



U.S. Securities and Exchange Commission

Office of the Advocate for Small Business Capital Formation

Small Cap Policy Roundtable: Reassessing the Framework for Small Public Companies

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U.S. SECURITIES AND EXCHANGE COMMISSION

SMALL CAP POLICY ROUNDTABLE

Amended: 7/14/2025

Wednesday, June 18th, 2025

10:59 a.m.

U.S. Securities and Exchange Commission

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

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

2 MS. RIEGEL: Hi, I'm Jenny Riegel with the
3 SEC's Small Business Advocacy Team and I'm thrilled to
4 be joined here today to moderate a discussion on
5 reassessing a small public company framework.

6 So you guys just finished a very insightful
7 discussion on IPO onramp and we're here to talk about
8 the next step in the process on being a public
9 company. We often hear, from small public companies,
10 on how the IPO or being public can be costly and
11 daunting and the costs that are associated.

12 So we wanted to spend the next few minutes
13 discussing kind of what are the ways to reassess this
14 public company framework and where can we go from
15 here.

16 So thank you so much for joining me today.
17 I'll let the panelists introduce themselves sharing a
18 little bit about who you are and how your work relates
19 to the public company framework.

20 I'll start off with Dan.

21 MR. ZINN: Sure. I'm Dan Zinn. I'm the
22 general counsel and chief of staff at OTC Markets. We
23 operate trading markets for over 12,000 publicly
24 traded companies, over 3,000 that are U.S. based. So
25 a discussion on small public companies and what we can

1 do to improve their experience is really our day-to-
2 day business. So very happy to be here. Thank you so
3 much for the invite.

4 MS. NEARY: I'm Melanie Neary. I'm a
5 partner at Gibson Dunn in San Francisco and my
6 practice focuses largely on capital markets and
7 securities regulation and corporate governance. And I
8 work with both public companies and investors, largely
9 in the life sciences space and many of whom fall under
10 the smaller reporting company framework.

11 So happy to be here today and to chat with
12 all of you about the framework.

13 MS. CHOI: Hi everyone, my name is Eun Ah
14 Choi, I am senior vice president and global head of
15 regulatory operations at NASDAQ. I've a unique
16 responsibility of managing our global listing
17 qualification program both for the U.S. and in Europe
18 and as part of that we get to hear from over 4,000
19 issuers who are listed with our exchanges and have
20 received a lot of great feedback about this topic in
21 particular.

22 So very happy to be able to share their
23 perspectives and views in addition to our own, as a
24 regulator and with our mission founded on capital
25 formation, investor protection, and maintaining

1 efficient and orderly markets.

2 At a personal level, I've been part of the
3 capital markets ecosystem for about 30 years and have
4 represented issuers and underwriters at a law firm,
5 have been with an investment bank, and have also been
6 with global companies working on M&A, venture capital,
7 and securities offerings.

8 So it's a privilege to be here.

9 MR. GOLDBERG: Hi, I'm Brad Goldberg. I'm a
10 partner at Cooley. I co-head our firms corporate
11 governance and securities regulation practice. I
12 spend all my time preparing companies to go public and
13 then representing them as public companies post-IPO.

14 People that know me know that I like to get
15 into the weeds and I also have some fairly strong
16 opinions, so I'm excited to dig into some of these
17 rules and discuss how they might be improved.

18 MS. ZEPRALKA: And I'm Jennifer Zepralka.
19 I'm a partner at Mayer Brown here in D.C., in the
20 capital markets group with a focus on advising public
21 companies, of all sizes, with their clients with SEC
22 requirements.

23 And prior to that I was the Office Chief in
24 the Office of Small Business Policy here in the
25 Division of Corporation Finance at the SEC. So I've

1 spent many years thinking about the issues facing
2 small reporting companies as they are dealing with SEC
3 regulations.

4 MS. RIEGEL: Excellent. I'm looking forward
5 to hearing those opinions and thoughts and feedback.

6 DISCUSSION ON WAYS TO REASSESS PUBLIC COMPANY
7 FRAMEWORK

8 MS. RIEGEL: I want to kick it off with the
9 overarching question here, which is what improvements
10 should we be considering to support companies, public
11 companies, particularly smaller companies, to stay
12 public?

13 Now, I know there are other market forces at
14 play that are really outside of the SEC's hands, so
15 since we're here at the SEC, I would love to focus on
16 kind of those general regulatory concerns.

17 Now, to help organize our discussion,
18 because this is quite the big question, I'd like to
19 kind of break it into three different categories.
20 Looking at disclosure and financial statements, then
21 turning to categories and filer status, and ending
22 with filing requirements.

23 Eun Ah, I know a lot of people have thoughts
24 on this but I'd love for you to kick off the
25 discussion on disclosure and financial statements.

1 MS. CHOI: Thank you. So as part of sort of
2 our overarching policy advocacy work at NASDAQ we did
3 in fact get feedback and did surveys with our issuers
4 to talk about what is your public company experience
5 like and what can be improved from that perspective.

6 And so we issued a comprehensive capital
7 formation white paper earlier this year and it has a
8 lot of deference to specific recommendations on it and
9 I'll cover some of that today, but when we take a look
10 at some of the feedback that we have received, I would
11 probably bucket them into four high-level categories
12 and themes that are coming out of it.

13 One, is that disclosure should be based on
14 materiality. Materiality with respect to the business
15 and the financial condition of the company and that
16 that should be the lowest SAR for the SEC's
17 regulations and what the company could have to
18 provide.

19 And that is important not just for issuers
20 but also for investors because they find immaterial --
21 investors find immaterial information to be unwieldy,
22 unhelpful, and ultimately confusing, in terms of how
23 they should be thinking about the company's securities
24 and how they should be making their investment and
25 voting decisions. So that's really theme number one.

1 Theme number two is related to scaled
2 disclosure or tailored disclosure requirements.
3 Meaning that there are different sized companies out
4 there and there are different industries and there's
5 different lifecycles and revenue models and business
6 models that are associated with public companies.

7 So how can we better tailor the specific
8 disclosure requirements to fit the type of company
9 that exists and provide important disclosure
10 information for the investors? So I know we're going
11 to talk about filer status later, but one is related
12 to just pure quantitative metrics associated with
13 companies, whether it's market cap revenues or others,
14 but there are also different industry groups like life
15 sciences and biotech companies that have a very, very
16 different revenue model from other types of companies
17 and manufacturers in particular.

18 There are also community banks that have
19 very specific needs and provide services to a very
20 sort of, you know, specific customers and they have
21 their constituents and they have their own set of
22 regulations that they have to abide by.

23 So the scalability and the tailoring of
24 regulations was an important thing coming out of these
25 discussions.

1 The third is cost-benefit analysis. And I
2 know that the Commission thinks a lot about that but I
3 do think that there is an impression that the actual
4 costs of the fees and the burden to operation lies the
5 disclosure machine with some of the rules that have
6 come into past like cybersecurity and climate
7 disclosure.

8 There is a though that maybe the cost-
9 benefit analysis could have gone more into obtaining
10 information about what is truly affecting the issuers
11 to be able to operationalize a disclosure
12 requirements.

13 And then last is concern about regulatory
14 whiplash. So there is a real concern that, politics
15 aside, with different leadership at the SEC the
16 guidance and the rules just kind of swing back and
17 forth without sort of stability in terms of what the
18 companies and investors can expect out of the
19 disclosure obligations.

20 So with that in mind, some of the very
21 specific recommendations and proposals and ideas that
22 we have come up with, with this feedback but also
23 really anchoring them in the sort our core mission of
24 investor protection, is related to thinking about the
25 emerging growth company phasing period and thinking

1 about then expanding it to just solid five years and
2 then having revenues and convertible debt offerings
3 and other characteristics and triggers come in for the
4 second five years.

5 So really giving companies that ability to
6 breathe within those five years with the benefits.
7 Second, is harmonizing smaller reporting company and
8 isolated filer definition so that there is clear
9 understanding of where that threshold fits between the
10 two. Third is, of course, with respect to accelerated
11 filers in particular and the large, accelerated
12 filers. And when you have the same requirements for a
13 \$700 million public float company and a trillion or
14 multi-trillion dollar or trillion plus public company,
15 that doesn't seem like that scaling is working and
16 probably should be recalibrated in some shape or form.

17 And the, of course, WIT-C eligibility
18 requirements and thinking about should there be more
19 credit given to issuers that have been able to engage
20 in successful offerings? Should it just be non-
21 convertible debt or should it include equities and
22 other sort of requirements to show that seasoning.

23 And then in terms of very specific
24 disclosure requirements, I think we can go broad and
25 very, very specific. And I think we can talk about

1 things related to proxy and proposals related to that
2 and sort of the burdens that companies have, both in
3 terms of the actual disclosure related but interacting
4 with shareholders to come up with proposals in areas
5 that create distraction for the companies and cost for
6 the companies, especially with intermediaries and OBO
7 designation and I think there's some work that can be
8 done with that area, executive comp disclosure.

9 The one that we hear about quite a bit is
10 actually with respect to pay performance and
11 compensation actually paid and whether that is really
12 needed for investors to understand executive
13 compensation of the company and that information seems
14 to be already provided in the summary comp table.

15 And another piece of that specific
16 disclosure is that for that one tabular disclosure
17 companies actually have to outsource their
18 calculations to a third party because it's so
19 complicated.

20 So from a cost-benefit perspective, what is
21 the costs that companies have to take on to be able to
22 generate that disclosure versus the benefit that we
23 are providing to the investors to be able to do that.

24 SK risk factors, maybe shortening that to be
25 more specific and thinking about creative ways for

1 companies to be able to put on their website more
2 macroeconomic or generalized industry risk factors so
3 that the filings themselves are not overrun with extra
4 disclosures and I think there's different ways of
5 thinking about that.

6 And perhaps thinking about the preliminary
7 proxy statement requirements and really limiting that
8 to specific mergers or contests or significant,
9 extraordinary transactions and proposals that the
10 shareholders have to think about.

11 I can go on and on but will just do one
12 more. Just something as simple as Section 16
13 reporting, the two-day business requirements
14 reporting. Maybe we can give grace periods and catch-
15 up reporting for things like vesting of the restricted
16 stock or compensation stock rewards so that there is a
17 little bit of reprieve from all the things that public
18 companies have to do.

19 I'll stop there and allow other people to
20 talk about their recommendations.

21 MR. GOLDBERG: I mean, I'm happy to jump in.
22 You covered a lot of great points. I think maybe we
23 should start with filer status. I think you need a
24 PhD or something to understand how you move the
25 process, SRC, accelerated filer, large, accelerated

1 filer. We put together a flowchart, I think it was
2 last year, that we thought would be helpful for
3 everyone to kind of navigate.

4 I didn't realize what we were getting
5 ourselves into when we endeavored on that. I remember
6 on a Saturday walking my dog and talking to somebody
7 at the firm as we went through the 80 percent tests
8 and all of this stuff and he explained to me why I had
9 no idea what it was actually saying and then we
10 identified that there was a gap that needed to be
11 addressed and we reached out to the SEC, who
12 acknowledged that there was oh, wait, yeah, it's not
13 quite clear and we heard back and got the answer. But
14 all that's to say is it shouldn't be that difficult to
15 figure out what status you're in.

16 I have had some involvement with the Society
17 of Corporate Governance. They're in the process of
18 preparing something similar to what NASDAQ has put
19 together, but a letter to the SEC with some
20 suggestions on how we can streamline the filer status
21 thresholds and also addressing some of these other
22 rule-based questions.

23 But on the filer status the proposal
24 essentially is to do a couple of things. One, make
25 them market cap and revenue based at a much higher

1 threshold. The original thresholds were set, I think,
2 in 2005 and haven't changed since then.

3 The Society did some work and some data
4 analysis and determined that if you move large
5 accelerated filer status up to a \$2 billion market cap
6 and a 1.235 revenue, based on the EGC test, that
7 you'll capture essentially 17 percent of what would be
8 large accelerated filers in today's market, which
9 equates roughly to the same percentage that was --
10 that Commissioner Uyeda mentioned was in existence at
11 2005.

12 And so that's 700 million up all the way to
13 2 billion. The other thing would be to eliminate the
14 accelerated filer status completely. The only thing
15 that being an accelerated filer gets you essentially
16 is a little bit more extra time on your 10Q, the 60
17 days, but it also has this draconian impact that you
18 can be an SRC and an accelerated filer and then have
19 to do the auditor attestation. So I think that's
20 something that could be streamlined for sure.

21 And then the concepts on the revenue and the
22 market cap would be instead of looking at the end of
23 the second quarter you wait until the end of the year,
24 you look at where you are, if you cross the threshold,
25 you don't actually opt in right away, you get a full

1 year and then you look at it again. If you've gone
2 below then you back out again and you test the next
3 year and if you're still above then you start
4 reporting and I think that's some of the ways we could
5 deal with a lot of the complexities, especially on the
6 moving in and out of the SRC status.

7 So essentially you would be a non-
8 accelerated filer SRC group and a large, accelerated
9 filer group. I think that would go a long way towards
10 making some of this a little bit less complicated and
11 easier for issuers to understand and navigate.

12 MS. NEARY: I like that. And you would do
13 revenue and market cap, right? It's not an or?

14 MR. GOLDBERG: It would be revenue and
15 market cap to move up and then if you're down on
16 either/or, you wouldn't move down.

17 MS. NEARY: Yeah, okay. Yeah, because I
18 see, especially in the life science space it's the
19 market cap. Most of them don't have revenue, who I'm
20 working with, but market cap, with the market being so
21 volatile, they're in, they're out, they're in, they're
22 out and then what are we even trying to comply with?

23 And then as we've touched on many times
24 earlier, like the costs associated with being the
25 large, accelerated filer are significant. So having

1 that certainty of I'm in this bucket for as long as I
2 have no revenue or revenue below 2 billion, I think,
3 would go a really long way.

4 MS. CHOI: I mean, the category of great
5 minds think alike. I mean, that was exactly sort of
6 how we were thinking about it too, in terms of not
7 just raising the market cap but really having some
8 kind of a revenue or gross profit or some kind of
9 final metric that ties into that maturity or that
10 lifecycle of a company.

11 And I do biotech's in particular have that
12 issue and they actually have that issue sometimes with
13 the, you know, sometimes with the other filer
14 categorization as well because they might just have
15 that revenue come in because of a milestone payment
16 but then they don't have a recurring revenue quite
17 yet.

18 So I think thinking about it from that
19 perspective and that's why we thought you know
20 expanding out the -- growth company requirements and
21 harmonizing the smaller reporting company requirement
22 with the accelerated filer requirements would really
23 help those type of companies that may have one off,
24 you know, a good thing in terms of money coming in,
25 but triggers and has unintended consequences because

1 they had one milestone payment or some other even that
2 occurred but that's not recurring.

3 MS. NEARY: That's a really good point for
4 those one-off payments.

5 MS. CHOI: Yeah.

6 MS. NEARY: And realistically, their
7 payments aren't changing so why should the disclosure
8 need to change so significantly for that one year?

9 MS. CHOI: Yeah.

10 MR. ZINN: So pull us back and make it so
11 you're only allowed to ask one question this whole
12 time and we'll just take it from there.

13 (Laughter.)

14 MR. ZINN: But I want to pull it back into
15 disclosures because I think there's so much ground to
16 cover there and excellent points that NASDAQ raised in
17 the white paper and that I think are relevant to a lot
18 of the public company experience has -- I'm seeing my
19 role as the different perspective here.

20 But specific to smaller companies. There
21 are scaled disclosure requirements that apply and to
22 give the SEC credit for all the work that they've done
23 in 2021, when it effected changes to it, Rule
24 15c2-11, which does not roll off the tongue but is a
25 very impactful rule that sets forth disclosure

1 requirements for companies that are not necessarily
2 listed on any exchange. So from the OTC perspective.

3 It includes things like SEC reporting and
4 all the issues attended to that that you've gone over
5 but also allows for an enumerated list of material
6 information that becomes the basis for ongoing
7 disclosure on an annual and quarterly basis that
8 companies in our markets can use to reduce the costs,
9 reduce the complexity a little bit, and focus, really
10 too I think everybody's point on what's actually
11 important to investors.

12 So thinking about ways to highlight
13 something like Rule 15c2-11 disclosure, Eun Ah
14 mentioned community banks. We have hundreds of
15 community banks and we have a bank standard disclosure
16 based on what they're already doing for their
17 regulatory requirements to being with. And just
18 scaling that a little bit with what's expected, in
19 terms of financial disclosure of a public company, and
20 then allowing them to access the markets and, as you
21 know, for a lot of the community banks, they're really
22 focused on their community.

23 The community bank in Pennsylvania is not so
24 worried about the Oregon investor, right? They want
25 to make sure that they're providing enough access to

1 the folks that are really their depositors and are in
2 that area.

3 So there are ways that already exist to
4 scale disclosure and maybe can even present an example
5 for some of the modifications that we're talking
6 about.

7 MS. ZEPRALKA: So what I'm hearing is sort of
8 it's a combination of tailoring and scaling, right?
9 So it's like the tailoring is more -- and it all comes
10 back to what do investors really need to know about
11 these companies. But tailoring would be sort of
12 across the board, not necessarily just for the
13 smallest companies but focusing in on the getting the
14 relevant 10 things, 20 things that investors really
15 need to know about life sciences companies, what
16 biotech's about, you know, you name it.

17 But then the scaling, which as I agree, that
18 the Commission has lots of scaled rules already for
19 smaller companies. There were some that could
20 probably be scaled further -- is scaled. It's not
21 perfect but they tried and I have thoughts about
22 exactly how to scale --

23 MR. GOLDBERG: -- SEC?

24 MS. ZEPRALKA: It is, but they still have to
25 do the --

1 MR. GOLDBERG: I mean, for the EGC, but
2 it --

3 MS. ZEPRALKA: They don't do it all.

4 MR. GOLDBERG: Right. Right, but the scale.

5 MS. ZEPRALKA: But I just -- the trick for
6 the regulators or the challenge for the regulators
7 here is scaling well but not taking away what
8 investors are going to need. And they can't -- they
9 don't always know that upfront, right, as they're
10 drafting a rule.

11 So it's sort of are we looking at a
12 retrospective? Are we revisiting rules that have some
13 scaling but not enough or no scaling at all and trying
14 to figure out what are investors really want here?

15 And is there a way that maybe more of these
16 requirements can be principal's based so that those
17 smaller companies can say this is relevant here but
18 not there so I'm only going to address what is
19 relevant to my business, my company, what my investors
20 need.

21 Now, again, what we're talking about
22 challenges for the regulators, that you lose
23 comparability there. It makes it harder for investors
24 to compare those companies against each other, but I
25 think you can come up with some overarching principles

1 that are based on investor requirements and it can be
2 very helpful.

3 MR. GOLDBERG: I guess in my mind the word
4 scaling meant eliminate, so I --

5 (Laughter.)

6 MR. GOLDBERG: -- but on the comparability,
7 I do think that is something that gets discussed and
8 it's a fair point but I also think, with the number of
9 rules that the companies have to address, what you
10 ultimately often see is boilerplate disclosure and
11 everybody is kind of saying the same thing. And so I
12 don't actually think that you're getting that much
13 information and it's not servicing the real intent, I
14 don't think, behind the rule because you have
15 everybody just sort of going down to the lowest common
16 denominator and looking at everyone's disclosure and
17 it's not really telling you much.

18 So I do think that's an issue and it goes
19 back to your point about focusing on materiality and
20 getting back to what are the important things that an
21 investor needs to know about a company and not having
22 the special interests and the political aspect and the
23 social issue, you know, wind their way into the
24 disclosure and have a kind of regulation by disclosure
25 mechanism. I think there are other ways to address

1 those and I guess I sound like Commissioner Peirce, but
2 I do think it's a really good point in that there are
3 other ways to address those things while making sure
4 that the investors are getting the material
5 information.

6 MS. RIEGEL: So it's not often that we have
7 five securities lawyers thinking about ways to look at
8 policy. Can we dive in more on kind of when we talk
9 about materiality and when talk -- and you've given a
10 number of specifics, which is fantastic, because when
11 I go back and -- when I was in Corp Fin and had my
12 rule writing hat on it's helpful to have ideas and
13 thoughts when you're looking at what is happening in
14 the world and where can we go with this.

15 It's helpful to have ideas and suggestions
16 and as the Small Business Advocacy Office, it's
17 helpful to know where people's thresholds are and
18 where the line is. So I'd love to hear, are there
19 other suggestions and ideas? I know we've delved into
20 a lot and you started with a very long list, which is
21 phenomenal, but are there other ideas or other areas
22 that we haven't covered kind of on the disclosure and
23 financial statement piece that you would want to talk
24 about now?

25 MR. GOLDBERG: I'm mean, I'm happy to go.

1 Realizing that I'm cannibalizing probably some of my
2 own existence, I do think another are that could be
3 addressed is the quarterly reporting and the 10Q
4 requirements, looking at whether it could go to more
5 of an FPI model and you're doing something semi-
6 annually or not even at all because, quite frankly,
7 the earnings release is really what everyone is
8 focused on. That's where the financial information
9 for the quarter is. There's not that much in a Q that
10 tends to really move anyone's needle, as far as
11 materiality or investor -- I'm not sure they pay that
12 much attention to the Q quite honestly, but it's a
13 significant amount of work for the company to do on a
14 quarterly basis.

15 So I think that's something worth looking
16 at, is there something that could be done there. Eun
17 Ah mentioned Section 16, I can't tell you the amount
18 of hours that have been taken up in my brain by
19 whether a grant or a trust or a this or a that
20 requires a Form 4 in a two-business day window. That
21 really I don't think is material.

22 So I think there's a way that we can
23 probably look at addressing some of those issues and
24 maybe it's just again, worded on the next form and not
25 on a short fuse. Could we eliminate Rule 144 filings

1 for the smaller companies? Those are a bit of
2 headache especially now that they need to be filed on
3 the same day.

4 I don't know if other people thought of
5 other suggestions as well.

6 MS. CHOI: The 10Q and the sort of the semi-
7 annual reporting regime is something that we do hear
8 about quite a bit. And I do agree that if you have a
9 quarterly earnings released that's already published,
10 it has a lot of really important information, than you
11 can couple that with an 8K to get the important
12 material information out to the investors on a timely
13 basis.

14 So that is something that I do think that
15 the Commission should really think seriously about. I
16 know it comes up in different conversations and I do
17 think that it will have a practical impact for
18 companies and it will still provide robust and
19 necessary information for the investors as well.

20 MS. NEARY: Yeah, I think it would need to
21 be coupled with an 8K for securities offerings --

22 MS. CHOI: Exactly. Yes. Yeah.

23 MS. NEARY: -- matters but I do think there
24 is a creative solution to that that gets rid of kind
25 of, especially in May, repeating so much of what you

1 just put out. Often they're six or eight weeks prior.

2 MS. CHOI: Yeah.

3 MR. GOLDBERG: Speaking of 8K, I promised my
4 partner that I would bring this up, but the kind of
5 draconian result if you miss an 8K or certain 8K's
6 that put you in a penalty box for 12 months and not
7 able to use short Form S3 to sell securities, I think
8 that's something that should be looked at.

9 You know, the fact that you forgot to
10 disclose your frequency of what you decide to
11 understand -- means that you can't use an S3 for, I'm
12 not sure it makes time or sense to me.

13 And so maybe looking at does it just all go
14 to not timely but currency or what --

15 MS. ZEPRALKA: Or expand the list.

16 MR. GOLDBERG: -- or expand the safe
17 harbors?

18 MS. CHOI: Yeah.

19 MS. ZEPRALKA: Or have the staff be more
20 transparent about the waiver process?

21 MS. CHOI: Yeah.

22 MR. GOLDBERG: Or willing to waive --

23 MS. ZEPRALKA: The case that is a black box.

24 You don't know how many waivers they're granting.

25 You can't see what sort of arguments are made. As a

1 practitioner, if you're helping your client with
2 requesting a waiver of S3 eligibility, you're starting
3 from scratch every time.

4 MS. CHOI: Yeah.

5 MR. GOLDBERG: Yeah.

6 MS. ZEPRALKA: And so all of that could be -
7 -

8 MR. GOLDBERG: The other one I promised I
9 would mention is I would mention is XBRL tagging and
10 the fact that you might have missed tagging your
11 equity grant policy language in your proxy somehow
12 means that you now can't file an S3, also, I don't
13 think that makes sense and I'm not even sure that was
14 really the intent, but maybe it was. But I think it's
15 worth looking at that as well. Those seem to be
16 fairly draconian in results.

17 MS. ZEPRALKA: Along that line also just
18 thinking XPLR4 for smaller companies. Is it really
19 necessary for the very smallest companies to be having
20 the expense of XPLR tagging. Are the analysts using
21 it?

22 MS. NEARY: Totally, and I see the most
23 issues with those smaller companies XPLR tagging,
24 requirements amendments and extra costs to fix the
25 problems that originally came up. And again, like

1 wouldn't.

2 MR. ZINN: And I'll just point out again
3 that there are scale, in our market, requirements for
4 things like 8K, we call it a current event report.
5 But a four-day window with a more well-defined list of
6 what needs to be disclosed there. Provides an
7 opportunity for, again, smaller companies.

8 And I will dive really, really into it. A
9 very specific point that I think Eun Ah raised earlier
10 with respect to OBOS, the Objecting Beneficial Owners
11 and how that ties into a Section 16 requirements and
12 maybe go in a slightly different direction but it is
13 so valuable for companies to understand who their
14 investors are and the fact that OBO requirements don't
15 necessarily carve out insiders, affiliates of the
16 company. If you can build up a position in the
17 company as an OBO and particularly again, in the OTC
18 Market, you can do that without disclosure, that
19 creates the wrong incentives and the wrong information
20 flow for investors.

21 So maybe looking at the OBO requirements as
22 whole and how shareholders overall are required to
23 report their existence and coupling that with some
24 investor protection related policies around insiders.

25 Do you agree with that?

1 MS. CHOI: Absolutely. I think proxy,
2 pluming, access, shareholder approval, that could
3 probably be a round -- should be a roundtable on its
4 own, but I do think that that's such an important part
5 of the public company experience and there's a lot of
6 work to be done there and there is a lot of costs that
7 are associated with the proxy process.

8 And cost of issuers related to areas where
9 they do not have control over which intermediaries
10 they get to pick and also the result and the benefit
11 is that, or the lack of benefit, is that most of the
12 times the shareholders are not engaging with the
13 companies and vice versa because there's no direct
14 link.

15 And I understand sort of the confidentiality
16 and things like that and concerns that are held at the
17 corporate -- level and at the account level, but I do
18 think that this is an area that could -- it is really
19 due for a fresh look and review, especially in the
20 context of some of the AI and different technologies
21 that we have, that are being developed.

22 Another area that just even as mundane as
23 the exhibits list. I mean, the amount of time that
24 in-house counsel poor associates at a law firm have to
25 spend to update and things of that nature. I mean, I

1 feel like that could be something that could be
2 refreshed perhaps on a company website as opposed to
3 on the filing but have some kind of jurisdictional
4 reach for the accuracy of that information.

5 So maybe there is creative ways to think
6 about how those types of administrative disclosures
7 could be worked into areas that are outside of maybe
8 the filing requirements but perhaps housed somewhere
9 else by the companies so that it's easier to
10 manipulate and update and just provide more on a real-
11 time basis.

12 MR. ZINN: Just to underscore that. I know,
13 because we've looked into it a bit, the rules relating
14 to the OBO and NOBO designations, they're 50 plus
15 years old.

16 MS. CHOI: I know.

17 MR. ZINN: The reasoning behind why that
18 system developed no longer really carries any weight.
19 So taking a fresh look at things like that now with a
20 Commission that seems inclined to do that, which is
21 wonderful. It's all about prioritizing all of these
22 wonderful ideas, I know.

23 But that really should be closer to the top
24 of the list.

25 MR. GOLDBERG: I think most people would say

1 like what about the broker search?

2 MR. ZINN: Yeah. Right.

3 MS. CHOI: Oh, yeah.

4 MR. GOLDBERG: I mean --

5 MR. ZINN: Again, these smaller companies,
6 they can run it in a day.

7 MR. GOLDBERG: -- if you --

8 MR. ZINN: Right?

9 MS. CHOI: Yeah.

10 MR. GOLDBERG: What was meant because you
11 needed to actually mail out things and get time for
12 them to come back, but they don't use that process
13 anymore and it actually does have some practical,
14 real-world impact. I've got a client looking to do a
15 special meeting and want to do it quickly but we have
16 to build in this basically meaningless period of time
17 to run the broker search when it's not required in
18 order for them to get the information they need.

19 I'll also make a plug to get rid of the
20 annual report and just use the 10K.

21 MS. CHOI: Preliminary proxies, as we talked
22 about. I think other than for really important sort
23 of shareholder meetings, there's probably not much of
24 a need for that. And I know that the staff probably
25 doesn't look at -- I mean, it's probably sort of a,

1 how should I say, a sampling, right, of the review.

2 So that's an area that probably could be
3 streamlined, both for the companies as well as for the
4 staff as well, reduce the work.

5 MR. ZINN: And state law provides a good
6 model there for some of the non-SEC registered
7 companies that trade with us. It's law or whatever
8 their statement corporation is and it is an easier to
9 understand and often more efficient process.

10 MS. RIEGEL: So many excellent ideas.
11 Before I pivot and kind of talk about S3 and
12 registered equity offerings, any other thoughts? I
13 don't want to cut off the conversation but I do want
14 to keep moving.

15 MR. GOLDBERG: I mean, I would just add, I
16 don't think -- there have been a lot of favorable and
17 helpful changes over the years. The business section
18 being more principles based, what else? I mean,
19 there's a number of things that CNDI's not being
20 blacklined or you can see the changes instead of when
21 they came in and somebody, you know, I'd be shuffling
22 around my office looking for the old CNDI's that I
23 printed out so I could copy them and then run a
24 blackline for myself and then send it out to the group
25 so we could understand what the changes were.

1 So I do think the staff and the Commission
2 are looking at these things and have been amenable.
3 So I don't want to be the doomsayer here. I just
4 think there are some other things that we could
5 continue to do that have been around for a long time
6 that I think could use some updating that would
7 actually make some real difference to some of these
8 companies.

9 MS. RIEGEL: Absolutely. Okay. So I'm
10 going switch on. So one thing that we often hear from
11 small public companies is the reasons to go public is
12 to be able to tap the public markets, right?

13 And I'm sure with life sciences you see that
14 a lot, right? Being able to go out and raise capital.
15 But when we looked at the data, small public
16 companies, only 13 percent of them raised capital in a
17 registered equity offering in the 12 months ending
18 June 30, 2024.

19 So a very small percent is actually going
20 out and raising that capital from the public markets.

21 So I'd love to hear from you. What are your ideas?
22 Like, how can we look at changing registered offerings
23 to open up the market and be able to allow that
24 pathway? And would that encourage more small public
25 companies to stay public?

1 MS. NEARY: I'm happy to start.

2 MS. RIEGEL: Yeah.

3 MS. NEARY: So in our earlier panel we
4 talked about both making an IPO more attractive but
5 also having benefits to being public and I think this
6 is a great area we can look into that.

7 I think two ideas I'd love to recommend that
8 to the staff to look into, one of which is to
9 reexamine the need to wait for 12 months and have a
10 10K filed to be S3 eligible.

11 It's not stopping companies from raising
12 money but it's costing them much more either by using
13 the S1 process or by doing a pipe and then registering
14 the shares on and S1.

15 And what I hear from clients all the time is
16 the desire to be able to do at the market offerings
17 and to dribble out securities, particularly when
18 markets are more volatile at times where there is an
19 opportunistic stock price and they can't not do that
20 on an S1 currently, so by having access to S3 they
21 could start blowing their coffers after the IPO. So
22 that's one.

23 The second, which we have seen a lot of
24 lately, is the baby shelf rules. And besides being
25 complicated for companies to understand, that \$75

1 million threshold ends up being relatively high but
2 the one-third ends up being quite low, especially when
3 ATMs are coming against that and you can register it
4 on the gross.

5 And really these are the companies that need
6 the money the most and the markets going to tell them
7 if they can't raise. So I think looking at does it
8 make sense to lower that \$75 million to something less
9 and/or raising the one-third threshold to something
10 that actually gives them the ability to raise money
11 and have runway out of baby shelf rules because
12 that's -- you're not really able to raise enough to
13 get out of the \$75 million public float.

14 And I think the both of those would really
15 give companies the ammunition to tap the public
16 markets like they intend to.

17 MR. ZINN: I just high five on that
18 (laughter) -- I agree 100 percent on continued access
19 to capital and specifically the ideas that you raised.

20 I would add only that, again, Regulation A, which I
21 think we talked about a little bit on our last panel,
22 is another option for that particularly for smaller
23 companies where that \$75 million limit can be
24 impactful.

25 It actually can be more impactful than the

1 baby shelf rules allow for at this point. But yet
2 another opportunity for companies to engage. Right
3 now Regulation A has a specific prohibition against
4 the market offerings, so I'd love to see the
5 Commission go back and reconsider how they can change
6 that and open up these pathways in a number of
7 different ways.

8 That not only would keep companies public, I
9 think you would provide the impotence for somebody's -
10 - come companies to go public in the first place.
11 What we see now, and these are wonderful ideas, the
12 kind of existing problems they can address. We see
13 companies, and I think we talked about this a little
14 bit, entering into convertible equity offerings. They
15 take on what we call a death spiral financing because
16 they don't necessarily have another better capital
17 raising option.

18 And they're issuing equity to somebody that
19 they may or may not have had a pre-existing
20 relationship with who is just going to exercise at a
21 discount to the then prevailing market price, bringing
22 down the experience for their existing public
23 investors, bringing down the company on it's way, it's
24 cap table.

25 And so again, it's wonderful to talk about

1 ways to allow companies to raise more money but it's
2 also addressing some very specific problems that are
3 impacting both companies and investors.

4 MS. ZEPRALKA: I completely agree.
5 Everything you said about S3 and baby shelf is like
6 exactly what's on my mind. You know, when the rule
7 was adopted I think the idea was sort of capping it
8 would keep -- there was a worry that the smaller --
9 the thinly traded securities would be subject to more
10 manipulation so they're sort of putting a limit on it
11 there and there was also a concern about the
12 information not being disseminated. And I think you
13 made the point that the market's not going to take
14 these securities if there's not for work.

15 And then there's so much more information
16 flow now than there was. I mean, it's a completely
17 different information era than we were dealing with in
18 the early 2000's. So I think definitely right to re-
19 evaluate the baby shelf rules and along with that, as
20 you say about Reg A, can't do ATMs, can't do something
21 that -- can't do delayed offerings, period.

22 So that's -- and there are reasons for --
23 and that not a re-issuer probably the Reg A world
24 should be doing that but I think that there are ways
25 to look at those rules and explore if that would give

1 them more runway.

2 MR. ZINN: Yeah, look the market will speak
3 as well for Reg A issuers. And I know Brad, you know
4 more than I do but I know from the initial drafting of
5 Regulation A that the idea was let's prevent it for
6 now, let's see what happens with these companies and
7 then reexamine and I've heard Chair Atkins and the
8 Acting Chair Uyeda say similar things about taking a
9 look at these things. So moving in the right
10 direction.

11 MS. RIEGEL: Excellent. Anything else
12 before we close it out with our ultimate question of
13 what is the most impactful change?

14 I mean, minor, minor. So we've talked about
15 so many different ideas.

16 I would love for everyone to kind of take a
17 step back and think about if -- what could be the one
18 most impactful change that you think that would help
19 smaller public companies?

20 I guess I'll kick it off with Dan.

21 MR. ZINN: Oh man. Everyone will pick up
22 what I miss I'm sure, so it's okay.

23 But I'm going to stick with the theme that
24 we were just on. I think the ability to continue to
25 raise capital while being a public company it's one of

1 the biggest things that we hear from the companies
2 that are on our markets. We have let's say 500 or so
3 U.S. based companies on our OTCQX and OTCQB markets
4 with a \$150 million market cap let's say on average.
5 Those companies have very specific capital raising
6 needs that are addressed in some of the negative ways
7 that I talked about before when there's no other
8 option.

9 So really giving these pathways, whether
10 it's through registered offerings and baby shelf
11 rules, whether it's through Regulation A, will
12 probably have the most impact.

13 MS. NEARY: Yeah, I concur. And I think
14 your point about the terrible convertible financings,
15 the issue is they take up so much of the cap table
16 that it doesn't help the public float problem and it
17 just drives them further and further from 75 million.

18 So giving, by re-examining that and having
19 access to capital more easily as a new public company
20 or a struggling public company, I think, would keep
21 companies public for a longer as well.

22 MS. CHOI: So many but just updating the
23 filer status thresholds and requirements in the
24 context of the current economy and the context of the
25 type of businesses that we have in our public markets,

1 I think is going to be an important one.

2 And I think it's -- and that ties into, of
3 course, the north star of materiality being at the
4 core of any disclosure requirements, cost benefit
5 analysis, I think, is going to be a really important
6 one because to me, especially for small businesses,
7 you know, when you have one or two people trying to
8 put these disclosures together and your
9 operationalizing it, that's a really big challenge and
10 I hear from general counsels and securities counsels a
11 lot in terms of I don't know how I'm going to do this
12 with the two people that I have on my team.

13 MR. GOLDBERG: Well, you can hire us.

14 (Laughter.)

15 MR. GOLDBERG: I agree on the scaling -- I
16 mean, on the thresholds. I also think expanding the
17 scaling and harmonizing the SRC and EGC stuff would be
18 super helpful and I'll make my final plug that I also
19 think we need to address the shadow regulator out
20 there, the proxy advisory firms that have an outside
21 influence on companies and the conflicts of interest
22 that come from that.

23 And I do think that's also something that is
24 hindering or, at least in people's minds when they're
25 thinking about going public.

1 MS. ZEPRALKA: Yeah. Nothing new beyond
2 those. I think probably number one for me is the
3 access to the public markets for additional capital
4 after a company has gone through the IPO process, as
5 we've talked about, and the filer status, sort of
6 rightsizing that, aligning them appropriately, which
7 has to be done with caution because a big part of this
8 that we didn't talk about is 404B and who stays in
9 that bucket of needing to do the auditor attestation,
10 which regulators will need to move cautiously there.

11 But I think that you can really sort of
12 streamline and it ties into that scaling idea of
13 getting the right information out there that investors
14 need.

15 MS. RIEGEL: Thank you all. This has been
16 an absolute pleasure to join you, Dan, Melanie, Eun
17 Ah, Brad, Jennifer, this has been a wonderful
18 conversation thinking about how we can reassess the
19 public company framework and what we need to be
20 thinking about to encourage those small companies to
21 stay public and to keep our markets healthy.

22 So thank you again for joining me and yes.

23 (Whereupon, at 11:46 a.m., the discussion
24 was concluded.)

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PROOFREADER'S CERTIFICATE

In The Matter of: SMALL CAP POLICY ROUNDTABLE
File Number: OS-0001
Date: Wednesday, June 18th, 2025
Location: Washington, D.C.

This is to certify that I, Kyleigh McGinnis,
(the undersigned), do hereby swear and affirm that the
attached proceedings before the U.S. Securities and
Exchange Commission were held according to the record
and that this is the original, complete, true and
accurate transcript that has been compared to the
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Kyleigh McGinnis
6/18/2025
(Date)

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I, Connor Morris, reporter, hereby certify that the foregoing transcript is a complete, true, and accurate transcript of the testimony indicated, held on Wednesday, June 18th, 2025 in the matter of:

SMALL CAP POLICY ROUNDTABLE

I further certify that this proceeding was recorded by me, and that the foregoing transcript has been prepared under my direction.

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