA CARRANZA

Administrator

U.S. Small Business Administration

🐦 @SBAJovita

As the 26th Administrator of the U.S. Small Business Administration, Jovita Carranza advocates on behalf of the 30 million small businesses in America.

Prior to her public service, Carranza had a distinguished 30-year career at United Parcel Service (UPS), where she worked her way from night-shift box handler up to President of Latin America and Caribbean operations, serving as the highest-ranking Latina in the history of the company.



ERICA DUIGNAN MINNIHAN

Founder and Managing Partner

Reign Ventures

🐦 @ericaminnihan

Erica Duignan Minnihan founded 1000 Angels, a private venture investment network that makes direct investments in high-growth, early-stage companies.

Duignan Minnihan also founded Reign Ventures, an early-stage venture fund focused on Seed and Series A investment opportunities.



PETE FLINT

Managing Partner

NFX

🐦 @peteflint

Pete Flint runs NFX, a venture fund focused on early stage investments. As the co-founder of Trulia and member of the founding team of lastminute.com,

Flint is a serial entrepreneur who uses his experience building and scaling companies from “great idea” to \$1 billion+ exit, guiding companies from a founder’s perspective.



STEPHEN GRAHAM

Partner

Fenwick & West LLP

🐦 @fenwickwest

Stephen Graham founded his law firm’s Seattle office in 2008, where he concentrates in the areas of private and public M&A, public offerings, private placements and corporate governance matters, representing emerging and established high growth companies. Graham also serves on the board of directors of Washington Federal, Inc., a publicly-traded bank, and as a member of the SEC’s Small Business Capital Formation Advisory Committee.



ARLAN HAMILTON

Founder and Managing Partner
Backstage Capital
🐦 @ArlanWasHere

Arlan Hamilton built the venture capital fund Backstage Capital in 2015 while homeless. The fund is dedicated to minimizing funding disparities in tech by investing in high-potential founders who are people of color, women, and/or LGBT. In 2018 Hamilton co-founded Backstage Studio, which launched four accelerator programs for underestimated founders in Detroit, Los Angeles, Philadelphia, and London.



WIL JENKINS

Investor and Entrepreneur
Uptown Salon and Boutique

Wil Jenkins is an entrepreneur who moved from Austin, Texas to Pine Bluff, Arkansas, where he opened Uptown Salon and Boutique and owns several downtown properties. Jenkins is passionate about the revitalization of the downtown area of his community, a former hub for cotton trading in the early 1900s, to create a vibrant Main Street.



AJ KRICK

CFO, Secretary and Treasurer
Smith-Midland Corporation
🐦 @smithmidland

AJ Krick is the top financial officer at Smith-Midland Corporation, a precast concrete company traded over-the-counter. A certified public accountant, Krick brings 15 years of experience working with executives and management teams to improve processes and provide cost savings. Krick currently serves as member of the OTCQX Advisory Council.



CHRISTY LAXTON

Executive Director
Wyoming County Economic Development Authority

Christy Laxton has served the Wyoming County Economic Development Authority, started in 2001 in response to disastrous area flooding. The Authority provides support and technical assistance to West Virginia businesses, including providing over 350 loans for over \$9 million, and is focused on preserving the county's "friendly small town America feel that most people can only dream about."



BRIAN LEVEY

Chief Business Affairs and Legal Officer

Upwork Inc.

🐦 @Upwork

Brian Levey helped navigate Upwork through its IPO in 2018, and oversees the company's legal, regulatory, and government affairs functions. Upwork is an online talent solution that enables businesses to find and work with highly-skilled independent professionals. Levey currently serves as a member of the SEC's Small Business Capital Formation Advisory Committee.



SAMARA MEJIA HERNANDEZ

Founding Partner

Chingona Ventures

🐦 @SamaraMHernandz

Following over a decade in sales, operations, and technology at Goldman Sachs and early-stage investing at MATH Venture Partners, Samara Mejia Hernandez founded Chingona Ventures to invest in overlooked businesses at the earliest stages. Mejia Hernandez co-founded the Latinx Founders Collective organization to bring together Latinx founders, investors, and community leaders to support the entrepreneurial ecosystem.



NATHAN OHLE

CEO

Rural Community Assistance Partnership, Inc.

🐦 @nathanohle

Nathan Ohle leads the Rural Community Assistance Partnership (RCAP), a national nonprofit focused on access to water and economic development for rural communities across the country. Ohle's prior experience includes economic development for more than a decade at both the federal and state levels. RCAP's work in assisting some of the smallest rural communities in the US helps to build capacity and opportunity in every state across the country.



DAVYEON ROSS

Co-Founder & President

ShotTracker

🐦 @davyeonross

Davyeon Ross is a co-founder of ShotTracker, a sensors-based technology company that aims to improve the performance of competitive athletes who participate in team sports by bringing elite-level analytics to the masses. Ross has almost 20 years of experience in the technology space, which includes founding Digital Sports Ventures, which he sold to Digital Broadcasting Group in 2011.



MARY ANN SCULLY

Chairman and CEO

Howard Bank

[@howardbank](#)

Mary Ann Scully is the Chief Executive Officer of Howard Bank and is Chairperson of its board of directors. Scully has more than 40 years of varied executive experiences in the Maryland marketplace. After heading the organizing team that launched Howard Bank in 2004, Scully led the company through over ten capital raises, Exchange Act registration, and five business combinations, creating Baltimore City's largest locally headquartered banking company and Maryland's fourth-largest locally headquartered bank.



SUSAN TYNAN

Founder and CEO

Framebridge

[@susanrtynan](#)

Susan Tynan founded Framebridge to make it easy for everyone to custom frame the things they love. Tynan successfully raised both angel and venture capital on the path to building her company. Prior to founding Framebridge, Tynan held roles at consumer technology startups Taxi Magic and Living Social.



DAVID WAGNER

President and CEO

Zix Corporation

[@ZixCorp](#)

David Wagner joined email security company Zix Corporation as President and Chief Executive Officer in January 2016, following two decades of leadership roles at Dallas-based tech companies. As CFO of Entrust, Wagner led the successful integration of the company after its acquisition by Datacard, delivered revenue growth, and led the re-investment strategy to move Entrust solutions to the cloud.



SEVETRI WILSON

Founder & CEO

Resilia

[@sevetriwilson](#)

Sevetri Wilson is a serial entrepreneur who founded Resilia, a technology startup that aims to revolutionize how nonprofits are created and maintained and how enterprises scale impact. Wilson became the first black woman in New Orleans to raise over \$1 million of venture capital, and one of only 11 to raise over \$3 million. Wilson bootstrapped her first company, Solid Ground Innovations, with zero outside capital.

OVERHEARD DURING KEYNOTE PRESENTATIONS



ARLAN HAMILTON

Founder and Managing Partner, Backstage Capital

“The idea is to change and broaden the spectrum of what an accredited investor is so that more people have a chance to back companies.... If you have more people who are in the trenches and on the front lines [mentoring these companies] who can also put in a \$2,000 or \$5,000 check, you’re going to be able to fund more of these companies that are having so much trouble getting funding because of systemic biases.”

SUSAN TYNAN

Founder and CEO, Framebridge

“We have to do a better job of matching entrepreneurs with the ideas and the grit to get things done with venture investors, and we have to make sure their capital journey doesn’t end there.”



OVERVIEW OF PROCEEDINGS

The Forum opened with welcome remarks from the SEC's Director of the Office of the Advocate for Small Business Capital Formation, Martha Legg Miller, and introductory remarks from Chairman Jay Clayton and Commissioners Hester M. Peirce, Elad L. Roisman, and Allison Herren Lee. Copies of their remarks are included in [Appendix C](#).

After opening remarks, the Forum featured spotlight discussions and keynote speakers that provided a breadth of perspectives on capital raising. Highlights from the speakers' remarks are included below.

Spotlight: Empowering Women Entrepreneurs

Erica Duignan Minnihan (Founder and Managing Partner, Reign Ventures) and **Samara Mejia Hernandez** (Founding Partner, Chingona Ventures) provided insights about empowering and supporting women-founded companies, including:

- » the positive impact of expanding access to capital for female and minority founders to create change within diverse communities;
- » the beneficial impact of diverse perspectives within the investment community and opportunities for expanded investor diversity;
- » the need to educate more women on becoming entrepreneurs and investors to increase opportunities;
- » the challenges that many women and minority founders face if they do not have an existing network of wealthy friends and family, including challenges with the accredited investor definition; and
- » the benefits of venture capital funding for certain business models, including relatively low marginal costs and a clear path to exit through a sale or initial public offering (IPO).

Keynote: Investing in the Underestimated

Arlan Hamilton (Founder and Managing Partner, Backstage Capital) spoke about her perspective investing in underestimated founders, including women, people of color, and LGBTQ founders, including:

- » statistics on founders receiving funding do not match the potential of underestimated founders due to barriers to entry and systemic biases;
- » the impact of potential changes to the accredited investor definition; and
- » the potential benefit of more early-stage investing syndicates from those with industry or sector expertise who can financially support and mentor founders.

Spotlight: Rural and Thriving

Wil Jenkins (Investor and Entrepreneur, Uptown Salon and Boutique), **Christy Laxton** (Executive Director, Wyoming County Economic Development Authority), and **Nathan Ohle** (CEO, Rural Community Assistance Partnership, Inc.) discussed overcoming the unique challenges of building companies in rural communities, including:

- » the unique ways that rural communities are innovating to procure capital, despite disparities in access;
- » the importance of understanding the intersection of culture, community, and potential impact of an investment;
- » the importance of evaluating different investment models that fit the opportunities in rural communities;
- » the need to bridge funding gaps within rural communities, often at very early stages where the local community bank, Community Development Financial Institution (CDFI), or angel investor may not provide funding; and
- » the overall importance of small businesses in revitalizing rural communities.

Keynote: Small Business Macro Perspectives

Jovita Carranza (Administrator, U.S. Small Business Administration) spoke about her perspective leading the federal agency focused on small businesses, including:

- » the focus of the SBA on delivering COVID-19 relief to small businesses and their workforce;
- » the impact of entrepreneurship and small business ownership on underrepresented communities; and
- » the unique challenges faced by minority-owned small businesses in accessing capital.

Spotlight: Stories from Founders of Color

Davyeon Ross (Co-Founder and President, ShotTracker) and **Sevetri Wilson** (Founder and CEO, Resilia) discussed capital raising for minority-owned companies, including:

- » the value of continually developing, building, and giving back to your network;
- » the importance of finding partners who understand and appreciate the founder's vision;
- » the role of geography and proximity in angel investing and early-stage capital raising, which remain predominantly local; and
- » tools for entrepreneurs to build their network, including local events, angel groups, accelerator programs, and connecting with other founders.

Keynote: The Founder's Journey

Pete Flint (Managing Partner, NFX) spoke about his perspective founding lastminute.com and Trulia and guiding them through challenging times, as well as how he now guides founders as a venture capital investor, including:

- » lessons in navigating a downturn learned in the “eye of the storm” during the Great Recession, including managing losses, gaining ground, and managing the psychology of the team;
- » the importance of culture in building companies; and
- » how companies and investors balance growth vs. profitability along a company's startup journey.

OVERHEARD DURING KEYNOTE PRESENTATIONS



JOVITA CARRANZA

Administrator, U.S. Small Business Administration

“Providing every entrepreneur the opportunity to succeed is personal to me.... I have the incredible honor of being in a position to make the American dream of small business ownership a reality for millions of Americans, including many in socially and economically disadvantaged communities.”

PETE FLINT

Managing Partner, NFX

“Companies need to constantly balance this aspect of growth vs. profitability, and I see this really as a startup glide path for companies.... Navigating this effectively and tweaking it through the journey is critical to every startup’s success.”



Spotlight: Building Tomorrow's Public Companies

Stephen Graham (Partner, Fenwick & West LLP) and **Brian Levey** (Chief Business Affairs and Legal Officer, Upwork Inc.) discussed the pathway to an IPO and the future of public offerings, including:

- » some of the benefits to an IPO, including positive impact on brand and credibility, liquidity access for existing investors and employees, flexibility for future acquisitions, and the ability to raise capital without the private market illiquidity discount;
- » the impact of recent changes in the IPO process that allow early discussions with institutional investors and a confidential filing process;
- » the initial costs to consider in the IPO process, as well as ongoing reporting costs;
- » distinctions within the reporting regime, including executive compensation disclosure requirements and independent auditor attestation of internal controls over financial reporting; and
- » the importance of clearly communicating strategy and vision to investors.

Keynote: Scaling Your Idea

Susan Tynan (Founder and CEO, Framebridge) spoke about her perspective building her company and raising multiple rounds of venture capital, including:

- » the challenges of matching founders with potential investors who can support not only the initial round of capital, but subsequent rounds needed for growth;
- » the impact of capital on the ultimate success of businesses operating at scale; and
- » the unique abilities of small businesses to respond to crises, like her company's pivot to producing face shields in response to the COVID-19 pandemic.

Spotlight: Small Cap Today

AJ Krick (CFO, Secretary and Treasurer, Smith-Midland Corporation), **Mary Ann Scully** (Chairman and CEO, Howard Bank), and **David Wagner** (President and CEO, Zix Corporation) discussed the challenges and strengths of smaller public companies in today's market climate, including:

- » the benefits of being a reporting company, including both access to capital for the company and accessibility of disclosures for shareholders;
- » the lack of shareholder liquidity in the micro-cap and nano-cap space compared to larger public companies, acknowledging that small cap liquidity is still generally greater than that of private companies;
- » the challenges with stock price volatility as the shareholder base has evolved; and
- » the role proxy advisory firms play, issues with execution of that role, and the potential benefits of reform.

COLLABORATIVE POLICY DISCUSSIONS

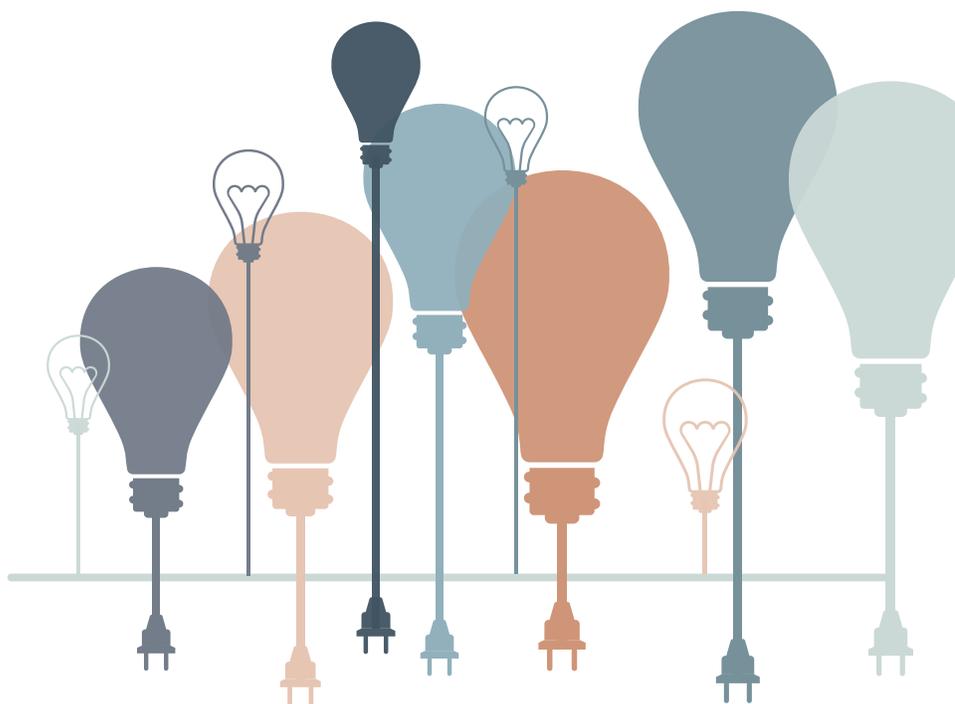
Throughout the Forum, speakers and participants identified issues with capital formation, along with potential solutions where policies could be improved. After the spotlight discussions and keynotes, participants engaged in collaborative policy discussions that addressed:

- » **Exempt Offerings and the Capital Formation Proposal** – Participants developed recommendations to improve the framework by which companies raise capital from investors in the exempt—or private—markets, including policy changes discussed in the SEC’s recent [Accredited Investor Proposal](#)⁴ and [Capital Formation Proposal](#).⁵
- » **The Path to IPO and Small Cap Companies** – Participants developed recommendations to address challenges faced by companies and their investors regarding the pathway to IPO and smaller public companies’ ongoing requirements.

The collaborative policy discussions engaged participants using interactive presentation software to provide for an inclusive process that enabled more voices than ever to be heard. Participants began each collaborative discussion by identifying the top issues and areas of securities regulation affecting capital raising. The recommendations of the participants are presented in the section that follows.

CONCLUSION

The virtual environment for the 2020 Forum resulted in an inclusive and engaging event that highlighted a spectrum of issues and potential solutions regarding access to investment capital for small businesses. Issues ranged from recurring securities law topics flagged in prior fora, to timely issues created by the current COVID-19 pandemic, to a spotlight on longstanding racial inequalities and their impacts on capital raising. One element that rang true throughout the entire event: access to capital is indeed more critical now than ever.



OVERHEARD DURING
SPOTLIGHT: STORIES FROM FOUNDERS OF COLOR



DAVYEON ROSS

Co-Founder & President, ShotTracker

“The time is now. People are more open to entrepreneurs and people of color ... to fund and partner.”



SEVETRI WILSON

Founder & CEO, Resilia

“As founders, you just never know what’s coming next.... There are opportunities for founders and minority founders to access capital that may have not been here prior.”

FORUM PARTICIPANTS' RECOMMENDATIONS

The recommendations of the Forum participants are presented below by collaborative policy discussion in their order of ranked priority.⁶ The priority ranking is intended to provide guidance to the Commission as to the importance and urgency the attendees of that session assigned to each recommendation.

Forum participants used interactive presentation software to identify the top issues and areas of securities regulation affecting capital raising. Following identification of issues, participants developed and prioritized solutions to each issue, culminating in the Forum recommendations outlined below. The inclusion of the multiple solutions provided by participants to address each issue is intended to provide additional context, and each set of solutions is considered holistically as part of a single recommendation.

The Commission's responses to the Forum recommendations appear below, along with a list of any corresponding policy initiatives.⁷ Where a Forum recommendation relates to an initiative as to which the Commission has solicited or expects to solicit public comment, the recommendation will be considered as part of that initiative, along with other comments received. The responses below do not include any Commission initiatives that are not yet public.

RECOMMENDATION DEVELOPMENT PROCESS

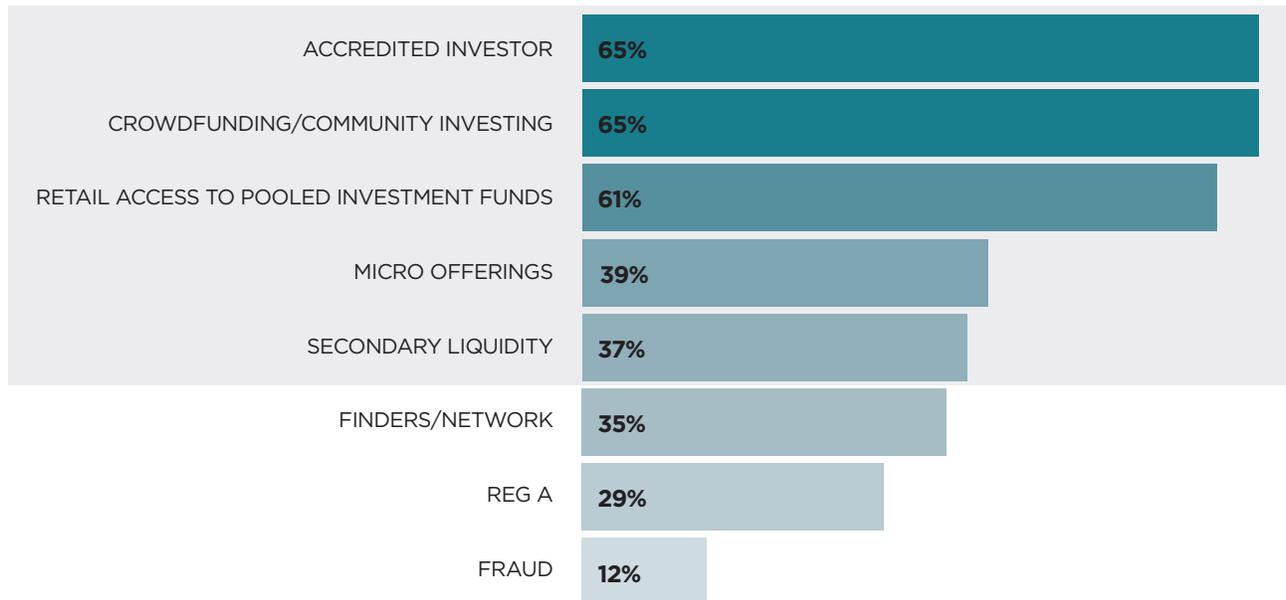


EXEMPT OFFERINGS AND THE CAPITAL FORMATION PROPOSAL

Forum participants began the first collaborative policy discussion by identifying areas of exempt market securities regulation that are having the most significant impact on capital raising.⁸ The following word cloud reflects the responses of the participants, with the relative size of each topic indicating the frequency with which the topic was identified by participants.⁹

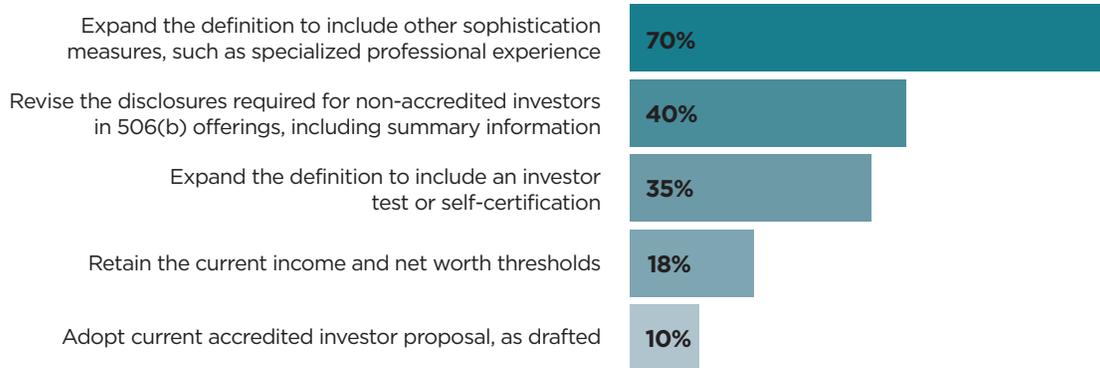


Looking at the top issues identified by speakers and participants during the Forum and using the word cloud data, participants prioritized their top five issues for development of recommendations during each session, as illustrated below. The percentages reflect the participants' votes prioritizing their top issues, with each participant able to select up to five issues.¹⁰



After identifying the top five issues for discussion, the participants identified and prioritized potential solutions to address each issue. The percentages shown with each of the following recommendations reflect the participants' votes prioritizing their preferred solutions for the specific issue, with each participant able to vote on up to two solutions per issue.

ACCREDITED INVESTOR



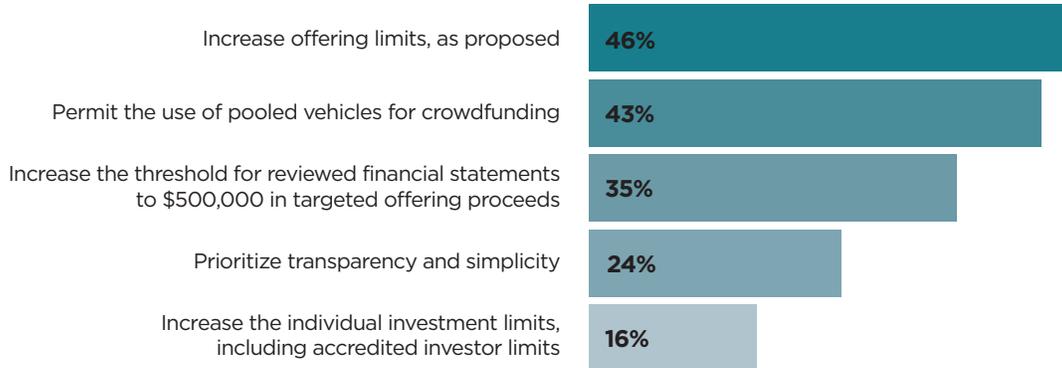
COMMISSION RESPONSE

On December 18, 2019, as part of its broader effort to consider ways to harmonize and improve the exempt offering framework under the Securities Act of 1933 (Securities Act), the Commission proposed amendments to the definition of “accredited investor” under Regulation D of the Securities Act to add new categories of qualifying natural persons and entities and to make certain other modifications to the existing definition (Accredited Investor Proposal).¹¹ The proposing release requested public comment on whether the Commission should make any changes to the current financial thresholds in the definition, consider developing an accredited investor examination, or consider permitting individuals to self-certify that they have the requisite financial sophistication to be an accredited investor.

On August 26, 2020, the Commission adopted final rules implementing the proposal.¹² The amendments maintain the financial thresholds in the rule and also permit natural persons to qualify as accredited investors based on, among other things, certain professional certifications, designations or credentials. In a related order, the Commission designated holders in good standing of the Series 7 (Licensed General Securities Representative), Series 65 (Licensed Investment Adviser Representative), and Series 82 (Licensed Private Securities Offerings Representative) licenses as accredited investors.

In addition, on March 4, 2020, the Commission proposed rule amendments to harmonize and streamline the Commission’s rules for exempt offerings under the Securities Act, including Regulation A, Regulation D, and Regulation Crowdfunding, in order to enhance their clarity and ease of use (Capital Formation Proposal).¹³ The proposed amendments would, among other things, amend the financial information requirements in Rule 502(b) for Regulation D offerings by non-reporting companies that include non-accredited investors to align with the disclosure required in offerings pursuant to Regulation A. As indicated on the Spring 2020 Unified Agenda of Federal Regulatory and Deregulatory Actions (Spring 2020 Unified Agenda),¹⁴ the Division of Corporation Finance is considering recommending that the Commission adopt rule amendments in connection with this initiative. Staff in the Division of Corporation Finance will consider this Forum recommendation with respect to disclosures in Rule 506(b) offerings in formulating its recommendations.

CROWDFUNDING/COMMUNITY INVESTING



COMMISSION RESPONSE

As described in the Accredited Investor recommendation response above, in the Capital Formation Proposal the Commission proposed amendments that would, among other things, raise the offering limit in Regulation Crowdfunding from \$1.07 million to \$5 million, permit the use of limited-purpose vehicles that function solely as conduits to invest in businesses raising capital through the vehicle under Regulation Crowdfunding, and increase the investment limits applicable to investors in Regulation Crowdfunding offerings by no longer applying those limits to accredited investors and allowing investors to rely on the greater of their income or net worth in calculating their investment limit. The proposing release also requested comment with respect to the Regulation Crowdfunding thresholds for different tiers of financial statement requirements.

As indicated on the Spring 2020 Unified Agenda, the Division of Corporation Finance is considering recommending that the Commission adopt rule amendments to harmonize and streamline the Commission's rules for exempt offerings under the Securities Act. Staff in the Division of Corporation Finance will consider these Forum recommendations in connection with this initiative.

RETAIL ACCESS TO POOLED INVESTMENT FUNDS



COMMISSION RESPONSE

On June 18, 2019, the Commission published for public comment a concept release on ways to simplify, harmonize, and improve the exempt offering framework to expand investment opportunities while maintaining appropriate investor protections and to promote capital formation (Harmonization Concept Release).¹⁵ In particular, the Commission solicited comments as to whether it should take steps to facilitate capital formation in exempt offerings through pooled investment funds, including interval funds and other closed-end funds, and whether retail investors should be allowed greater exposure to growth-stage companies through pooled investment funds. Division of Investment Management staff are reviewing comments on this aspect of the Harmonization Concept Release.

In addition, Chairman Clayton has expressed interest in exploring options for increasing opportunities for retail investors to invest in private markets, including through professionally managed funds and on terms similar to those available to institutional investors.¹⁶

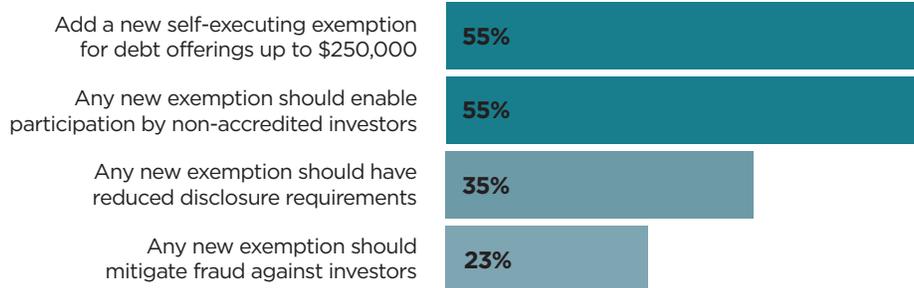
The Director of the Division of Investment Management has also emphasized the importance of expanding public access to private markets and has solicited feedback from fund sponsors, investors and other market participants on how closed-end funds of private funds could help enhance such access.¹⁷

As described in the Accredited Investor recommendation response above, the Commission adopted final rules that, among other things, add additional means for individuals to qualify as accredited investors and participate in private offerings.

Based on public input received in connection with the Harmonization Concept Release, in the Capital Formation Proposal, the Commission also proposed a variety of rule amendments that would harmonize, simplify, and improve the exempt offering framework to promote capital formation. Among other things, these proposals would increase the offering limits for Regulation A, Regulation Crowdfunding, and Rule 504 offerings, revise certain individual investment limits, and permit the use of certain special purpose vehicles to facilitate investing in Regulation Crowdfunding issuers.¹⁸

Staff in the Divisions of Corporation Finance and Investment Management will consider this Forum recommendation in connection with these and other initiatives.

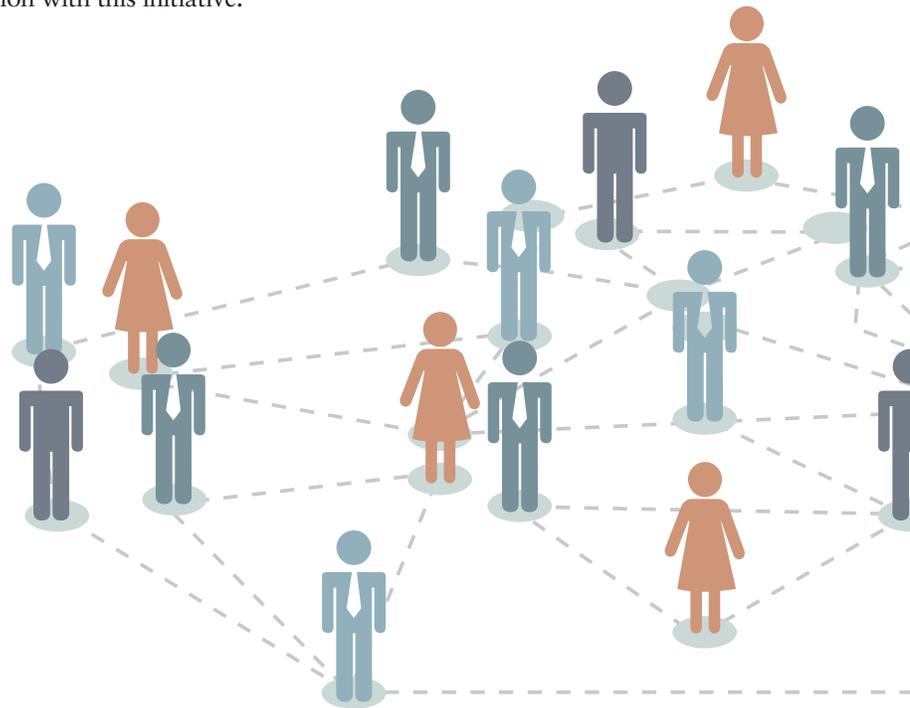
MICRO-OFFERINGS



COMMISSION RESPONSE

In the Harmonization Concept Release, the Commission sought public comment on ways to simplify, harmonize, and improve the exempt offering framework to promote capital formation and expand investment opportunities while maintaining appropriate investor protections.¹⁹ The concept release specifically sought comment on whether the Commission should add a micro-offering or micro-loan exemption and, if so, what an appropriate aggregate offering limit would be.

Although the Commission did not propose a micro-offering exemption in the Capital Formation Proposal, the Commission specifically requested public comment on whether it should consider creating a micro-offering exemption. Staff in the Division of Corporation Finance will consider this Forum recommendation in connection with this initiative.



■ ■ ■ SECONDARY LIQUIDITY



COMMISSION RESPONSE

In the Harmonization Concept Release, the Commission sought public comment on whether federal preemption should be extended to additional offers and sales of securities.²⁰ In addition, the Capital Formation Proposal requested comment on whether the Commission should extend federal preemption to secondary sales of Regulation A or Regulation Crowdfunding securities.²¹ Staff in the Division of Corporation Finance will consider the Forum recommendation with respect to state preemption for secondary transactions in connection with this initiative. Staff in the Division of Trading and Markets will consider the Forum recommendations related to finders and Rule 15c2-11²² and consult, as needed, with relevant stakeholders.

OVERHEARD DURING
SPOTLIGHT: BUILDING TOMORROW'S
PUBLIC COMPANIES



STEPHEN GRAHAM

Partner, Fenwick & West LLP

“You have a strategy, you have a vision; make sure you are understood by the street, and investors can invest in your company or not based on that vision.”

BRIAN LEVEY

Chief Business Affairs and Legal Officer, Upwork Inc.

“[Our IPO] really served as a branding event, which I believe continues to give us more credibility, prestige, with customers of all sizes.”

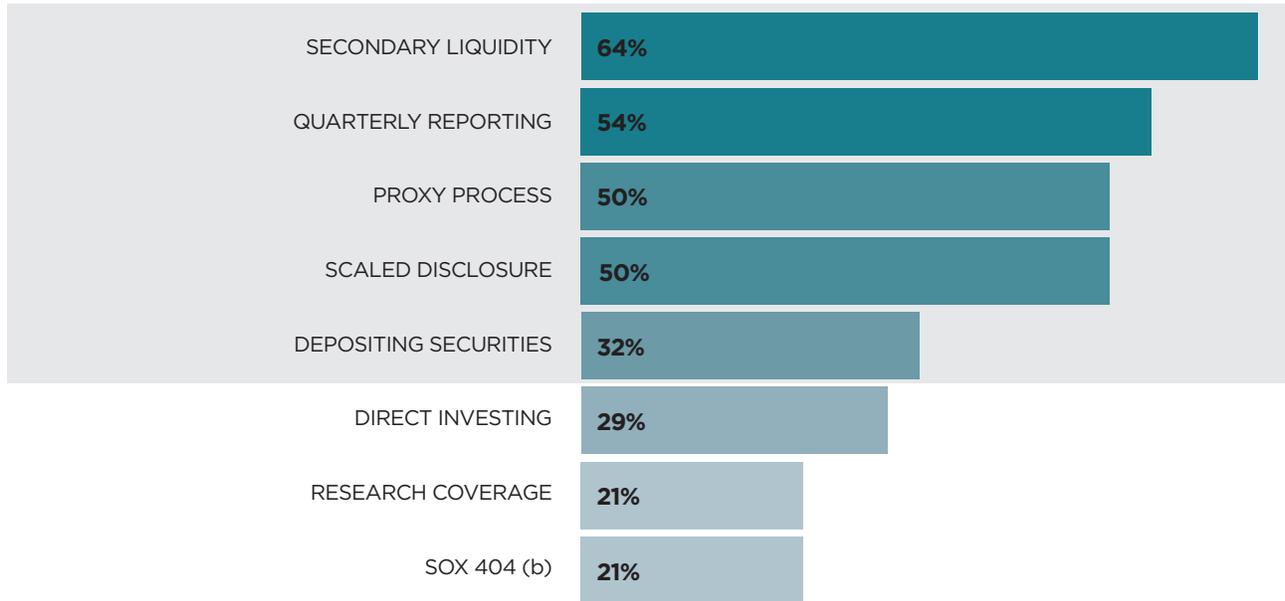


THE PATH TO IPO AND SMALL CAP COMPANIES

Forum participants began the second collaborative policy discussion by identifying areas of public company securities regulation that are having the most significant impact on capital raising.²³ The following word cloud reflects the responses of the participants, with the relative size of each topic indicating the frequency with which the topic was identified by participants.²⁴

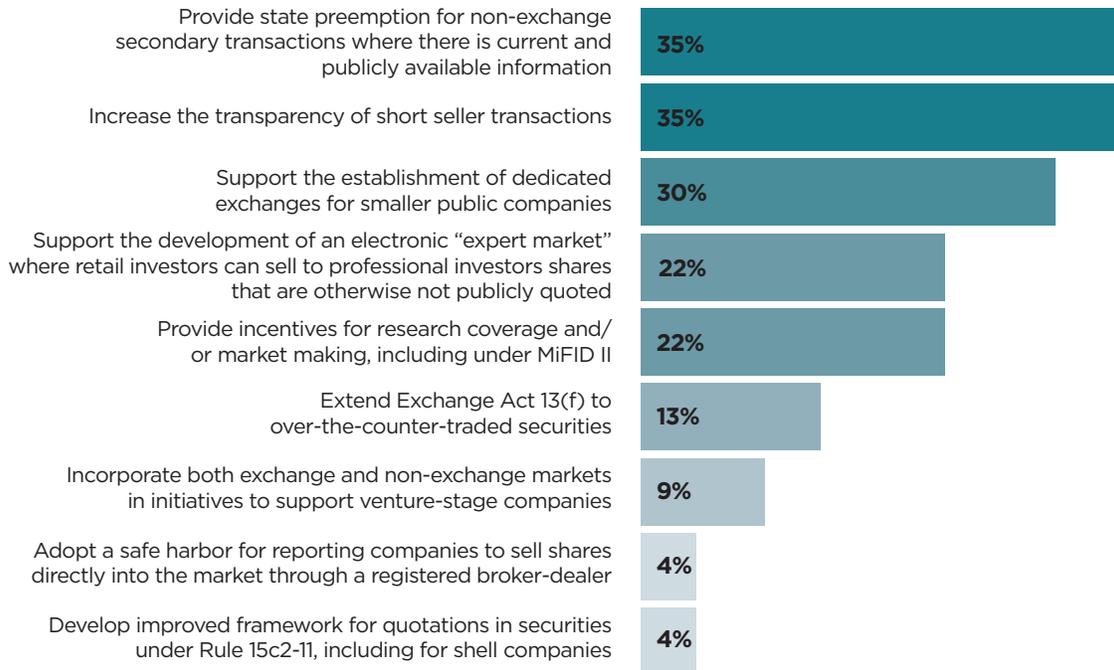


Looking at the top issues identified by speakers and participants during the Forum and using the word cloud data, participants prioritized their top five issues for development of recommendations during each session, as illustrated below. The percentages reflect the participants' votes prioritizing their top issues, with each participant able to select up to five issues.²⁵



After identifying the top five issues for discussion, the participants identified and prioritized potential solutions to address each issue. The percentages shown with each of the following recommendations reflect the participants' votes prioritizing their preferred solutions for the specific issue, with each participant able to vote on up to two solutions per issue.

SECONDARY LIQUIDITY



COMMISSION RESPONSE

In connection with short sale disclosure, self-regulatory organizations, including NYSE, Nasdaq, and FINRA, provide transparency of short selling information on their websites, and the SEC provides information on failures to deliver securities that may result from sales, including short sales. Staff in the Divisions of Corporation Finance, Trading and Markets, and Investment Management continue to monitor developments that have occurred since the completion of the 2014 Commission staff report on the benefits and costs of real-time short sale reporting. Commission staff will consider this Forum recommendation and consult, as needed, with relevant stakeholders.

In connection with research incentives, staff in the Divisions of Trading and Markets and Investment Management have been actively engaged with market participants to better understand their concerns regarding the impact of MiFID II's research provisions, including with respect to research coverage. To provide a path for market participants to comply with MiFID II in a manner that is consistent with the U.S. federal securities laws, Commission staff issued three no-action letters in October 2017, one of which took a temporary no-action position with regard to broker-dealers that receive certain unbundled payments for research from MiFID-affected clients.²⁶ In November 2019, Commission staff extended the temporary no-action position until July 2023 and noted the continued ability of broker-dealers to receive payments for research under Exchange Act Section 28(e) through certain client commission arrangements.²⁷

Commission staff have also sought and received public feedback on the evolving research landscape, including the impact of MiFID II's research provisions. Commission staff will consider this Forum recommendation in connection with this initiative.

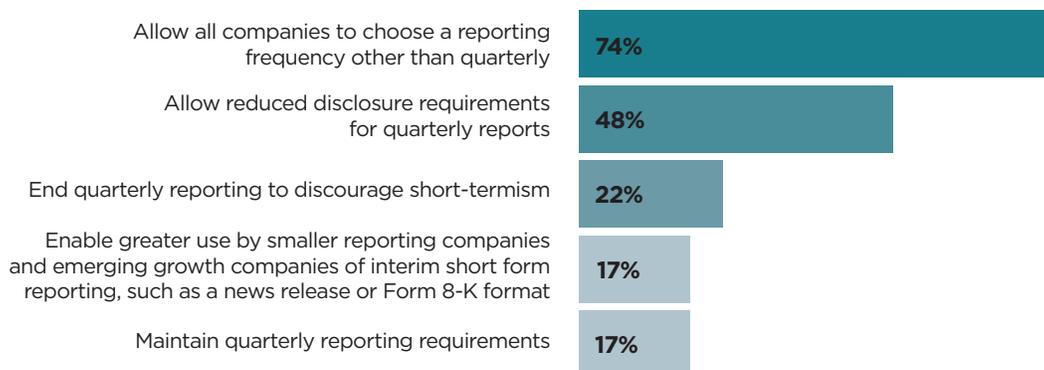
In addition, the Commission issued a Statement on Market Structure Innovation for Thinly Traded Securities in October 2019.²⁸ It identifies several potential market structure changes as a few examples of types of innovations that exchanges and other market participants could consider developing that might facilitate improved trading in thinly traded securities. Among these potential changes are incentives that exchanges could provide to market makers to assume heightened market making obligations for thinly traded securities. The statement notes that an exchange might also explore ways to incentivize market makers to provide additional liquidity not only during normal market conditions, but also during times of market stress when liquidity in thinly traded securities can become even scarcer.

Staff in the Division of Corporation Finance will consider the Forum recommendation with respect to state preemption for non-exchange secondary transactions in connection with this initiative. For the recommendation regarding dedicated exchanges, staff in the Division of Trading and Markets will consider any application for a new exchange, including for a dedicated exchange. Similarly, Trading and Markets staff will consider any application for a new venture exchange.

Staff in the Division of Trading and Markets will consider the Forum recommendations related to the development of an electronic “expert market” and the Rule 15c2-11 framework and consult, as needed, with relevant stakeholders. The Commission recently proposed amendments to Rule 13f-1 and Form 13F, though the Forum recommendation related to Exchange Act Section 13(f) is outside of the scope of the proposed rulemaking.²⁹ Staff in the Divisions of Corporation Finance, Trading and Markets, and Investment Management will consider the Forum recommendation related to Exchange Act Section 13(f) and consult, as needed, with relevant stakeholders.

The Commission recently proposed amendments to Rule 15c2-11. Rule 15c2-11 sets out certain requirements with which a broker-dealer must comply before it can publish quotations for securities in the over-the-counter (“OTC”) market. Issuers of securities quoted on the OTC market include small domestic companies. The Rule 15c2-11 Proposal seeks to improve the framework for quotations in securities in the OTC market, including shell companies. The Commission received numerous comments on the proposal, including with regard to shell companies as well as the possible development of an expert market, and is carefully considering such comments.

■ ■ ■ QUARTERLY REPORTING



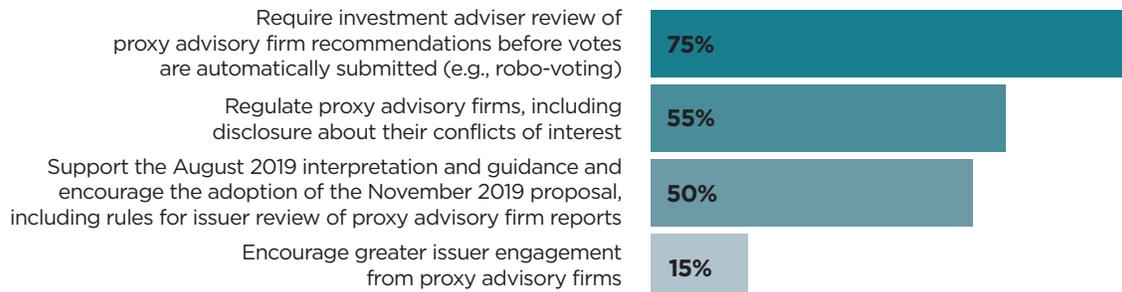
COMMISSION RESPONSE

In December 2018, the Commission published a request for comment soliciting public input on the quarterly reporting process and on how the Commission can reduce the administrative and other burdens on reporting companies associated with this process while enhancing, or at a minimum maintaining, the investor protection attributes associated with periodic reporting under the Securities Exchange Act of 1934.³⁰ In the request for comment, the Commission sought feedback on the frequency of interim reporting and whether the Commission should consider moving to a semi-annual or flexible reporting frequency model, as well as the benefits, costs and burdens of the current quarterly reporting system. The Commission also sought comment on whether quarterly reporting may foster an undue focus among companies and market participants on short-term results (“short-termism”) and the potential benefits and drawbacks of allowing companies that issue earnings releases to use the releases to satisfy the core disclosure requirements of quarterly reports.

Following the publication of the request for comment, the staff of the Division of Corporation Finance held a roundtable in July 2019 with investors, issuers, and other market participants about the impact of short-termism on capital markets.³¹ The panel discussions explored, among other things, the causes and impact of short-termism on capital markets and whether the periodic reporting system should be modified to address these concerns.

Staff in the Division of Corporation Finance have considered and will continue to consider these Forum recommendations, as well as the comments received in response to the request for comment and the roundtable, and will consult, as needed, with relevant stakeholders.

PROXY PROCESS



COMMISSION RESPONSE

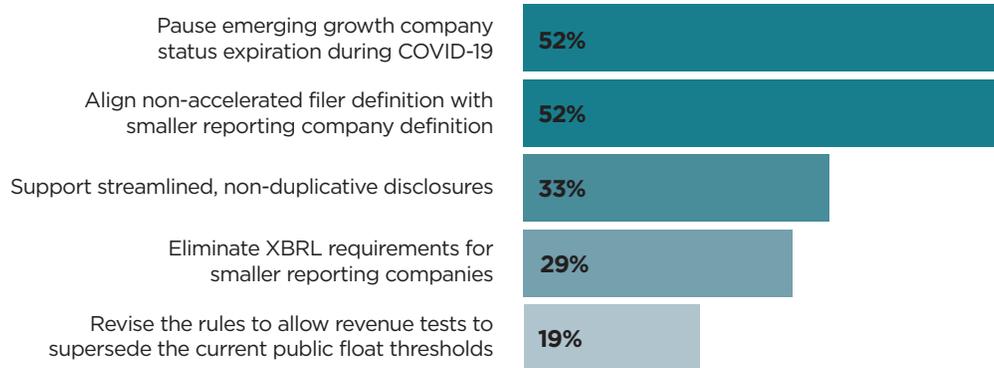
In November 2018, the SEC staff hosted a roundtable to engage with the public on the proxy process, including a discussion of the topic of investment advisers' use of proxy advisory firms.³² Chairman Clayton asked the staff to look at the issues raised in the roundtable on this topic and formulate recommendations for the Commission's consideration.

In August 2019, the Commission issued guidance to assist investment advisers in fulfilling their proxy voting responsibilities.³³ At the same time, the Commission issued an interpretation clarifying that proxy voting advice provided by proxy advisory firms generally constitutes a solicitation under the federal proxy rules and provided related guidance about the application of the proxy solicitation antifraud rule to proxy voting advice.³⁴

On November 5, 2019, the Commission proposed amendments to its rules governing proxy solicitations to help ensure that investors who use proxy voting advice receive more accurate, transparent, and complete information on which to make their voting decisions.³⁵ On July 22, 2020 the Commission approved final rules that, among other things, condition the availability of certain existing exemptions from the information and filing requirements of the federal proxy rules for proxy voting advice businesses upon additional disclosures regarding conflicts of interest and on certain procedural requirements.³⁶ The procedural requirements include principles-based requirements that proxy voting advice businesses must have policies and procedures reasonably designed to ensure that (i) registrants that are the subject of proxy voting advice have such advice made available to them at or prior to the time such advice is disseminated to the proxy voting advice business's clients; and (ii) the proxy voting advice business provides its clients with a mechanism by which they can reasonably be expected to become aware of any written statements regarding its proxy voting advice by registrants who are the subject of such advice in a timely manner before the shareholder meeting. Further, to complement the Commission's release adopting amendments to Rule 14a-2, the Commission supplemented the August 2019 guidance to assist investment advisers in assessing how to consider the additional information that may become more readily available to them as a result of these amendments, including in circumstances where the investment adviser utilizes a proxy advisory firm's electronic vote management system that pre-populates the adviser's proxies with suggested voting recommendations and/or for voting execution services.³⁷ The supplementary guidance also addresses disclosure obligations and considerations that may arise when investment advisers use such services for voting.

Staff in the Divisions of Corporation Finance and Investment Management have considered and will continue to consider these Forum recommendations in connection with this initiative.

SCALED DISCLOSURE



COMMISSION RESPONSE

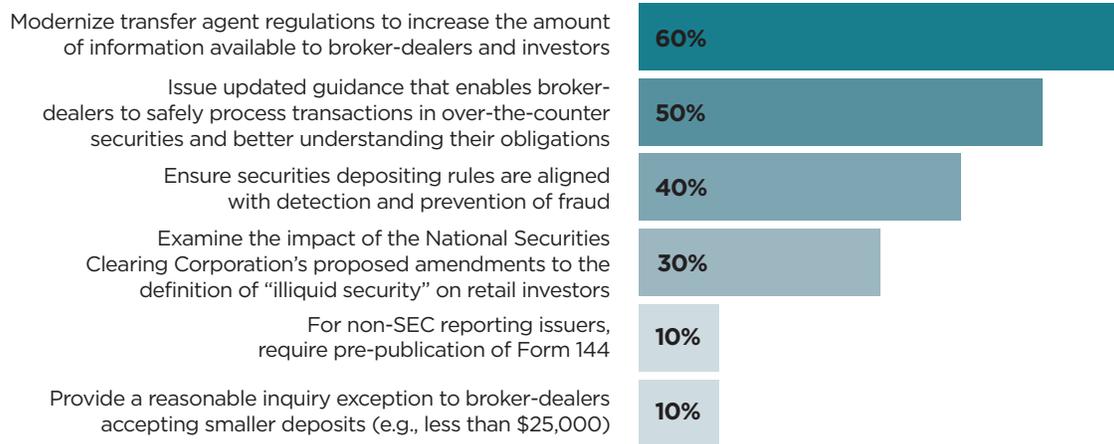
The Commission's Disclosure Effectiveness initiative to review and modernize public company disclosure requirements has included the issuance of a Report on Modernization and Simplification of Regulation S-K,³⁸ as well as the issuance of a concept release on the business and financial disclosure required by Regulation S-K.³⁹

In March 2020, the Commission adopted amendments to the accelerated filer and large accelerated filer definitions, which, among other things, exclude from these definitions an issuer that is eligible to be a smaller reporting company and had no revenues or annual revenues of less than \$100 million in the most recent fiscal year for which audited financial statements are available.⁴⁰ Under the final amendments, some, but not all, smaller reporting companies have become non-accelerated filers. The staff in the Division of Corporation Finance will consider the Forum recommendation to further align the non-accelerated filer definition with the smaller reporting company definition.

In January 2020, the Commission proposed amendments to streamline, modernize, and enhance the requirements for Management's Discussion and Analysis disclosure.⁴¹ In addition, on August 26, 2020, the Commission adopted final rules to modernize the description of business, legal proceedings, and risk factor disclosures under Items 101, 103, and 105.⁴² These initiatives support streamlined, non-duplicative disclosures.

The staff in the Division of Corporation Finance will consider the Forum recommendations related to emerging growth company status during COVID-19, eliminating XBRL requirements for smaller reporting companies, and allowing revenue tests to supersede the current public float thresholds in connection with this initiative.

DEPOSITING SECURITIES



COMMISSION RESPONSE

The Division of Trading and Markets is considering recommending that the Commission propose updates and refinements to the Commission's transfer agent regulatory regime to update the existing regulatory framework.

The Commission will consider National Securities Clearing Corporation's proposed rule change,⁴³ consistent with Sections 17A and 19(b) of the Exchange Act and the rules thereunder.

Staff in the Division of Trading and Markets will consider whether additional guidance regarding a broker-dealer's obligations associated with over-the-counter transactions would be appropriate, with a particular focus on the detection and prevention of fraud.

Staff in the Division of Corporation Finance will consider the Forum recommendation related to pre-publication of Form 144 and a reasonable inquiry exception to broker-dealers accepting smaller deposits and consult, as needed, with relevant stakeholders.

OVERHEARD DURING SPOTLIGHT: SMALL CAP TODAY



AJ KRICK

CFO, Secretary and Treasurer, Smith-Midland Corporation

“We’re in the nano-cap space.... There’s a little bit of liquidity for our investors, but it’s a major, major challenge.... It takes a long time to get in a big position and a long time to get out of a big position.”

MARY ANN SCULLY

Chairman and CEO, Howard Bank

“We’ve been very happy with the SEC registration and with the public role.... We believe it’s given us that access to capital, it’s given us that transparency that our shareholders want, and it’s given them the optionality [with limitations as a micro-cap, for liquidity] on an optional basis.”



DAVID WAGNER

President and CEO, Zix Corporation

“Our passion right now as it relates to the investment community is ESG. I’ve been spending a lot of time thinking about ESG, working on ESG, and have earned the ISS ESG premiere designation as a company in the top decile for ESG.”



■ ■ ■ APPENDICES

APPENDIX A | AGENDA

12:00 P.M.

WELCOME

Martha Legg Miller

Director, Office of the Advocate for Small Business Capital Formation
U.S. Securities and Exchange Commission

INTRODUCTORY REMARKS FROM SEC COMMISSIONERS

U.S. Securities and Exchange Commission

Jay Clayton, Chairman

Hester M. Peirce, Commissioner

Elad L. Roisman, Commissioner

Allison Herren Lee, Commissioner

12:20 P.M.

MARKET PERSPECTIVES ON CAPITAL RAISING

Spotlight: Empowering Women Entrepreneurs

Insights from investors who support women-founded companies

» **Erica Duignan Minnihan**

Founder and Managing Partner, *Reign Ventures*

» **Samara Mejia Hernandez**

Founding Partner, *Chingona Ventures*

Keynote: Investing in the Underestimated

» **Arlan Hamilton**

Founder and Managing Partner, *Backstage Capital*

Spotlight: Rural and Thriving

Overcoming the unique challenges of building companies in rural communities

» **Wil Jenkins**

Investor and Entrepreneur, *Uptown Salon and Boutique*

» **Christy Laxton**

Executive Director, *Wyoming County Economic Development Authority*

» **Nathan Ohle**

CEO, *Rural Community Assistance Partnership, Inc.*

Keynote: Small Business Macro Perspectives

» **Jovita Carranza**

Administrator, *U.S. Small Business Administration*

Spotlight: Stories from Founders of Color

Building minority-owned companies and raising capital

» **Davyeon Ross**

Co-Founder & President, *ShotTracker*

» **Sevetri Wilson**

Founder & CEO, *Resilia*

Keynote: The Founder's Journey

- » **Pete Flint**
Managing Partner, *NFX*

Spotlight: Building Tomorrow's Public Companies

Exploring the pathway to IPO and the future of public offerings

- » **Stephen Graham**
Partner, *Fenwick & West LLP*
- » **Brian Levey**
Chief Business Affairs and Legal Officer, *Upwork Inc.*

Keynote: Scaling Your Idea

- » **Susan Tynan**
Founder and CEO, *Framebridge*

Spotlight: Small Cap Today

How smaller public companies overcome challenges in today's market climate

- » **AJ Krick**
CFO, *Secretary and Treasurer, Smith-Midland Corporation*
- » **Mary Ann Scully**
Chairman and CEO, *Howard Bank*
- » **David Wagner**
President and CEO, *Zix Corporation*

2:30 P.M.

BREAK

2:45 P.M.

COLLABORATIVE POLICY DISCUSSIONS

Exempt Offerings and the Capital Formation Proposal

Participants will collaborate on policy recommendations to improve the framework by which companies raise capital from investors in the exempt, or private, markets, including policy changes discussed in the SEC's recent [Accredited Investor Proposal](#) and [Capital Formation Proposal](#).

4:00 P.M.

The Path to IPO and Small Cap Companies

Participants will collaborate on policy recommendations to address challenges faced by companies seeking to go public or that are smaller public companies.

5:15 P.M.

CLOSING REMARKS

APPENDIX B | ADVISORY PLANNING GROUP

Chair **Martha Legg Miller**
Director, Office of the Advocate for Small Business Capital Formation
U.S. Securities and Exchange Commission

Government/Regulatory Representatives

Craig Buerstatte
Director, Office of Innovation
& Entrepreneurship
U.S. Economic Development Administration

William Manger
Chief of Staff and Associate Director,
Office of Capital Access
U.S. Small Business Administration

Gregory J. Dean, Jr.
Senior Vice President, Office of
Government Affairs
FINRA

Mary Ellen Mitchell-Whisnant
Deputy Director, Office of Community and
Economic Development Policy
U.S. Department of Treasury

Melanie Lubin
Maryland Securities Commissioner
*National Association of State
Securities Administrators*

Representatives of Business and Professional Organizations

Brandon Andrews
Co-Founder
Gauge

John Dearie
Founder & President
Center for American Entrepreneurship

Faith Bautista
President & CEO
National Diversity Coalition

Andrew Deye
Managing Director, Strategy, Business
Development & Research
JobsOhio

Greg Brown
Executive Director
Keenan Institute at UNC Chapel Hill

Ryan Feit
Board Member
Association of Online Investment Platforms

Charles Crain
Director, Tax & Domestic Economic Policy
National Association of Manufacturers

Patrick Gouhin
Executive Director
Angel Capital Association

Alise Crane
Partnerships Operations Manager
Hello Alice

Joseph Kapp
Founder
Rural RISE

Stephanie Luebbe
Executive Director
Nebraska Angels

Raul Moas
Miami Director, Community and National
Initiatives Program
Knight Foundation

Brett T. Palmer
President
Small Business Investor Alliance

Carlo Passeri
Director, Capital Markets and Financial
Services Policy
Biotechnology Innovation Organization

Andre Perry
Fellow, Metropolitan Policy Program
The Brookings Institution

Bonnie J. Roe
Chair, Small Business Issuers Subcommittee,
Business Law Section's Committee on Federal
Regulation of Securities
American Bar Association

Erik Rust
Director, Center for Capital Markets
Competitiveness
U.S. Chamber of Commerce

Rodney Sampson
Executive Chairman & CEO
Opportunity Hub and OHUB Foundation

Charlotte Savercool
Director of Government Affairs
National Venture Capital Association

Leslie Lynn Smith
President of the Board of Directors
InBIA

John Stanford
Co-Executive Director
Small Business Roundtable

Sydney Sykes
Co-Founder & Co-Chair
BLCK VC

APPENDIX C | SEC OFFICIALS' REMARKS

Remarks of Martha Legg Miller

Director

Office of the Advocate for Small Business Capital Formation



Welcome and thank you for sharing your afternoon with us at this year's [Small Business Forum](#).

The theme of this year's Forum is "Access to Capital: More Critical Now Than Ever." Our team in the [Office of the Advocate for Small Business Capital Formation](#)⁴⁴ is immersed in addressing the challenges that 2020 has brought to small businesses and their investors. Small businesses are currently in a state of crisis, with many abruptly

shutting their doors this spring in response to COVID-19.⁴⁵ While Congress has provided relief through several legislative measures, the consensus among many is that public assistance will not be enough. Effective pathways for investors to support small businesses' capital needs are more critical now than ever to help businesses weather the current environment, to rebuild, and to continue to create the companies we depend on for the future. The Commission's recent [temporary crowdfunding relief](#)⁴⁶ is one example of how your feedback has been put into action. We need your input on what you think is needed to support our capital markets, both short term and long term.

"In addition, as we look to dismantle longstanding racial inequality in our country, the opportunities afforded by entrepreneurship and capital investment can create powerful bridges across social and economic barriers."

In addition, as we look to dismantle longstanding racial inequality in our country, the opportunities afforded by entrepreneurship and capital investment can create powerful bridges across social and economic barriers. Our Office is focused on identifying and addressing the capital raising challenges faced minority-owned and women-owned small businesses and their investors.⁴⁷ While entrepreneurship is by no means a panacea to the myriad of challenges with which we are grappling, I look forward to hearing your ideas to improve the capital raising toolkit to work well for all.

In closing, thank you to our speakers for your thought leadership, to our participants for committing time to use your voice to shape Congress and the Commission's path ahead, to our advisory planning group for providing valued feedback to shape this program, and to the incredible team here at the SEC who collaborated to make this year's Forum a success. I am grateful for your contributions, and I look forward to learning from your unique perspectives.

Remarks of SEC Chairman Jay Clayton



Welcome to the 39th annual Small Business Forum. I want to thank Martha and the staff in the Office of the Advocate for Small Business Capital Formation—that includes Colin, Jenny, Jessica, Julie, Malika, and Todd—for their significant efforts to forge ahead and organize this virtual Forum.

Although I would have much preferred to have been out on the road as we have in the past few years, going to Austin, Columbus, and Omaha, that is just not possible this year. Thanks to our Office of Information Technology and the good work of Martha and her strong team, we're able to meet virtually, and that's the next best thing. It's very important for us to hear from experts from around the country, from outside Washington, DC, and we're going to do just that today.

I'd be remiss if I didn't mention current events and the important issues they raise—in particular, very disturbing videos that are at the front of all of our minds. Those videos, along with the pandemic that we're all facing, have placed unprecedented stress on our economy, our markets, and our small businesses. And that's why it's more important than ever that we make every effort to hold this Forum.

Let me try to underline how important that is with a few statistics.

There are over 1 million minority-owned businesses in the U.S.⁴⁸ But 99.9% of those businesses have less than 500 employees.⁴⁹ I think we all recognize that COVID-19 has had a disproportionate negative impact on small businesses and it is estimated that more than 50% of small businesses face immediate or near-term risks due to the effects of COVID-19.⁵⁰

We also recognize that small businesses are the engine of economic growth and that we will need small businesses to support a post COVID-19 economic recovery.

Today, we will hear from a number of panelists that will lead us on discussions on how we can support small businesses, including minority- and women-owned small businesses, rural small businesses, and those smaller companies that are considering going public or would like to go public in the future. These are very important areas of our economy and we need to support we can.

We want your ideas. We want your questions. Please know that we recognize that one size regulation doesn't fit all and that we need to tailor our regulations and our support to fit the needs of small- and medium-sized businesses.

So with that, I look forward to hearing your comments, your suggestions, and your questions. Thank you all for attending.

“We also recognize that small businesses are the engine of economic growth and that we will need small businesses to support a post COVID-19 economic recovery.”

Remarks of SEC Commissioner Hester M. Peirce



Good afternoon. Thank you to Martha Miller and her team for putting together this virtual Forum and thank you to the participants for taking time out of your busy schedules today to share your first-hand knowledge of the challenges small businesses face in raising capital. Today's agenda is ambitious, so I will keep my remarks brief.

One topic that I anticipate will make an appearance in this afternoon's discussion is finders. Great uncertainty persists in this area because of decades of Commission inaction and a patchwork of shifting positions in staff no-action letters. Indeed, this Forum first advocated for reform in 1998 and has raised the request repeatedly over the last two decades. The need for more clarity on finders is, under current circumstances, particularly acute. At last month's Small Business Capital Formation Advisory Committee, committee member Greg Yadley explained,

Particularly these days, where companies are going to become even more desperate for money and we are loosening up so many ways for people to be able to raise money, there is still a disconnect between issuers who need a little bit of money and accredited investors who are willing to invest. But how do they find one another?⁵¹

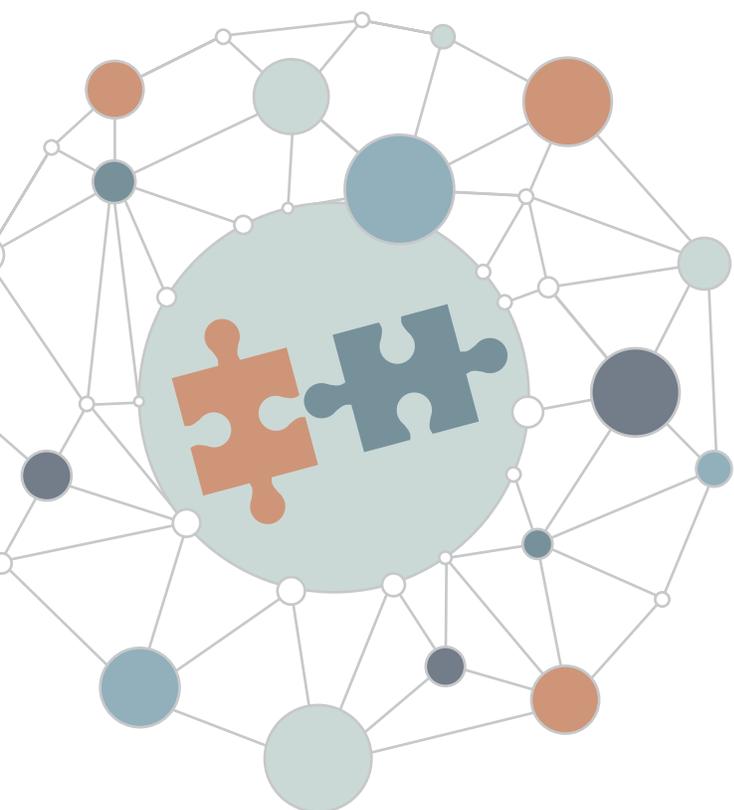
The ongoing COVID-19 pandemic has placed tremendous stress on the economy. Small businesses have responded with their characteristic creativity and flexibility. As demonstrated by today's keynote speaker, Administrator Carranza, whose agency was charged with the immense task of implementing the Paycheck Protection Program, government also must be flexible and creative in times like these. The SEC has issued emergency relief and guidance for issuers, broker-dealers, advisers, and other market participants. In May, for example, the Commission provided temporary, conditional relief for small businesses to pursue Regulation Crowdfunding offerings based on suggestions by the Small Business Capital Formation Advisory Committee. I will look to recommendations developed at today's Forum for ideas about other short-term and longer-term measures we can put in place.

Today's discussions will highlight the role that a good regulatory structure can have in getting capital into every community across the country. We sometimes forget that innovators do not all look alike, think alike, or live in the same few coastal cities. It is not surprising that investors and smart, innovative people have benefited from gathering in places like Silicon Valley. We saw this innovation clustering play out in the forerunner of Silicon Valley—my hometown of Cleveland,

“This pandemic and the attendant embrace of working from home may change what it means for a business to be located in a particular place, and new technology is changing the way innovators collaborate. It is, therefore, the perfect time to work on ways to ensure that capital can follow the talent wherever it goes.”

Ohio. Garrett Morgan, the son of a formerly enslaved father, who made his way to Cleveland and a job in the city's thriving manufacturing sector, is one example of this phenomenon at work. Ever on the lookout for problems in need of solving, and after establishing himself in Cleveland, he became a serial innovator and successful businessman.⁵² His ideas caught the attention of others in Cleveland's business community, including General Electric, which had a large presence in Cleveland and purchased Morgan's patent on a revolutionary traffic signal after seeing first-hand how well it worked.

This pandemic and the attendant embrace of working from home may change what it means for a business to be located in a particular place, and new technology is changing the way innovators collaborate. It is, therefore, the perfect time to work on ways to ensure that capital can follow the talent wherever it goes. I urge today's Forum to consider whether, and if so which, regulatory factors contribute to the current concentration of capital on the coasts. For example, should we consider adjusting the current financial thresholds in the accredited investor definition to take into account income disparities in different geographic areas of the country? Further, should we broaden the definition to encompass individuals that have successfully completed an investing-related course at an accredited college or university? Should we create a new micro-offering exemption to enable people to support entrepreneurs they know? Should we make the temporary crowdfunding relief permanent? Are there other ways we can make crowdfunding a more viable option for businesses? I look forward to your thoughts on these and other issues. Enjoy the Forum.



Remarks of SEC Commissioner Elad L. Roisman



Good morning and welcome everyone to what I am pretty sure is the 39th annual, but first ever virtual, Government-Business Forum on Small Business Capital Formation. I attended the past two Forums, in Columbus and Omaha, and think of them as among the best events the SEC has held. Each drew knowledgeable and diverse participants, had panels that discussed great ideas, and helped shape my own thinking and appreciation for entrepreneurship.

I have been particularly looking forward to this year's Small Business Forum, and it comes at a critical time. Like many, I have been thinking a lot about our nation's small businesses and the immense challenges they have faced over the past few months. The number of businesses whose operations have been curtailed or completely shut down amidst the pandemic is staggering. While public policy efforts such as those through the CARES Act appear to have provided some help, great uncertainty still prevents many from being able to know when, how, or if they will be able to carry on their work.

I know that today's agenda does not focus directly on these matters. But, I am very interested in hearing how these events have affected the way our small businesses have been able to operate, including by raising capital to weather the storm. So, I hope that those participating today will not be shy in sharing what you can, including your ideas about what regulators can do to help in the long term and perhaps in the immediate future. We may not be able to address all of these issues, but it is certainly our jobs to try.

“So, I hope that those participating today will not be shy in sharing what you can, including your ideas about what regulators can do to help in the long term and perhaps in the immediate future.”

I see that today's agenda includes a wide array of topics, and discussions will touch on all of the life stages and sizes of small businesses. We will also hear from individual founders who may have distinct experiences given their backgrounds and geography. I look forward to hearing about the successes and challenges such entrepreneurs have faced at the different points in the business lifecycle.

Thank you to Martha and the hardworking team from the Office of the Advocate for Small Business Capital Formation for hosting today's event. Thank you also to the incredible Information Technology team and Office of Public Affairs at the SEC—I know that transitioning to a virtual forum was no small feat. Finally, thank you all for being with us today. I am sure this will be a fantastic event.

Remarks of SEC Commissioner Allison Herren Lee



Good morning and thank you for having me at the 39th annual Government-Business Forum on Small Business Capital Formation. I wish we could all be sitting together in the same room, but I'm grateful that we are able to go forward with the Forum in a virtual environment. I want to thank our Small Business Advocate, Martha Legg Miller, and her staff for putting together this excellent program. Thanks also to all the speakers and panelists for coming together today to share your experiences and insights.

It's challenging to put together an event like this in the present circumstances, and for many it can be challenging even to absorb the daily news and still focus on our day-to-day work. But those very challenges make it all the more important that we go forward with this event for a several different reasons.

First, we know small businesses are particularly vulnerable in our current economic circumstances and it's critically important that we find ways to support them. The Commission's recent temporary crowdfunding rules are a good example.⁵³ The staff listened and crafted rules targeted to meet the immediate needs of small businesses, and I hope time will show that this temporary relief was helpful to both businesses and investors alike. Today provides another opportunity for us to listen to and learn from small businesses to better inform our rulemaking.

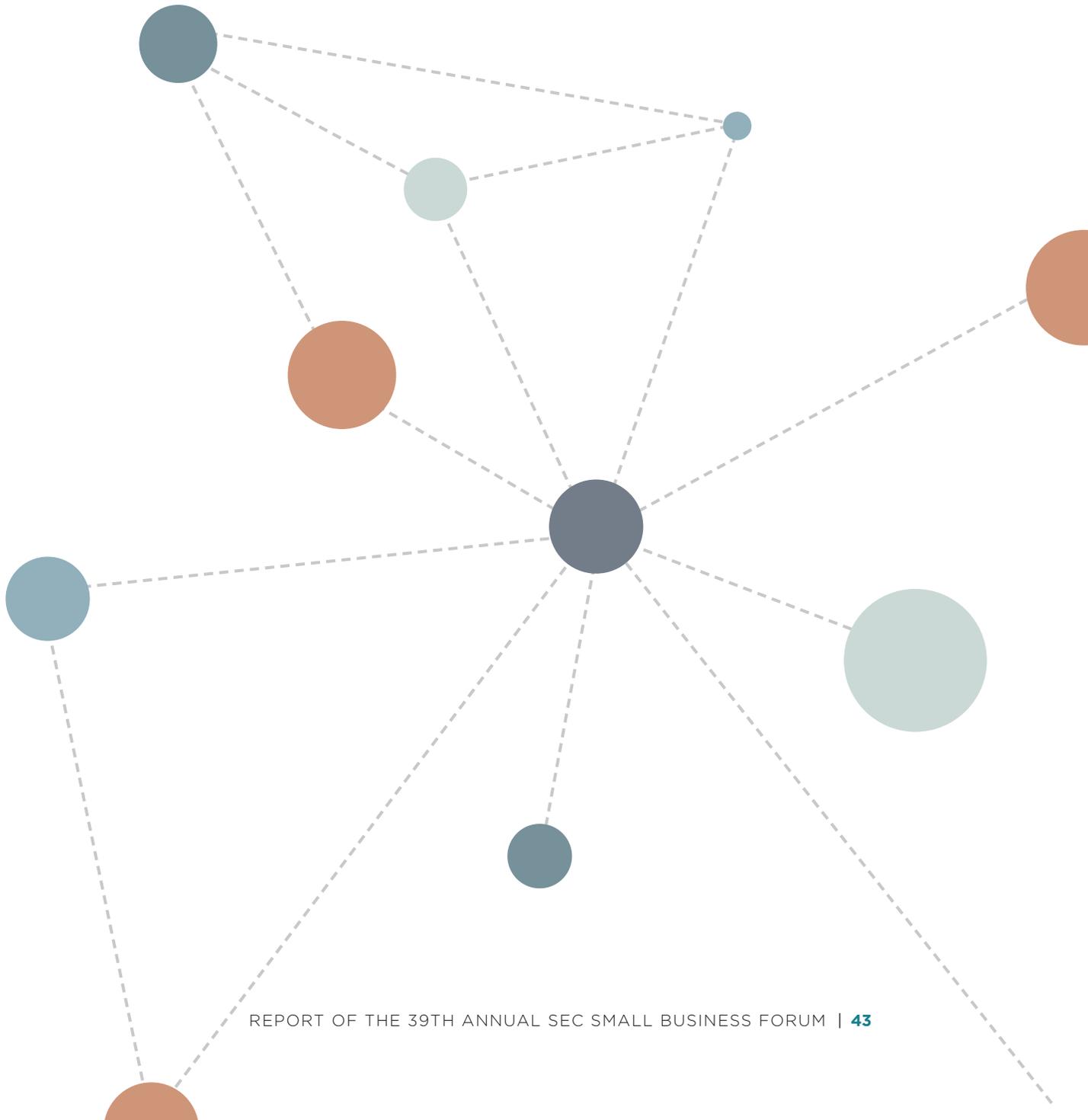
Second, this Forum's mandate is unique in that it calls on us to engage not only with small businesses but also with our fellow regulators. Thus it challenges us to think about where we sit in the broader capital raising and regulatory landscape. For instance, we'll be hearing today from the Small Business Administration. What are the implications of the SBA's Paycheck Protection Program that the SEC should be thinking about? Can we help to leverage the effectiveness of that program? We'll also be hearing from the Wyoming County Economic Development Authority. How can the SEC work with local authorities and supplement their efforts to help small businesses? How can we better assist with educational and other initiatives? It's more important than ever that we collaborate and work across regulatory channels to think holistically about how to facilitate capital formation for small businesses.

“It is crucial that we listen to voices from those communities, that we amplify those voices, and that we take the time to educate ourselves, and inform our regulatory approach, about the systemic and structural issues these communities face.”

Third, the agenda today highlights women- and minority-owned businesses, as well as rural entrepreneurship, and I'm very pleased to see that. Our capital formation solutions in this space should be premised on an understanding of the barriers that exist, and should be tailored to address those barriers.⁵⁴ Too often we take a “rising tide lifts all boats” approach in our efforts to facilitate capital raising, and fail to consider the unique challenges that face particular communities.⁵⁵ Simply taking steps to enhance capital formation broadly does nothing to address

the underlying reasons why equal opportunities for access to capital still elude so many talented and hardworking minority, female, and rural entrepreneurs. It is crucial that we listen to voices from those communities, that we amplify those voices, and that we take the time to educate ourselves, and inform our regulatory approach, about the systemic and structural issues these communities face. The Forum represents a good opportunity for us to do just that.

With that, I'll leave you to get on with your important agenda and thank you all for your time and attention on behalf of small businesses.



APPENDIX D | ABOUT THE OFFICE OF THE ADVOCATE FOR SMALL BUSINESS CAPITAL FORMATION

About the Office

The Office of the Advocate for Small Business Capital Formation is an independent office that began operations in January 2019. It was established pursuant to the [SEC Small Business Advocate Act of 2016](#)⁵⁶ to advance the interests of small businesses and their investors at the SEC and in the capital markets. The Office advocates for small businesses and their investors by conducting outreach to solicit views on relevant capital formation issues, providing assistance to resolve significant problems, analyzing the potential small business impact of proposed regulations and rules, and recommending changes to mitigate capital formation issues and promote the interests of small businesses and their investors.

The Office is responsible for the following:

- » Identifying problems that small businesses have with securing access to capital;
- » Conducting outreach to small businesses and their investors to solicit views on capital formation issues;
- » Assisting small businesses and their investors in resolving significant problems they may have with the SEC or with self-regulatory organizations (SROs);
- » Identifying areas in which small businesses and their investors would benefit from changes in SEC regulations or SRO rules;
- » Analyzing the potential impact on small businesses and their investors of proposed SEC regulations and SRO rules; and
- » Proposing appropriate regulatory and legislative changes to the SEC and Congress to mitigate problems identified with small business capital formation and to promote the interests of small businesses and their investors.

The Office proactively works to identify and address unique challenges faced by minority-owned, women-owned, rural, and natural disaster area small businesses.

Meet the Team



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We would like to acknowledge and thank the teams across the agency that worked tirelessly to help make this event possible, including the Office of Public Affairs and the Office of Information Technology.

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ENDNOTES

- 1 The SEC conducts the Forum annually and prepares this report in accordance with the Small Business Investment Incentive Act of 1980 [15 U.S.C. 80c-1 (codifying section 503 of Pub. L. No. 96-477, 94 Stat. 2275 (1980))].
- 2 Responsibility for the Forum transferred to the Office pursuant to the SEC Small Business Advocate Act of 2016, P.L. 114-284. See <https://www.sec.gov/files/Small%20Business%20Advocate%20Act%20of%202016-as%20amended.pdf>.
- 3 The data presented utilizes self-reported data from registered participants attending via WebEx and data on webcast streaming participants. Participants from outside of the United States, as well as SEC staff, are not represented on the map. Participants could select multiple ecosystem roles, life cycle stages of interest, or value positions for the Forum, or participants could select none. Percentages are calculated as a percentage of total responses for the specific question.
- 4 *Amending the Accredited Investor Definition*, Release No. 33-10734 (Dec. 18, 2019), <https://www.sec.gov/rules/proposed/2019/33-10734.pdf> (Accredited Investor Proposal).
- 5 *Facilitating Capital Formation and Expanding Investment Opportunities by Improving Access to Capital in Private Markets*, Release Nos. 33-10763; 34-88321 (Mar. 4, 2020) <https://www.sec.gov/rules/proposed/2020/33-10763.pdf> (Capital Formation Proposal).
- 6 Through technology that allowed real-time input from the participants, of the eight areas for securities regulation collaboratively identified by participants, participants prioritized the top five significant issues for the group's collaborative discussion.
- 7 The SEC responds to the Forum recommendations pursuant to the Small Business Investment Incentive Act of 1980, as amended by the Economic Growth, Regulatory Relief and Consumer Protection Act of 2018. 15 U.S.C. 80c-1. Section 503 of the Economic Growth, Regulatory Relief and Consumer Protection Act of 2018 [Pub. L. 115- 174, 132 Stat. 1296 (2018)] amended Section 503 of the Small Business Investment Incentive Act of 1980 to add this requirement in new paragraph (e).
- 8 Through technology that allowed real-time input from the participants, participants identified up to three different areas of securities regulation that are having the most significant impact on capital raising.
- 9 The raw data submissions from Forum participants were polished to produce the included word cloud for the report. For example, if a participant submitted "Reg CF" in the word cloud shown in the live discussion, that response was included in the word cloud included in this report with the other responses for "crowdfunding."
- 10 Through technology that allowed real-time input from the participants, participants were able to select their top five significant issues. The percentages were derived by dividing the number of participants that selected the issue by the total number of participants that voted on this question.
- 11 Accredited Investor Proposal.
- 12 *Amending the "Accredited Investor" Definition*, Release No. 33-10824 (Aug. 26, 2020), <https://www.sec.gov/rules/final/2020/33-10824.pdf>.
- 13 Capital Formation Proposal.
- 14 See Office of Information and Regulatory Affairs, Office of Management and Budget, "Securities and Exchange Commission Agency Rule List (Spring 2020)," https://www.reginfo.gov/public/do/eAgendaMain?operation=OPERATION_GET_AGENCY_RULE_LIST¤tPub=true&agencyCode=&showStage=active&agencyCd=3235&csrf_token=9972B4BA3FE877657AE88EA23C0FE3125A29D55AD9123B0CA8D7ACE5C1686598363EE55FEF48B9B93438966631E774CB4A2F.
- 15 *Concept Release on Harmonization of Securities Offering Exemptions*, Release Nos. 33-10649; 34-86129; IA-5256; IC-33512 (Jun. 18, 2019), <https://www.sec.gov/rules/concept/2019/33-10649.pdf> (Harmonization Concept Release).
- 16 See Jay Clayton, Chairman, SEC, Remarks at Meeting of the Small Business Capital Formation Advisory Committee (Nov. 12, 2019), <https://www.sec.gov/news/public-statement/clayton-remarks-small-business-capital-formation-advisory-committee-111219>.
- 17 See Dalia Blass, Director, Division of Investment Management, Speech: PLI Investment Management Institute (July 28, 2020), <https://www.sec.gov/news/speech/bllass-speech-pli-investment-management-institute>.
- 18 Capital Formation Proposal.
- 19 Harmonization Concept Release.
- 20 *Id.*

- 21 Capital Formation Proposal.
- 22 The Commission recently proposed amendments to Rule 15c2-11, though the Forum recommendation on state preemption is outside of the scope of the proposed rulemaking. *See Publication or Submission of Quotations Without Specified Information*, Release No. 34-87115 (Sep. 25, 2019), <https://www.sec.gov/rules/proposed/2019/34-87115.pdf> (Rule 15c2-11 Proposal).
- 23 *See supra* note 8.
- 24 *See supra* note 9. For example, if a participant submitted the terms “proxy,” “proxy disclosures,” “proxy firms,” or “proxy process reform” in the word cloud shown in the live discussion, that response was included in the word cloud included in this report with the other responses for “proxy process.”
- 25 *See supra* note 10.
- 26 *See* Securities Industry and Financial Markets Association, SEC No-Action Letter (Oct. 26, 2017), <https://www.sec.gov/divisions/investment/noaction/2017/sifma-102617-202a.htm>; *See* Asset Management Group and Securities Industry and Financial Markets Association, SEC No-Action Letter (Oct. 26, 2017), <https://www.sec.gov/divisions/marketreg/mr-noaction/2017/sifma-amg-102617-28e.pdf>; *See* Investment Company Institute, SEC No-Action Letter (Oct. 26, 2017), <https://www.sec.gov/divisions/investment/noaction/2017/ici-102617-17d1.htm>.
- 27 *See* Securities Industry and Financial Markets Association, SEC No-Action Letter (Nov. 4, 2019), <https://www.sec.gov/investment/sifma-110419>.
- 28 *See* Commission Statement on Market Structure Innovation for Thinly Traded Securities, Release No. 34-87327 (Oct. 17, 2019), <https://www.sec.gov/rules/policy/2019/34-87327.pdf>.
- 29 *See Reporting Threshold for Institutional Investment Managers*, Release No. 34-89290 (July 10, 2020), <https://www.sec.gov/rules/proposed/2020/34-89290.pdf>. The proposed rule would update the reporting threshold for Form 13F reports from \$100 million to \$3.5 billion.
- 30 *Request for Comment on Earnings Releases and Quarterly Reports*, Release Nos. 33-10588; 34-84842 (Dec. 18, 2018), <https://www.sec.gov/rules/other/2018/33-10588.pdf>.
- 31 *See* SEC Roundtable on Short-Term / Long-Term Management of Public Companies (July 18, 2019), https://www.sec.gov/video/webcast-archive-player.shtml?document_id=roundtable-short-long-term-071819.
- 32 *See* SEC Roundtable on the Proxy Process (Nov. 15, 2018), <https://www.sec.gov/proxy-roundtable-2018>.
- 33 *See Commission Guidance Regarding Proxy Voting Responsibilities of Investment Advisers*, Release No. IA-5325 (Aug. 21, 2019), <https://www.sec.gov/rules/interp/2019/ia-5325.pdf>.
- 34 *See Commission Interpretation and Guidance Regarding the Applicability of the Federal Proxy Rules to Proxy Voting Advice*, Release No. 34-86721 (Aug. 21, 2019), <https://www.sec.gov/rules/interp/2019/34-86721.pdf>.
- 35 *Amendments to Exemptions from the Proxy Rules for Proxy Voting Advice*, Release No. 34-87457 (Nov. 5, 2019), <https://www.sec.gov/rules/proposed/2019/34-87457.pdf>.
- 36 *Exemptions from the Proxy Rules for Proxy Voting Advice*, Release No. 34-89372 (July 22, 2020), <https://www.sec.gov/rules/final/2020/34-89372.pdf>.
- 37 *See Supplement to Commission Guidance Regarding Proxy Voting Responsibilities of Investment Advisers*, Release No. IA-5547 (July 22, 2020), <https://www.sec.gov/rules/policy/2020/ia-5547.pdf>.
- 38 *Report on Modernization and Simplification of Regulation S-K* (Nov. 23, 2016), <https://www.sec.gov/reportspubs/sec-fast-act-report-2016.pdf>.
- 39 *Business and Financial Disclosure Required by Regulation S-K*, Release No. 33-10064 (Apr. 13, 2016), <https://www.sec.gov/rules/concept/2016/33-10064.pdf>.
- 40 *Accelerated Filer and Large Accelerated Filer Definitions*, Release No. 34-88365 (Mar. 12, 2020), <https://www.sec.gov/rules/final/2020/34-88365.pdf>.
- 41 *Management’s Discussion and Analysis, Selected Financial Data, and Supplementary Financial Information*, Release No. 33-10750 (Jan. 30, 2020), <https://www.sec.gov/rules/proposed/2020/33-10750.pdf>.
- 42 *Modernization of Regulation S-K Items 101, 103, and 105*, Release No. 33-10825 (Aug. 26, 2020), <https://www.sec.gov/rules/final/2020/33-10825.pdf>.
- 43 *See* Notice of Filing of Proposed Rule Change to Enhance National Securities Clearing Corporation’s Haircut-Based Volatility Charge Applicable to Illiquid Securities and UITs and Make Certain Other Changes to Procedure XV (Mar. 25, 2020), Release No. 34-88474; File No. SR-NSCC-2020-003, <https://www.sec.gov/rules/sro/nsc/2020/34-88474.pdf>.
- 44 For more information on the Office, visit <https://www.sec.gov/oasb>.

- 45 For more information on resources available for small businesses navigating COVID-19 challenges, visit <https://www.sec.gov/page/covid-19-resources-small-businesses>.
- 46 See <https://www.sec.gov/news/press-release/2020-101>.
- 47 For data and information compiled by our Office on capital raising across demographic groups, see FY2019 Annual Report of the SEC’s Office of the Advocate for Small Business Capital Formation, https://www.sec.gov/files/2019_OASB_Annual%20Report.pdf.
- 48 Source – SBA: <https://cdn.advocacy.sba.gov/wp-content/uploads/2019/05/31131339/Small-Business-Facts-Spotlight-on-Minority-Owned-Employer-Businesses.pdf>.
- 49 *Id.*
- 50 Source – Brookings Institute: <https://www.brookings.edu/research/how-local-leaders-can-stave-off-a-small-business-collapse-from-covid-19/>.
- 51 See Transcript of Meeting of the SEC Small Business Capital Formation Advisory Committee (May 8, 2020) at 112, <https://www.sec.gov/info/smallbus/acsec/sbcfac-transcript-050820.pdf>.
- 52 A short biography geared for children, but interesting for adults too, is Mary N. Oluonye, *Garrett Augustus Morgan: Businessman, Inventor, Good Citizen* (2008).
- 53 See *Temporary Amendments to Regulation Crowdfunding*, Release No. 33-10781 (May 4, 2020), <https://www.sec.gov/rules/interim/2020/33-10781.pdf>.
- 54 See e.g., *Small Business Credit Survey: Report On Minority-Owned Firms*, Federal Reserve Bank of Cleveland, Federal Reserve Bank of Atlanta (Nov. 2017) (finding that “[f]orty percent of non-applicant black-owned firms did not apply for financing because they were discouraged (i.e., they did not think they would be approved), compared with 14% of white-owned firms” and “when comparing minority- and nonminority-owned firms with good personal and/or business credit scores, 40% of minority-owned firms received full amount sought compared to 68% of nonminority-owned firms.”); *Understanding the Landscape: Access to Capital for Women Entrepreneurs*, A Report Prepared by the Federal Research Division, Library of Congress under an Interagency Agreement with the National Women’s Business Council (Mar. 1, 2018) (finding that “women business owners raise smaller amounts of capital to finance their firms and are more reliant on personal, rather than external, sources of financing” and that “[w]omen in business are often tied to an unconscious association with less credibility and a lack of legitimacy”); Alicia Robb, “Access to Capital among Young Firms, Minority-owned Firms, Women-owned Firms, and High-tech Firms,” Small Business Administration Office of Advocacy (April 2013) (“African-American wealth levels are just 8 percent of non-minority wealth levels, and Hispanic wealth levels are just 12 percent of non-minority wealth levels. Only Asians have wealth levels similar to those of non-Hispanic Whites. Low levels of wealth and liquidity constraints can create substantial barriers to entry for would-be entrepreneurs because the owner’s wealth can be invested directly in the business, used as collateral to obtain business loans, or used to acquire other businesses. Investors frequently require a substantial level of an owner’s investment of his/her own capital as an incentive.”).
- 55 See, e.g., Capital Formation Proposal, p. 66, n.134 (Mar. 4, 2020) (asserting that a proposed exemption from the prohibition against general solicitation for “demo days” will particularly benefit issuers “that have historically had less access to capital at start up,” such as “women-owned and minority-owned businesses.”). A similar unsupported claim, that a proposal that applies to all issuers will somehow particularly benefit women-owned or minority-owned businesses, was made in the proposal to amend the accredited investor definition. See Accredited Investor Proposal, pp. 129-30 (Dec. 18, 2019). These proposals in no way address the systemic issues that have traditionally acted as barriers to capital raising for such issuers. See, e.g., Robert W. Fairlie, Ph. D. and Alicia M. Robb, Ph.D., “Disparities in Capital Access between Minority and Non-Minority-Owned Businesses: The Troubling Reality of Capital Limitations Faced by MBEs,” U.S. Dept. of Commerce, Minority Business Development Agency (Jan. 2010) (“A review of national and regional studies over several decades indicates that limited financial, human, and social capital as well as racial discrimination are primarily responsible for the disparities in minority business performance.... Minority-owned businesses are found to pay higher interest rates on loans. They are also more likely to be denied credit, and are less likely to apply for loans because they fear their applications will be denied.”).
- 56 See *supra* note 2.



U.S. SECURITIES AND EXCHANGE COMMISSION