

Small Business Advocate Act of 2016

Below are Sections 4(j) and 40 of the Securities Exchange Act of 1934 (15 U.S.C. §§ 78d and 78qq), as added by the Small Business Advocate Act of 2016 (Public Law 114-284) and amended by the Small Business Access to Capital after a Natural Disaster Act (title IX of division S of Public Law 115-141).

SEC 4(j) [15 U.S. Code §78d]

OFFICE OF THE ADVOCATE FOR SMALL BUSINESS CAPITAL FORMATION

- (1) **OFFICE ESTABLISHED.**—There is established within the Commission the Office of the Advocate for Small Business Capital Formation (hereafter in this subsection referred to as the “Office”).
- (2) **ADVOCATE FOR SMALL BUSINESS CAPITAL FORMATION**
 - (A) **IN GENERAL.**—The head of the Office shall be the Advocate for Small Business Capital Formation, who shall—
 - (i) report directly to the Commission; and
 - (ii) be appointed by the Commission, from among individuals having experience in advocating for the interests of small businesses and encouraging small business capital formation.
 - (B) **COMPENSATION.**— The annual rate of pay for the Advocate for Small Business Capital Formation shall be equal to the highest rate of annual pay for other senior executives who report directly to the Commission.
 - (C) **NO CURRENT EMPLOYEE OF THE COMMISSION.**—An individual may not be appointed as the Advocate for Small Business Capital Formation if the individual is currently employed by the Commission.
- (3) **STAFF OF OFFICE.**—The Advocate for Small Business Capital Formation, after consultation with the Commission, may retain or employ independent counsel, research staff, and service staff, as the Advocate for Small Business Capital Formation determines to be necessary to carry out the functions of the Office.
- (4) **FUNCTIONS OF THE ADVOCATE FOR SMALL BUSINESS CAPITAL FORMATION.**—The Advocate for Small Business Capital Formation shall—
 - (A) assist small businesses and small business investors in resolving significant problems such businesses and investors may have with the Commission or with self-regulatory organizations;
 - (B) identify areas in which small businesses and small business investors would benefit from changes in the regulations of the Commission or the rules of self-regulatory organizations;
 - (C) identify problems that small businesses have with securing access to capital, including any unique challenges to minority-owned small businesses, women-owned small businesses, and small businesses affected by hurricanes or other natural disasters;
 - (D) analyze the potential impact on small businesses and small business investors of—
 - (i) proposed regulations of the Commission that are likely to have a significant economic impact on small businesses and small business capital formation; and

- (ii) proposed rules that are likely to have a significant economic impact on small businesses and small business capital formation of self-regulatory organizations registered under this chapter;
 - (E) conduct outreach to small businesses and small business investors, including through regional roundtables, in order to solicit views on relevant capital formation issues;
 - (F) to the extent practicable, propose to the Commission changes in the regulations or orders of the Commission and to Congress any legislative, administrative, or personnel changes that may be appropriate to mitigate problems identified under this paragraph and to promote the interests of small businesses and small business investors;
 - (G) consult with the Investor Advocate on proposed recommendations made under subparagraph (F); and
 - (H) advise the Investor Advocate on issues related to small businesses and small business investors.
- (5) ACCESS TO DOCUMENTS.—The Commission shall ensure that the Advocate for Small Business Capital Formation has full access to the documents and information of the Commission and any self-regulatory organization, as necessary to carry out the functions of the Office.
- (6) ANNUAL REPORT ON ACTIVITIES
- (A) IN GENERAL.—Not later than December 31 of each year after 2015, the Advocate for Small Business Capital Formation shall submit to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives a report on the activities of the Advocate for Small Business Capital Formation during the immediately preceding fiscal year.
- (B) CONTENTS.—Each report required under subparagraph (A) shall include—
- (i) appropriate statistical information and full and substantive analysis;
 - (ii) information on steps that the Advocate for Small Business Capital Formation has taken during the reporting period to improve small business services and the responsiveness of the Commission and self-regulatory organizations to small business and small business investor concerns;
 - (iii) a summary of the most serious issues encountered by small businesses and small business investors, including any unique issues encountered by minority-owned small businesses, women-owned small businesses, and small businesses affected by hurricanes or other natural disasters and their investors, during the reporting period;
 - (iv) an inventory of the items summarized under clause (iii) (including items summarized under such clause for any prior reporting period on which no action has been taken or that have not been resolved to the satisfaction of the Advocate for Small Business Capital Formation as of the beginning of the reporting period covered by the report) that includes—
 - (I) identification of any action taken by the Commission or the self-regulatory organization and the result of such action;
 - (II) the length of time that each item has remained on such inventory; and
 - (III) for items on which no action has been taken, the reasons for inaction, and an identification of any official who is responsible for such action;
 - (v) recommendations for such changes to the regulations, guidance and orders of the Commission and such legislative actions as may be appropriate to resolve problems with the

Commission and self-regulatory organizations encountered by small businesses and small business investors and to encourage small business capital formation; and
(vi) any other information, as determined appropriate by the Advocate for Small Business Capital Formation.

- (C) CONFIDENTIALITY.—No report required by subparagraph (A) may contain confidential information.
- (D) INDEPENDENCE.—Each report required under subparagraph (A) shall be provided directly to the committees of Congress listed in such subparagraph without any prior review or comment from the Commission, any commissioner, any other officer or employee of the Commission, or the Office of Management and Budget.
- (7) REGULATIONS.—The Commission shall establish procedures requiring a formal response to all recommendations submitted to the Commission by the Advocate for Small Business Capital Formation, not later than 3 months after the date of such submission.
- (8) GOVERNMENT-BUSINESS FORUM ON SMALL BUSINESS CAPITAL FORMATION.—The Advocate for Small Business Capital Formation shall be responsible for planning, organizing, and executing the annual Government-Business Forum on Small Business Capital Formation described in section 80c–1 of this title.
- (9) RULE OF CONSTRUCTION.—Nothing in this subsection may be construed as replacing or reducing the responsibilities of the Investor Advocate with respect to small business investors.

SEC. 40 [15 U.S. Code §78qq]

SMALL BUSINESS CAPITAL FORMATION ADVISORY COMMITTEE

(a) ESTABLISHMENT AND PURPOSE

- (1) ESTABLISHMENT.—There is established within the Commission the Small Business Capital Formation Advisory Committee (hereafter in this section referred to as the “Committee”).
- (2) FUNCTIONS.—
 - (A) IN GENERAL.—The Committee shall provide the Commission with advice on the Commission’s rules, regulations, and policies with regard to the Commission’s mission of protecting investors, maintaining fair, orderly, and efficient markets, and facilitating capital formation, as such rules, regulations, and policies relate to—
 - (i) capital raising by emerging, privately held small businesses (“emerging companies”) and publicly traded companies with less than \$250,000,000 in public market capitalization (“smaller public companies”) through securities offerings, including private and limited offerings and initial and other public offerings;
 - (ii) trading in the securities of emerging companies and smaller public companies; and
 - (iii) public reporting and corporate governance requirements of emerging companies and smaller public companies.
 - (B) LIMITATION.—The Committee shall not provide any advice with respect to any policies, practices, actions, or decisions concerning the Commission’s enforcement program.

(b) MEMBERSHIP

- (1) IN GENERAL.—The members of the Committee shall be—
 - (A) the Advocate for Small Business Capital Formation;

- (B) not fewer than 10, and not more than 20, members appointed by the Commission, from among individuals—
 - (i) who represent—
 - (I) emerging companies engaging in private and limited securities offerings or considering initial public offerings (“IPO”) (including the companies’ officers and directors);
 - (II) the professional advisors of such companies (including attorneys, accountants, investment bankers, and financial advisors); and
 - (III) the investors in such companies (including angel investors, venture capital funds, and family offices);
 - (ii) who are officers or directors of minority-owned small businesses or women-owned small businesses;
 - (iii) who represent—
 - (I) smaller public companies (including the companies’ officers and directors);
 - (II) the professional advisors of such companies (including attorneys, auditors, underwriters, and financial advisors); and
 - (III) the pre-IPO and post-IPO investors in such companies (both institutional, such as venture capital funds, and individual, such as angel investors); and
 - (iv) who represent participants in the marketplace for the securities of emerging companies and smaller public companies, such as securities exchanges, alternative trading systems, analysts, information processors, and transfer agents; and
- (C) three non-voting members—
 - (i) one of whom shall be appointed by the Investor Advocate;
 - (ii) one of whom shall be appointed by the North American Securities Administrators Association; and
 - (iii) one of whom shall be appointed by the Administrator of the Small Business Administration.
- (2) TERM.—Each member of the Committee appointed under subparagraph (B), (C)(ii), or (C)(iii) of paragraph (1) shall serve for a term of 4 years.
- (3) MEMBERS NOT COMMISSION EMPLOYEES.—Members appointed under subparagraph (B), (C)(ii), or (C)(iii) of paragraph (1) shall not be treated as employees or agents of the Commission solely because of membership on the Committee.
- (c) Chairman; vice chairman; secretary; assistant secretary
 - (1) IN GENERAL.—The members of the Committee shall elect, from among the members of the Committee—
 - (A) a chairman;
 - (B) a vice chairman;
 - (C) a secretary; and
 - (D) an assistant secretary.
 - (2) TERM.—Each member elected under paragraph (1) shall serve for a term of 3 years in the capacity for which the member was elected under paragraph (1).
- (d) MEETINGS
 - (1) FREQUENCY OF MEETINGS.—The Committee shall meet—

- (A) not less frequently than four times annually, at the call of the chairman of the Committee; and
 - (B) from time to time, at the call of the Commission.
- (2) NOTICE.—The chairman of the Committee shall give the members of the Committee written notice of each meeting, not later than 2 weeks before the date of the meeting.
- (e) COMPENSATION AND TRAVEL EXPENSES.—Each member of the Committee who is not a full-time employee of the United States shall—
- (1) be entitled to receive compensation at a rate not to exceed the daily equivalent of the annual rate of basic pay in effect for a position at level V of the Executive Schedule under section 5316 of title 5 for each day during which the member is engaged in the actual performance of the duties of the Committee; and
 - (2) while away from the home or regular place of business of the member in the performance of services for the Committee, be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in the Government service are allowed expenses under section 5703 of title 5.
- (f) STAFF.—The Commission shall make available to the Committee such staff as the chairman of the Committee determines are necessary to carry out this section.
- (g) REVIEW BY COMMISSION.—The Commission shall—
- (1) review the findings and recommendations of the Committee; and
 - (2) each time the Committee submits a finding or recommendation to the Commission, promptly issue a public statement—
 - (A) assessing the finding or recommendation of the Committee; and
 - (B) disclosing the action, if any, the Commission intends to take with respect to the finding or recommendation.
- (h) FEDERAL ADVISORY COMMITTEE ACT.—The Federal Advisory Committee Act (5 U.S.C. App.) shall not apply with respect to the Committee and its activities.