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1 UNITED STATES SECURITIES AND EXCHANGE COMMISSION  
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5 ADVISORY COMMITTEE ON SMALL AND EMERGING COMPANIES  
6 MEETING  
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9  
10 Friday, February 1, 2013  
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15 Multi-Purpose Room LL-006  
16 100 F Street, N.E.  
17 Washington, D.C.  
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24 Diversified Reporting Services, Inc.  
25 (202) 467-9200

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1 A P P E A R A N C E S  
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- 3 SEC COMMISSIONERS PRESENT:  
4 Elisse B. Walter, Chairman  
5 Daniel Gallagher, Commissioner  
6  
7 COMMITTEE MEMBERS PRESENT:  
8 Stephen M. Graham, Co-Chairman  
9 M. Christine Jacobs, Co-Chairman  
10 Heath Abshure  
11 David A. Bochnowski  
12 John J. Borer, III  
13 Dan Chace  
14 Milton Chang  
15 Shannon L. Greene  
16 Kara B. Jenny  
17 Kathleen A. McGowan  
18 Karyn Smith  
19 Timothy Walsh  
20 Gregory C. Yadley  
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1 A P P E A R A N C E S (cont.)

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PARTICIPANTS PRESENT:  
Gerald Laporte  
Lona Nallengara  
David Shillman  
Matt Slavin  
Jennifer Zepralka  
Kathleen Hanley

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P R O C E E D I N G S

MR. GRAHAM: Well, why don't we get started? I think we do have a quorum. Jennifer, is that true?

4 All right. Again, welcome, everyone. It's  
5 Diversified Reporting Services, Inc.  
6 (202) 467-9200  
7 good to see the Committee, and welcome to the SEC  
8 Commissioners and staff.

9 We intend to take up a number of  
10 recommendations today, as you know, and if these ideas  
11 are ultimately implemented, we feel that these ideas will  
12 result in a significant positive impact on the ability of  
13 smaller public companies to raise and preserve capital.

14 These are ideas that have been developed over  
15 the course of a number of meetings of this Committee, and  
16 we have put together draft recommendations that you've  
17 all had an opportunity to read that we believe reflect  
18 the consensus of the Committee, at least at the time of  
19 the prior meetings. So we will discuss them today and  
20 decide what to do with them today.

21 The first one, of course, is to consider tick  
22 size, and you know, essentially the idea is to  
23 immediately provide for a meaningful increase in tick  
24 size as a necessary step toward encouraging the  
25 reestablishment of an infrastructure designed to increase

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1 liquidity for small public companies.

2 The second recommendation we'll pick up has to  
3 do with the establishment of a new exchange, which no one  
4 around here has the authority to direct or probably the  
5 ability to do, but nonetheless, we think this is an  
6 important idea which, if effected would enable small  
7 companies to go public and stay public at a much reduced  
8 cost without much in the way of a reduction in investor  
9 protection. So the idea is to recommend to the SEC to  
10 encourage the establishment of an exchange limited to  
11 accredited or sophisticated investors where disclosure  
12 requirements for listed companies are much less, and  
13 appropriately limited in light of the absence of  
14 retail investors.

15 And then two more. Chris, do you want to note  
16 the next two or --

17 MS. JACOBS: Yeah.

18 MR. GRAHAM: -- do you want me to keep going?

19 MS. JACOBS: No, I'll just jump in for a minute  
20 on the other two recommendations, and again, I want to  
21 thank the entire team for helping us out as we edited and  
22 created the list of exemptions and recommendations for  
23 small reporting companies.

24 We all know this represents the engine of  
25 growth. Both the government and the private sector have

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1 gone on record as saying so, and that our job as a  
2 Committee is to promote capital formation. So we've been  
3 looking for suggestions on and off over the last several  
4 meetings.

5 The recommendations today that you have around

6 reporting for small public companies represent a  
7 compilation of the discussions, and actually we went back  
8 and pulled the transcripts of our meetings.

9 Full disclosure, I wanted to make sure that we  
10 put in front of you, as we begin to edit and create  
11 recommendations, recommendations that were, indeed,  
12 realities for small public companies and create specific  
13 recommendations with the goal being no harm to investors  
14 and reasonable in the relief that it would provide for  
15 the small reporting companies, and recognizing that where  
16 investor protection has to go or where we consider it, we  
17 had to put them into three categories: nice to have  
18 information, need to know information, and material  
19 disclosures that reasonable investors would need to make  
20 their decisions in and around the stocks.

21 I will invite those that, throughout those  
22 discussions, invite those folks that have experience or  
23 to bring up examples as we go through because not  
24 everybody on the Committee may be familiar with the ins  
25 and outs of any one of those recommendations.

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1 The second recommendation or the last one that  
2 we will consider today is Conflict Minerals. The  
3 Committee may recall that the law is, indeed, a mandate  
4 by Congress that the Securities and Exchange Commission  
5 has to now implement. We've discussed its burden, the  
6 disclosure of the Conflict Minerals issue, and that it  
7 sort of sets up yet again another subjective process for  
8 small public reporting companies because what's probably  
9 going to happen is we, as small companies, are going to  
10 have to hire outsiders who will then interpret the law.

11 We've discussed this type of thing before as  
12 pertains to 404. So the recommendation today also says  
13 that Congress should not use the federal securities laws  
14 and the Commission's disclosure requirements as a vehicle  
15 to further humanitarian, social or foreign policy  
16 objectives.

17 So, again, we will ask for an exemption for the  
18 small reporting companies in and around that session of  
19 Conflict Minerals.

20 So thank you.

21 MR. GRAHAM: Thank you, Chris.

22 We're pleased to have with us today Elisse  
23 Walter, who is Chairman of the Securities and Exchange  
24 Commission. Chairman Walter has been a Commissioner  
25 since 2008 and was named Chairman by President Obama in

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1 December.

2 Prior to her appointment as a Commissioner,  
3 Chairman Walter had a distinguished career at FINRA and  
4 the NASD, and before that, she served as the General  
5 Counsel of the CFTC and positions here at the SEC,  
6 including Deputy Director of the Division of Corporation  
7 Finance.

8 She's also been a strong supporter of small and  
9 emerging companies and of our Committee's efforts.  
10 Chairman Walter wanted to say a few words before we  
11 begin. So I will turn the mic over to her.

12 CHAIRMAN WALTER: Good morning and thank you so  
13 much for having me here, and welcome. I'm glad to see  
14 all of you sitting around this square table where you  
15 actually can look at each other as you talk, which I find  
16 very helpful.

17 And I would like to begin by thanking all of you for  
18 participating in this Advisory Committee on Small and  
19 Emerging Companies. Your voice is much needed in our  
20 ongoing public/private dialogue with the nation's small  
21 and emerging business community, and your efforts ensure  
22 that the agency's work to protect investors and  
23 facilitate capital formation reflects a clear  
24 understanding of the issues and concerns that you face in  
25 our marketplace today.

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1 I want each of you to know that your advice on  
2 our rules, regulations and policies is deeply  
3 appreciated. Even your criticism is deeply appreciated,  
4 although any time you want to give us an "attaboy" we'd  
5 love to hear it.

6 Let me also welcome today all of our guests,  
7 those who are here in the room with us today and those  
8 watching online. I think one of the discouraging things  
9 or apparently discouraging things about the advent of  
10 online technology is that you look around a room like  
11 this and think, "Oh, not too many were interested," and  
12 that's simply not the case. You can no longer judge by  
13 crowds in rooms because there are crowds around computers  
14 all around the globe who are eagerly awaiting, listening  
15 to and watching everything that you have to say.

16 It's my hope that in addition to listening to  
17 the specific discussions that will take place today those  
18 of you who are here or watching will actively participate  
19 in the larger discussions that will continue after  
20 today's meeting adjourns. Please send us your advice,  
21 recommendations, comments, and in particular -- and I  
22 plead for this -- any empirical data that you can share.

23 There is no such thing as too much information  
24 or too much data, particularly when it comes to  
25 regulations and policies that impact the small and

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1 emerging business community that is so critical to our  
2 nation's economy.

3 As was just mentioned, I'm a former staff  
4 member very proudly, and I was glad to hear the mention  
5 of Corp Fin because as I sit with my Corp Fin colleagues,  
6 I'm very proud of the role that I played in Corp Fin in  
7 the '80s and '90s, and as a Commissioner and now as  
8 Chairman, I've been engaged in public service for more  
9 than two decades. The SEC is the cornerstone and the

10 heart of my career because I strongly believe in the  
11 agency's mission and the critical role that we play in  
12 leveling the playing field in our nation's capital market  
13 system.

14 And as I said in the past, I view the  
15 discussions of balancing the desire for easier capital  
16 formation against the need for investor protection as  
17 presenting what I view as a false choice, one that I'm  
18 sure each of you here today must understand. Surely any  
19 loss of investor confidence is a cost that no one in  
20 today's marketplace can afford to bear. So we need to  
21 view them as mutually supportive goals, not as competing  
22 goals that need to be balanced against each other.

23 So as the SEC carries out its mission, I  
24 believe that we regulators must continually strive to  
25 ensure that our regulations and policies are well

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1 informed. The decisions we reach today as regulators  
2 will affect not only today's businesses and investors,  
3 but tomorrow's as well. I continue to believe that  
4 addressing the needs of the small and emerging business  
5 community consistent with investor protection is the most  
6 viable path forward.

7 Today's agenda reflects the Committee's  
8 willingness to engage from every angle and to take the lead  
9 on some of the more complicated market structure and  
10 disclosure questions we face. As a career regulator, I  
11 greatly appreciate hearing your unique perspective.  
12 Those of us who have chosen to devote our careers to  
13 regulation do not have the same practical, on the ground  
14 viewpoint that all of you do, and we must hear that so  
15 that we can take it into account in making decisions.

16 At a time when the markets and the regulations  
17 that govern them are evolving at an unprecedented pace,  
18 the tenacity with which you drill down into the issues  
19 which you examine provides us with an enhanced level of  
20 input from the small and emerging business community, and  
21 with this meeting, the Committee has reached a transition  
22 point.

23 When it was first created, my predecessor, Mary  
24 Schapiro, asked that you examine a series of issues  
25 relating to small business capital formation. You should

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1 be proud that you've completed that initial examination  
2 and more and your work has significantly informed the  
3 discussion of those issues, many of which found their way  
4 into the JOBS Act.

5 As the Commission tackles the rulemaking  
6 required under the JOBS Act, it is my hope that once we  
7 issue rule proposals, particularly on topics such as  
8 crowdfunding and what we call Reg A+, you will  
9 provide the Commission with your perspective and  
10 thoughtful analyses of the issues raised by  
11 implementation of the provisions we've proposed.

12           We at the Commission seek to enhance both  
13 investor protection and capital formation. Achieving  
14 both goals is a task that we have grappled with for  
15 decades. Thoughtful input by all market participants,  
16 including the small and emerging business community,  
17 certainly goes a long way towards helping us carry out  
18 this delicate task, and so we look to you to bring the  
19 outside world inside, bridge the gap between regulators  
20 and entrepreneurs, and help us protect the integrity of  
21 the capital markets as they continue to evolve.

22           Thank you. I look forward to hearing the  
23 results of today's discussions, and I want to welcome my  
24 colleague, Dan Gallagher. I don't know, Dan, if you'd  
25 like to say anything, but we'd welcome any remarks that  
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1     you have.

2           COMMISSIONER GALLAGHER: It will shock you and  
3 everyone else who knows me, too, to say I have nothing to  
4 say.

5           (Laughter.)

6           CHAIRMAN WALTER: I would please like to  
7 mention that that should be recorded for a --

8           (Laughter.)

9           CHAIRMAN WALTER: I have never heard those  
10 words before, but of course, the same could be said of  
11 me.

12           COMMISSIONER GALLAGHER: But I'm happy to be  
13 here, and you guys are doing great work, terrific work.  
14 So keep it up, please.

15           MR. GRAHAM: Okay. Well, thank you both.

16           A couple of housekeeping matters. Just to kind  
17 of lay out the expectations, we plan to walk through, of  
18 course, each of the proposed recommendations. After an  
19 opportunity for discussion, we will finalize those  
20 recommendations and have a vote. Then we will, to the  
21 extent that the recommendations are passed, we will  
22 prepare final drafts to circulate to the Committee just  
23 to confirm that we got it right, and then we'll pass them  
24 on to the SEC.

25           We plan to break for lunch at noon. Lunch is  
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1     on your own. We'll reconvene and wrap up and talk about  
2 next steps.

3           But before we turn to today's recommendations,  
4 I thought it might be a good idea to turn to yesterday's  
5 recommendations, and now we'll hear from Lona Nallengara,  
6 who since the last time we were together has been named  
7 Acting Director of the Division of Corporation Finance,  
8 and Lona is going to talk for a few moments about the  
9 recommendations the Committee has made to the Commission  
10 in the past and give us an update on where things stand  
11 with respect to those recommendations, and of great  
12 interest to, I'm sure, everyone in the room and closely  
13 related to that, is an update on the Commission's

14 implementation of the JOBS Act.

15 So, Lona.

16 MR. NALLENGARA: Great. Thank you, Stephen.

17 Thank you, everyone, for coming today and all  
18 your efforts you make for this Committee both at these  
19 meetings and in between the meetings.

20 I think you recognize most of the staff faces  
21 here, Gerry and Jennifer, and I think you all know  
22 Kathleen. She's an old friend of this Committee, having  
23 attended many meetings. She's our Deputy Chief Economist  
24 and Deputy Director of our Risk, Strategy and Financial  
25 Innovation Division. She will be critical as we work

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1 through -- as you all work through the decimalization/  
2 tick size recommendation. So she is here as well. We'll  
3 actually bring others up as we work through the other  
4 recommendations to help provide some technical advice.

5 All of our views today that we express are our  
6 own views and don't necessarily represent the views of  
7 the Commission. So remember that. I invariably will say  
8 something I'm not supposed to say. So particularly with  
9 two of my bosses here, I want to make sure that you don't  
10 attribute it to them.

11 COMMISSIONER WALTER: We hereby give you  
12 amnesty, but just for this meeting.

13 MR. NALLENGARA: Thank you.

14 (Laughter.)

15 COMMISSIONER GALLAGHER: Speak for yourself.

16 (Laughter.)

17 MR. NALLENGARA: Chris and Steve asked us, as  
18 Steve mentioned, to run through some of the  
19 recommendations that you have made at prior meetings and  
20 then line them up with the JOBS Act because, as the  
21 Chairman indicated, your first charge that you took up  
22 was looking at recommendations related to many of the  
23 capital formation initiatives that were outlined, or ended  
24 up being outlined, in the JOBS Act.

25 So let's start. I thought of orienting this

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1 discussion more to the JOBS Act titles rather than your  
2 recommendations, and I could weave in those  
3 recommendations with the appropriate title.

4 So Title I of the JOBS Act, as all of you  
5 remember, was the IPO on-ramp provisions. You had all  
6 talked about the IPO Task Force Report. You had looked  
7 at those recommendations in that report, and I think  
8 there was some general consensus of support for those  
9 recommendations in the report, but I don't think you  
10 ended up making a recommendation with respect to that.

11 Title I of the JOBS Act is in place now,  
12 operative today. Companies are taking advantage of the  
13 benefits and relaxations in some of the requirements,  
14 taking advantage of some of the communication relaxations  
15 that are available as well in Title I. So there was no



16 rulemaking required to make those provisions operative.  
17 We provided some interpretive guidance, and I think it's  
18 probably too early to tell what impact that may have had  
19 or that will have in terms of IPOs, but I think everyone  
20 is excited to take advantage of those provisions.

21 Title II of the JOBS Act was the general solicitation  
22 provision. You had made a recommendation that lined up  
23 very closely with the Title II provision in the JOBS Act.

24 The recommendation you made was to lift the restriction on  
25 general solicitation in 506 offerings, but require that

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1 any purchaser be an accredited investor. The JOBS Act  
2 provision was effectively the same thing, with an  
3 additional provision that required any issuer to verify  
4 that the ultimate purchaser was, in fact, an accredited  
5 investor.

6 At the end of August of last year, the  
7 Commission proposed a rule that would implement the Title  
8 II provision and the comment period for that was opened  
9 and closed at the beginning of October. Currently the  
10 staff and the Commission are looking through those  
11 comments to try and put together a recommendation— or the  
12 staff is trying to put together a recommendation for the  
13 Commission to consider in terms of an adopted rule.

14 Comments on the rule that are available on our  
15 website ranged from a discussion of the mechanism by  
16 which— as the Commission outlined in a proposal— issuers  
17 verify accredited investor status, and there were a  
18 number of commentators who indicated that any rule with  
19 respect to general solicitation should include a  
20 consideration of other issues, other issues related to  
21 how you define an accredited investor, what kind of  
22 materials or what kind of communications should be  
23 permitted as general solicitation, whether the notice  
24 requirement informed— whether there should be changes  
25 to that. Should that be filed before an offering?

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1 Should that be made a condition to use the exemption?  
2 Should other information be included?

3 And there were a number of other additional  
4 issues that some commentators felt were outside the scope  
5 of this rulemaking and other commentators felt were  
6 necessarily part of this rulemaking.

7 So that's Title II and your recommendation was  
8 reflected in the JOBS Act, and now we are working towards  
9 implementation of that with the final rule.

10 The third title is the crowdfunding title.  
11 That is a provision to allow small issue offerings to any  
12 purchaser, with caps on the amounts that can be raised by a  
13 company and caps on the amount that an individual can  
14 actually purchase. This is formatted as an online type  
15 of offering to allow smaller companies to raise small  
16 amounts of capital from a number of different investors  
17 with no sophistication or accredited investor status required

18 for those investors.

19 This Committee considered the crowdfunding  
20 concept, and I think this Committee declined to make a  
21 recommendation with respect to crowdfunding.

22 Title IV is what the Chairman referred to as Regulation  
23 "A+". Title IV is a small issue exemption. It's an  
24 exemption that provides for an exemption from  
25 registration for offerings up to \$50 million. The JOBS

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1 Act provision provides a general outline of what the  
2 offering mechanics, the private placement exemption  
3 qualification would provide. It is thought to be modeled  
4 on the existing Regulation A exemption. Regulation A is  
5 an exemption from registration for offerings up to \$5  
6 million. As this Committee has discussed, that exemption  
7 has not been used, has really not been used at all in the  
8 last number of years.

9 Many of the criticisms surrounding the  
10 exemption relate to the small dollar amount and the cost  
11 associated with that exemption, with taking advantage of  
12 that exemption for capital formation, the idea being if  
13 you raise the dollar amount, it makes offerings under that  
14 exemption more palatable.

15 This Committee recommended a Regulation A type  
16 exemption very similar to what was reflected in the JOBS  
17 Act, but this Committee expressed some skepticism of  
18 whether that exemption even at the \$50 million level  
19 would be something that would be a true capital formation  
20 technique and recommended that Commission resources  
21 should not be directed away from focusing on other  
22 capital formation initiatives to put in place a \$50  
23 million small issue exemption.

24 The last two titles that I wanted to talk about  
25 that were reflected in recommendations relate to 12(g)

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1 thresholds for registration. So companies that have  
2 record holders that exceed— prior to the JOBS Act— 500  
3 holders would be required to effectively become a public  
4 company. The JOBS Act increased that threshold to 2,000  
5 holders for banks and bank holding companies and to 2000  
6 holders or up to 500 non-accredited investors for all  
7 other companies, and your recommendations lined up pretty  
8 closely with those JOBS Act provisions. You had  
9 different numbers, but relative consistency with the  
10 JOBS Act provisions.

11 Those provisions are effective today. There is  
12 no rulemaking required. So if you go back and look at  
13 the JOBS Act, many of your recommendations were reflected  
14 in the JOBS Act. Rulemaking is still required on general  
15 solicitation. Rulemaking is still required on crowd  
16 funding, and rulemaking is still required on the  
17 Regulation A+ exemption.

18 And as the Chairman indicated, although you may  
19 have not expressed a lot of interest or a lot of

20 excitement around the crowdfunding regulation or the Reg A+  
21 exemption, as proposals for those rules come, this  
22 Committee could consider looking at the questions that  
23 the Commission will ask in those recommendations-- in  
24 those proposals-- and consider whether this Committee  
25 should comment on those rule proposals, consider some of  
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1 the questions we've asked as to whether considerations  
2 we've taken in structuring those exemptions are ones that  
3 will foster capital formation or are appropriately  
4 considering investor protection.

5 So I think this Committee should feel that  
6 they've accomplished quite a lot in their first three  
7 recommendations. Those recommendations are reflected in  
8 the JOBS Act, and those reflect also active rulemakings  
9 of the Commission, and if you look at the attention from  
10 small companies, they are very excited about general  
11 solicitation. They're also very excited about crowd  
12 funding, and many are looking towards a new offering  
13 exemption under Reg A+ that could provide a new form  
14 of capital formation for small companies.

15 Thanks, Steve.

16 MR. GRAHAM: Okay. Thank you, Lona.

17 So let's --

18 MR. BOCHNOWSKI: Steve, may I ask?

19 MR. GRAHAM: Yes.

20 MR. BOCHNOWSKI: I'm sorry. Dave Bochnowski  
21 here.

22 Might I ask a question of Lona?

23 MR. GRAHAM: Oh, please.

24 MR. BOCHNOWSKI: And thank you for that great  
25 report, Lona.

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1 Relative to the 12(g) thresholds registration,  
2 I think as bankers are aware -- and I know you are --  
3 there was a drafting error in the JOBS Act in that  
4 savings and loan holding companies were not included by  
5 name even though the sponsors of the legislation have now  
6 indicated that it was not their legislative intent to  
7 exclude savings and loan holding companies.

8 I noticed that the Washington Post yesterday  
9 had a rather extensive article that suggested that over  
10 100 banks have taken advantage of this Committee's  
11 position as well as the legislation and have exited and  
12 are no longer registered.

13 I wonder what the outlook is, since I believe  
14 that through, I'm told, through rulemaking, the SEC  
15 could, in fact, bring savings and loan holding companies  
16 in, and they could then take advantage of the legislation  
17 as well as this Committee's recommendation.

18 MR. NALLEGARA: Thanks for the question,  
19 David.

20 So on the threshold for registration provisions  
21 in the JOBS Act, there is rulemaking necessary. The

22 changes to the thresholds are operative now, but there is  
23 rulemaking required. There is some rule clean-up we  
24 need to do to make sure that statutory changes line up  
25 with the rule provisions, but you're right. Savings and  
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1 loans, thrifts have asked, "Why weren't we included as  
2 part of the JOBS Act provision?" And we've received  
3 comment letters to that effect.

4 That is something that the staff is considering  
5 and the Commissioners are considering whether the savings  
6 and loans, whether the thrifts should be included in  
7 there. Part of it is making sure that the appropriate  
8 protections that were in place that were part of the  
9 consideration for bank and bank holding companies for  
10 threshold changes are part of the consideration for  
11 savings and loans as well.

12 So that is something that we are looking at,  
13 and as part of rulemaking related to those two titles  
14 will be considered and will be discussed. So I think the  
15 short answer is stay tuned. Hopefully as we work towards  
16 that rulemaking, that is actively being considered.

17 MR. GRAHAM: Thank you.

18 I guess I have a  
19 question, Lona. Any sense for when we'll actually see  
20 some proposed rules?

21 MR. NALLEGARA: That's a great question. It's  
22 a question I get asked a lot. I was --

23 COMMISSIONER GALLAGHER: We're listening, Lona.

24 MR. NALLEGARA: Yes. I was hoping that  
25 someone else would get to answer that question. As you  
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1 know, and we've said this a lot, we have lots to do.  
2 Congress has given us a big plate to work through.  
3 There's lots of Dodd-Frank rulemaking left to do, and we  
4 also have JOBS Act rulemaking.

5 I think the Chairman has said this, and  
6 Commissioner Gallagher, I think, agrees with this, but he  
7 will most certainly tell me if he doesn't. I think the  
8 goal is to work through the congressionally mandated  
9 rulemakings. There are Dodd-Frank rulemakings and JOBS  
10 Act rulemakings. There are lots of other things that the  
11 staff would like the Commission to consider working on,  
12 and I'm sure there's lots of things that the  
13 Commissioners would like to work on, but I think as a  
14 near term priority there are a number of Dodd-Frank and  
15 JOBS Act rulemakings that need to be worked through.

16 That's what we're working on, and that's what I  
17 think will be the first things coming, but putting a time  
18 frame on that is challenging because there is lots to do,  
19 and there's a lot of other considerations.

20 MR. GRAHAM: Okay.

21 MR. NALLEGARA: Commissioner, did I --

22 COMMISSIONER GALLAGHER: No, I think that's  
23 fair. You guys have a lot to work through. I do think

24 that within mandates, you know, the Commission should be  
25 using its discretion to pick and choose what's most

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1 important now, and we all have different views of what  
2 that could be.

3 I mean, for me obviously I think we're woefully  
4 behind on JOBS Act implementation. We haven't done,  
5 quite frankly, anything yet, and we're going to be at the  
6 one-year anniversary here in a couple months. So I think  
7 we've got to get general solicitation nailed down, you  
8 know, Reg A. I got an earful out in San Diego from some  
9 VC folks on Reg A, which isn't something we talk a lot  
10 about, right? We talk more about crowdfunding, but they  
11 said, you know, "Don't worry about that. Let's get onto  
12 the Reg A."

13 So there's a lot to do there. The mandates, I  
14 think, are pretty clear. The legislation was hugely  
15 bipartisan in responding to a current crisis as opposed  
16 to one that, you know, may or may not have run its course  
17 that started five or six years ago.

18 So I think personally I'd like to get the JOBS  
19 Act stuff done as soon as possible, recognizing that  
20 there are other things that we're behind on within Dodd-  
21 Frank by way of mandates and where we have authority but  
22 not a mandate or a mandate but not a deadline, and I do  
23 think that we have to use our discretion and push those  
24 things to the back of the line.

25 MR. GRAHAM: Okay. Thank you.

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1 Any other questions from the Committee?

2 (No response.)

3 MR. GRAHAM: Okay. Let's turn to the first  
4 proposed recommendation, which is a recommendation with  
5 regard to increasing tick sizes for securities in smaller  
6 companies traded on U.S. securities markets.

7 There was a question that for decades a small  
8 IPO has been an engine for job creation and innovation in  
9 this country. Also, another question that over the last  
10 decade we have seen a steep decline in small IPOs, but  
11 there's much debate as to the reasons why. You hear SOX  
12 mentioned. You hear global analysts' research settlement  
13 mentioned, high frequency trading, and of course,  
14 decimalization.

15 I don't think there's any one thing you can  
16 point to that says we've seen this decline and that  
17 there's essentially a deterioration of the infrastructure  
18 that supports small companies, nor do I think there's a  
19 magic bullet, but I am of the view that there no longer  
20 exists a healthy ecosystem for smaller cap companies, and  
21 that much can be done to correct the situation by  
22 increasing tick size and essentially restoring, I guess,  
23 the reasonable economics necessary to ensure the support  
24 of investment banks.

25 As you all know, Section 106(b) of the JOBS Act

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1 directed the SEC to conduct a study examining the impact  
2 of the transition to trading in- quoted securities on  
3 U.S. securities exchanges in one penny increments on the  
4 number of IPOs; also the impact of decimalization and  
5 liquidity, and whether there's sufficient economic  
6 incentive to support trading operations in these  
7 securities in one penny increments.

8 In July, the SEC delivered this mandated report  
9 to Congress. As you know, the staff recommended that the  
10 Commission not proceed with specific rulemaking to  
11 increase tick sizes at this time, but recommended that  
12 the Commission should consider additional steps that may  
13 be needed to determine whether such rulemaking should be  
14 undertaken in the future.

15 We considered the issue of tick sizes at public  
16 meetings on June 8 and again on September 7, and it  
17 seemed to be the consensus that providing economic  
18 incentives to market participants that would encourage  
19 the provisions of trading support to equity securities  
20 and small and mid-cap companies, which includes market  
21 making and providing research analysts, could serve to  
22 increase the liquidity for the equity securities in small  
23 and mid-cap companies, which would enhance the  
24 attractiveness of the IPO market for these companies and  
25 the ability of small and mid-cap companies to raise

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1 capital.

2 We believe that a change in the method of  
3 determining tick sizes for equity securities or smaller  
4 exchange listed companies is the type of economic  
5 incentive market participants may require to provide  
6 trading support for these securities, and it is necessary  
7 to increase the liquidity and facilitate IPOs and capital  
8 formation.

9 And so the proposed recommendation is that the  
10 Commission adopt rules to increase tick size for smaller  
11 exchange listed companies in the U.S. that will allow  
12 such companies to choose their own tick size within a  
13 range designated by the Commission. The way the  
14 recommendation is drafted, it says that we think it would  
15 be a good idea for the Commission to come up with a set  
16 of rules to facilitate this. It doesn't talk in terms of  
17 doing a pilot study, but I think that's all kind of in  
18 the definition. I think when you think about it, it does  
19 make sense to have a pilot study just to determine  
20 whether or not this will have the desired effect.

21 My initial concern was that in order to make  
22 this work you've got to set up a system that's going to  
23 actually encourage people to come back into the markets  
24 and actually make investments required to give the  
25 support that we're looking for, for these smaller

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1 companies, and if you put something in place that's only

2 going to last a little while, that doesn't give time for  
3 people to make an investment. It doesn't give time for  
4 people to get a return on their investment, and it  
5 doesn't give time for there to really be enough  
6 experience, if you will, to determine whether or not  
7 these kinds of changes have the desired effect.

8           So I think the way I would modify the draft  
9 recommendation for you is that we talk in terms of a  
10 pilot study, but that that pilot study should be for some  
11 period of years, and you know, we can talk to people that  
12 are more experienced and smarter than certainly I am to  
13 determine, you know, what that period should be, but it  
14 should be long enough, it should be of sufficient  
15 duration so that we actually give it a chance to  
16 determine whether or not this is something that will help  
17 to bring back this sector.

18           And so with that, I will open it up to  
19 discussion. Any comments? Greg

20           MR. YADLEY: Greg Yadley.

21           I support this recommendation. We've talked  
22 about the factors relating to why there are fewer IPOs  
23 generally and primarily with respect to smaller  
24 companies, and all the information is very interesting,  
25 but the playing field seems to be to quantify what the

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1 factors are, and I haven't read much that says this is  
2 not a contributing factor, and it seems to me that this  
3 is an easy thing to implement, particularly when some of  
4 the comments, comment letters received are from market  
5 participants who are now publicly saying that this is  
6 important to them, and they think this would help.

7           I don't see very much downside, and I think  
8 that it's appropriate to defer to the Commission's  
9 judgment as to how best to do this.

10           It's also important, since the Commission very  
11 timely responded to Congress and did the study for us not  
12 to let grass grow and say it shouldn't be studied. It  
13 seems like a very meaningful step forward, and it ties  
14 into the later recommendation that we're going to  
15 consider relating to a special marketplace.

16           MR. GRAHAM: Thanks, Greg.

17           MR. ABSHURE: I have a few questions, and I  
18 have to apologize. I wasn't at the meeting in San  
19 Francisco. So these questions might seem somewhat  
20 ignorant, but ignorant questions are what I'm really good  
21 at.

22           And I guess I did as much research as I could  
23 after I saw this proposal in talking with a number of  
24 people to determine what the issue is and the  
25 relationship of tick size and why this is a concern. I

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1 talked with a number of the Commissioners. I've talked  
2 to people within industry. I've talked with people at  
3 the Hill, and it seems the uniform answer once you drill

4 down a little bit is to facilitate analysts' coverage of  
5 these companies, to incentivize analysts and researchers  
6 to provide coverage of these small companies.

7 So I guess my one question for the group  
8 because I missed San Francisco, again, and I apologize:  
9 is that really the case? Is that what we're looking to  
10 accomplish here, which is to provide more analyst  
11 coverage of these small cap companies?

12 And once we answer that, I guess the other  
13 question I have is by default is a tick size, certainly a  
14 discretionary tick size within parameters that you allow  
15 a company to choose on its own; is it a more imperfect  
16 measure than the real value of the security that the  
17 decimalization will provide?

18 And so if somebody could help me with those  
19 questions, I'd really appreciate it.

20 MR. GRAHAM: Well --

21 MS. JACOBS: Do you want me to?

22 MR. GRAHAM: Yeah, sure, go ahead.

23 MS. JACOBS: To recap the discussion in and  
24 around tick size, I don't think is specific to analyst  
25 coverage, but those of us that are associated with the  
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1 public companies, it was liquidity. Analyst coverage,  
2 we're hoping that's a fallout, but it is the liquidity of  
3 the small and micro cap stocks.

4 MR. GRAHAM: Yeah, I think that's right, and  
5 you know, again, I see it as those two things. You know,  
6 to provide -- to give the economics to investment banks,  
7 to encourage them to hire and retain analysts to provide  
8 coverage is a big part of this, and I think all these  
9 things are interrelated, and you know, that would help to  
10 lead to increase liquidity because there's more trading  
11 in the stock since there's more of an economic incentive  
12 to trade in the stock, which of course would lead to  
13 increased capital formation.

14 It's not my business, but those who are in the  
15 business believe this to be so, and I support at least  
16 the notion to implement a pilot study so that we can  
17 confirm. We can stop studying and studying and studying.

18 We can stop debating and debating and debating and, you  
19 know, begin to take steps that may have a positive  
20 effect.

21 And we're not looking at doing it across the  
22 board. We're not looking at kind of a one size fits all  
23 situation because I think that's one of the  
24 issues that we have with a lot of regulations, is that  
25 we kind of take the one size fits all

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1 approach, which just intuitively to me doesn't make  
2 sense. If you've got issuers that are  
3 dramatically different in terms of market cap, in terms  
4 of who's following them, in terms of the risk  
5 to the system if something goes wrong with those



6 companies, to treat every one of those the same  
7 just instinctively to me that doesn't make a whole  
8 lot of sense.

9 And so I think that as a result,  
10 coming up with a pilot study that talks about, well, it  
11 increases the tick size with respect to just these  
12 smaller cap companies is something that is well worth  
13 doing.

14 MR. ABSHURE: So the idea is that,  
15 in fact, increasing that spread, you know, as a focus  
16 toward liquidity, it makes it more attractive for the  
17 investor, but also provides a means for investment banks,  
18 analysts, whoever else, to follow that. There's more  
19 room there. There's more opportunity there for that.

20 MR. GRAHAM: That's the theory.

21 MR. BORER: Stephen, this is John Borer.

22 From the perspective of the investment bank,  
23 because I've been with boutique investment banks for  
24 years and years, I think that, Heath, to your point, I  
25 think that the analyst piece is one element of it and

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1 very important, but even if the tick sizes are increased,  
2 many of these firms will still have a very tough time  
3 getting analysts to pick them up.

4 But I think it's one way to improve the  
5 ecosystem for the trading and small firm side of the  
6 business. When I say "trading," on one hand you have the  
7 big wholesalers like the Knight Securities, the  
8 Susquehannas, et cetera, which trade a lot of the volume  
9 in the exchanges every day, including in the smaller  
10 companies, and on the other hand, you have the boutiques,  
11 which if anyone is going to follow the smaller companies,  
12 it will be them. It will not be the wire houses, the big  
13 banks, et cetera, because that's just not part of what  
14 they do.

15 It may also increase the non-brokerage research  
16 community that get paid either as, you know, registered  
17 investment advisors or as broker-dealers but without  
18 trading operations to provide that information, access to  
19 management, et cetera, because they can get paid by the  
20 buy-side community through commission checks going to  
21 whoever they get paid from.

22 My view on this is that there's very little or  
23 no recognized, at least in my perspective, downside to  
24 trying this out. To Stephen's point, I agree. A pilot

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2 program that is going to be a limited period, no one is  
3 going to make the investment. You can't afford to.

4 I go back to Global Settlement where there was  
5 a very large piece of that that was allocated to a multi-  
6 year requirement for large wire houses to provide  
7 secondary research to their clients when they purchase

8 stocks, and there were a number of boutiques came up.  
9 They were providing those research services, and I think  
10 almost all of them now have either dissipated, winnowed,  
11 or gone away.

12 So my view on this is I don't know what a test  
13 period means. From the way I read our suggestion is we  
14 should try this and then adjust it as we get a little bit  
15 further on. I think the devil, as has always been  
16 stated, is in the details. What size companies should  
17 they supply to? What should the range of tick sizes be?  
18 How should companies be able to decide what those are?  
19 And then how often can those be adjusted by those  
20 companies? Are they freezing them in place for a while  
21 or can they say, "Well, it's five cents today. We're not  
22 doing it. It should be ten cents in 30 days"?

23 There has got to be some ratchet, I assume,  
24 around how this gets done or else it would be very  
25 confusing. I'd be interested to know because I haven't  
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1 seen it and my fault if I haven't seen the notices, what  
2 the input has been from the very high volume wholesale  
3 trading firms on the street are or some of the electronic  
4 markets, including the OTC markets because those entities  
5 likely will not provide any research and those entities  
6 are not providing the corporate finance and other  
7 advisory services which the boutiques do, but I think  
8 they will largely drive the liquidity, meaning the  
9 allocation of capital to support the trades with a wider  
10 spread if these changes are made.

11 And I'm not quite sure because I can't speak  
12 from that direction on how those constituents in the market  
13 would react to this if anybody knows.

14 MR. NALLEGARA: John, that's a great question,  
15 and as part of the report that we issued over the summer,  
16 one of the recommendations was to get smart people  
17 together and talk about tick size generally, you know,  
18 sort of impact on the market, but also what changes or  
19 what the impact has been on smaller companies, and then  
20 discuss what you could do with that information, how if  
21 you were going to do something, a pilot, for example, how  
22 that would be structured, how you would identify what  
23 companies would be involved and how you would -- you  
24 know, the length of time, all of those questions.

25 So next week we have a roundtable, which would  
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1 include some of the larger players that you've talked  
2 about, smaller ones as well, academics who have studied  
3 this and they will -- they will talk about it as a  
4 theoretical concept, but also practically how you could  
5 implement, if you were going to implement something, how  
6 you would implement some test or pilot program.

7 So we don't -- I mean, we've heard anecdotally  
8 what their thoughts are, but getting their views on the  
9 concept but also how something like that would be

10 implemented, and that would include OTC markets as well.  
11 We are sort of looking forward to the discussion and the  
12 input from that group as well as we consider this.

13 MR. BORER: One other point, Stephen, is when  
14 we talk about a test period, and I hate to use "pilot"  
15 because that truly implies to me that there's a sunset to  
16 it, what kind of a time period, if any, would the  
17 Committee recommend for something like that? I think if  
18 you have any time period at all, people may be watching  
19 at the very beginning, see other people doing it, and  
20 then some of that time has run, and the secondary adopters  
21 may not come in, or should this just be open ended and  
22 obviously subject in the future to further, you know,  
23 rulemaking or revisions in how it's being implemented or  
24 used.

25 MR. GRAHAM: Well, you know, first of all I'm  
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1 with you in terms of creating enough certainty to get  
2 people to participate, and whether you call it a pilot  
3 program or something else, I want to get to the point  
4 where we provide enough certainty or enough certainty is  
5 provided so that the participants will get in and make  
6 the investment and give this a try.

7 But at the same time, you know, couch it in  
8 terms that will make the terms necessary to enable the  
9 SEC to act as quickly as possible. So that's kind of,  
10 you know, whatever kind of terminology you need to come  
11 up with to kind of satisfy those objectives, that's kind  
12 of what I'm thinking.

13 In terms of duration, I think that  
14 the outcome of the roundtable that Lona mentioned, I  
15 think that will help kind of inform us and the  
16 staff as to what might work, but I think you're looking  
17 at a period of time, let's say, two or three years before  
18 you could even hope to see an effect. If we change this on  
19 Monday, we're not going to see a dramatic change in the  
20 marketplace on Friday. So this is nothing that's going  
21 to happen overnight, and so I think that you've got to  
22 give it a few years to figure out whether or  
23 not we really are moving the needle, and then beyond that  
24 you've got to give it a few years to see what the effect  
25 is once things really do have an opportunity to kick in.

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1 And so, what those periods should be,  
2 I don't know. Maybe it's five to seven years. I don't  
3 know, but I think the important thing is to  
4 provide the certainty, come up with a framework that  
5 really gives it an opportunity to work if it's going to  
6 work, and then part of that is making sure that we have a  
7 system in place where people feel comfortable making  
8 investment without worrying about having kind of the rug  
9 pulled back out from under them once things are up and  
10 running and they've staffed up and began to shore up this  
11 ecosystem that they keep talking about.

12 MS. JACOBS: I also think that I'm hoping out  
13 of that meeting that some attention is paid to not just  
14 the action of tick size, but what is the deliverable?  
15 And hopefully the deliverable which will be -- I mean, I  
16 would assume metrics that do demonstrate that we have  
17 changed the average daily trading volume of the small and  
18 micro cap stocks because that's the goal; that once the  
19 deliverables are identified, that then will support how  
20 long the program is. How long do you need to study what  
21 happens to the liquidity? Because that's hopefully one  
22 of the deliverables.

23 Do you see what I mean? So once we know what  
24 metrics are going to be used to decide how this pilot  
25 program works, that then will help decide how long do we  
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1 have to give it. Because I went back to the average  
2 daily trading volume of our shares to the calendar of  
3 those laws, NMS and ATS, and what happened to our stock,  
4 and I do not have the time or the resources to look at  
5 other small and micro cap stocks over that time period of  
6 '97 to '99 all the way out to 2011; that drop in the  
7 average daily trading volume was somewhat precipitous,  
8 but it reached a steady state, and I think that's going  
9 to be important for us to know, not only when do we see  
10 an effect of increased liquidity, but did we go out some  
11 period of time and see a nadir, i.e., a steady state?

12 So I'm hoping the deliverables will lead us to  
13 how long should this program be in effect.

14 MR. BORER: I believe based on the inputs that  
15 Lona was mentioning, having a bunch of industry  
16 participants in next week and those types of things will  
17 drive or should drive a lot of how this is adopted, but I  
18 would suggest perhaps for consideration that instead of  
19 having on the front end in whatever regulation or  
20 rulemaking is put in place a sunset that this is either  
21 like as with the changes to the shelf filing rules and  
22 doing away with the S-B rules a few years ago that the  
23 Commission come up with something and we recommend  
24 something that is adopted; that it's not people staring  
25 at a withdrawal date, which everybody else can know; and  
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1 then based upon the volume, the liquidity, the market  
2 participation and, perhaps more importantly, given the  
3 attrition on Wall Street over the last ten years of  
4 firms, new market entrants. You know, go back to when  
5 the electronic market started coming into place, the  
6 Archipelagos and the E\*Trades, and those types of people  
7 to drive liquidity a number of years ago. Those people  
8 came into the market because opportunities were open with  
9 respect to how the markets were operating, and so things  
10 were moving off of the New York Stock Exchange and the  
11 American and NASDAQ into these alternative venues, and I  
12 think over time that's been very healthy, and I think if  
13 we circumscribe at all a limit on how long this lasts as

14 it's set up, we're going to keep people from setting into  
15 it, venture capitalists starting new companies, et  
16 cetera, to do this or to start new brokerage or trading  
17 venues and those types of things as opposed to just as we  
18 go along.

19 If Rule 419 was changed a number of years ago,  
20 we see something needs to be fixed, let's go deal with  
21 that as opposed to let's try a rule change and then, you  
22 know, five years from now it will stop and then we'll  
23 look at it again. I just think that would be a better  
24 way to encourage market participation on Wall Street  
25 firms who right now, quite honestly, are very skittish

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1 and afraid to try new things.

2 The big guys, they can put somebody on it and,  
3 reprogram their computers and see if tick sizes  
4 make a difference for them, but for the folks down in the  
5 weeds, which is kind of where we operate, I think that  
6 that's going to be pretty important.

7 MR. GRAHAM: I agree with 100 percent of  
8 that. That's what my gut tells me, too.

9 Dan.

10 MR. CHACE: So just on this recommendation  
11 generally, I was a bit skeptical of it when I read it and  
12 when we discussed it last time because the only certainty  
13 of it is that transaction costs will increase for  
14 investors, and then it relies on a series of assumptions  
15 beyond that, that liquidity will increase and that that  
16 will drive research coverage and that research coverage  
17 will generate more institutional or retail interest in  
18 these stocks and interest in IPOs.

19 I've kind of become persuaded in the provision  
20 that's most important, I think, in that is that the  
21 company gets to choose the tick size because there are  
22 micro cap and small cap public companies that don't  
23 really care about the liquidity of their stock and don't  
24 really care about institutional ownership or retail  
25 ownership. I think it's important to give those

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1 companies that leeway to not pass that transaction cost  
2 onto their investors.

3 But there's also companies that do care. So I  
4 think that that aspect of the recommendation I think is  
5 pretty critical rather than a one size fits all, and as  
6 well I would just agree with the comments. Since I am  
7 skeptical that the impact will be there, anything that  
8 makes that less likely to happen, such as a sunset  
9 provision or a timing that makes those investments  
10 unlikely doesn't make sense. So I think it's worth  
11 considering making it just a recommendation to allow this  
12 rather than a temporary thing.

13 MR. GRAHAM: Thanks, Dan.

14 Tim.

15 MR. WALSH: Good morning. Just to follow up on

16 Dan, too, I think he summed it up at least on the buy  
17 side how I feel exactly, too, skeptical, but I think it's  
18 worth a try. As he mentioned, the only certainty is the  
19 costs are going up. So as soon as I hear that the costs  
20 are going up and there's a hope we're going to get  
21 better liquidity, research on the other side of tomorrow  
22 I'm a little bit skeptical, and I think the roundtable  
23 next week, the question you have to follow up on, Chris,  
24 is: what is the deliverable? Because you could have  
25 something where actual liquidity doesn't get better, but  
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1 relative to where the markets were at the time, they're  
2 better than they would have been.

3 So it's very difficult to quantify two years,  
4 three years, four years whether this is really going to  
5 work, but I'm like 55-45 support it.

6 MR. GRAHAM: Thanks, Tim.  
7 Milton.

8 MR. CHANG: Extrapolating what Dan said, it  
9 really hinges upon let the market decide. I wonder if  
10 we have some ways of extrapolating that principle to  
11 determine the tick size.

12 MR. BORER: Milton, that's a good point, but I  
13 think as Dan just said if the company has the ability  
14 because they will act in their own best interest and that  
15 will be accomplished by understanding what the  
16 infrastructure ecosystem is that supports them in the  
17 capital markets, which includes what the buy side needs in  
18 order to have a healthy and ongoing participation in the  
19 investment in their companies, I think, as he said, the  
20 one size fits all I don't like.

21 I think if a company decides, it  
22 isn't working now trading in half penny increments and  
23 let's try five cents so we have a reason that a broker-  
24 dealer, you know, a market participant in the middle will  
25 be willing to buy 10,000 shares, hold it in inventory and  
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1 offer it out on the other side because there's a spread  
2 in there, I think that's where this all starts, and there  
3 will be a million decisions a day made by hundreds of  
4 thousands of participants in the end investor, you know,  
5 as well as the market participants in the middle, the  
6 dealers and trading infrastructure.

7 And as long as there's a rational person, and I  
8 think it's the issuer who can help decide what that  
9 should be as opposed to, you know, a black box or even  
10 the dealers doing it because dealers can either decide  
11 they want to make a market or not, and that's something  
12 that they will do based on their best interest, and I  
13 think that that's the way to do it.

14 So I think whatever we recommend, I think --  
15 and it's in there right now -- is that it be at the  
16 discretion of the issuing company because if they're  
17 happy and they don't need their stock to have much

18 attention, trade or provide the infrastructure of Wall  
19 Street a profit, then they don't need to. Question why  
20 they're public, but that's what they can do. The ones  
21 that want to encourage and support the infrastructure, I  
22 think, can do it another way.

23 MR. GRAHAM: And in that regard and maybe this  
24 is something that we leave to the staff to sort out or  
25 next week's roundtable to provide some input, but what  
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1 might be your thoughts on kind of the limits placed on  
2 issuers in choosing their own tick size?

3 It just seems to me that you would end up with  
4 a system that might be more chaotic if you had  
5 20 tick sizes out there. You're in the business. You  
6 probably know whether or not that makes any difference,  
7 but it would seem to me that it would probably make sense  
8 to have a range and then some limits within that range,  
9 maybe only dealing with round numbers, that  
10 sort of thing or maybe that's something that we don't  
11 need to address in this recommendation.

12 MR. BORER: Yeah, I think it would be very  
13 helpful, I think, because the wholesalers in large I  
14 think will drive a lot of the volume that takes place.  
15 So perhaps in the group next week where you have the  
16 market participants in, that would be a good thing to  
17 find out.

18 I agree. I think there ought to be some  
19 limitations. I don't think it should be something that's  
20 like a videogame where you can change your cheat every  
21 time you're, you know, jumping onto the next level and  
22 those types of things, but I think that could be a pretty  
23 short period of time, and I think it should be easily  
24 distributed because trading decisions are made a million,  
25 tens of millions of times a day. They're pretty easy to  
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1 look when you're making a trade what the tick size is,  
2 and your dealer will provide that information.

3 I think whether it's none, a penny, five cents,  
4 seven and a half cents, ten cents, those types of things  
5 make sense because then every company can make up its  
6 mind, and if we're going to go in discrete, say, penny  
7 increments as opposed to percentages or something else,  
8 then that obviously will be impacted pretty dramatically  
9 by whether it's a one dollar stock or a \$100 stock.

10 You know, the \$100 stock is likely not going to  
11 need any type of support in this type of venue. So it's  
12 most likely to be the smaller ones, but I think  
13 some reasonable rules along those lines would be  
14 pretty easy for people to -- and to evaluate within a  
15 very short period of time, a year afterward, 18 months  
16 afterwards, as to are they really working. Are the  
17 market participants satisfied with these? And some of  
18 the things Christine was talking about with respect to  
19 the liquidity being provided and those types of things.

20 MR. YADLEY: I'm not sure that except for a few  
21 folks that are in the market there's a lot more we can  
22 say. The recommendation doesn't address the time frame.

23 So the only question I have, Stephen and Chris, is do we  
24 want to add something that says we believe sufficient  
25 time should be given and metrics established so that we

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1 give this a chance to work? Other than that, I'm ready to  
2 vote.

3 MR. GRAHAM: Okay. Good. Chris, did you have  
4 something?

5 MS. JACOBS: No.

6 MR. GRAHAM: Okay. Any other comments?

7 COMMISSIONER GALLAGHER: Can I make one quick  
8 comment?

9 It seems just interesting to me coming in on  
10 this, the tail end, the last meeting obviously. You're  
11 going to vote on this now, but we have the roundtable  
12 next week, and I don't like putting things off. I'm not  
13 an advocate for putting things off, but I just wonder  
14 whether the learning from next week, which I personally  
15 am looking forward to, will impact any decisions you make  
16 today, not again advocating you don't take action today,  
17 but that you have some mechanism to bring that  
18 learning into your decision.

19 And on a related note I would hope that you  
20 would have at least a reporter or some other  
21 representation for this Committee next week at the round  
22 table so that you get it live and somebody is responsible  
23 for reporting back to you.

24 MR. GRAHAM: Daniel -- excuse me -- I think  
25 those are good points. I personally am not concerned

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1 about voting today and passing a recommendation along the  
2 lines that we described because I don't think that  
3 anything coming out of next week's session is going to  
4 kind of alter that recommendation in a fundamental way.  
5 I think it will be just like it's not going to be ready  
6 for the SEC to say, "Okay. This is it. We're done."

7 There's going to be a decision made as to  
8 whether this is the recommendation that should be  
9 followed. Then there's all the detail, and I think that  
10 the roundtable next week is going to provide that, help  
11 to provide at least some of that detail.

12 As far as having a member of this Committee be  
13 at that roundtable, I think that's a very good idea. So  
14 let's see if we can't make that happen or maybe we can  
15 deputize Lona.

16 COMMISSIONER GALLAGHER: Just tell us if you  
17 run into any problems.

18 MS. JACOBS: And I just want to add in  
19 background this is our third meeting where it has been  
20 discussed. So we've got about -- I think we've had a  
21 sense it's like, well, this meeting was sort of a get it



22 up, get it down meeting, and having had the benefit of  
23 all these presenters, some of which I think the February  
24 5th meeting will be hearing for the first time. We've  
25 already heard; we've seen the presentations; we've had  
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1 them, and I think there's a sense of this Committee that  
2 they are ready, and I don't know who's going next week.

3 COMMISSIONER GALLAGHER: That makes perfect  
4 sense. I mean, a generalized recommendation subject to,  
5 you know, the nuts and bolts implementation --

6 MS. JACOBS: Sure.

7 COMMISSIONER GALLAGHER: -- details by the  
8 staff. You know, I think you're right that next week  
9 shouldn't impact that sort of generalized --

10 MR. GRAHAM: And also we'd feel free to amend  
11 any recommendation.

12 Okay. Any other comments?

13 (No response.)

14 MR. GRAHAM: So the recommendation then that's  
15 before you is, in effect, the one that was already before  
16 you with certain modifications, and that is that we make  
17 it clear that there's no sunset, but an opportunity for  
18 adjustment as we go along. It is to underscore that  
19 whatever program is in place has to be of sufficient  
20 duration to give it an opportunity to work.

21 Related to that is just kind of understanding  
22 the framework within which, you know, all of this happens  
23 so that to the extent you're pushing one part of the  
24 system and something comes out on the other part, you  
25 have to make sure that we're cognizant of other rules  
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1 that might need to be adjusted in this context and that  
2 although choosing the tick size should be voluntary, kind  
3 of the range of options should be limited.

4 That's what is on the table, and I will propose  
5 that recommendation and ask for someone to second it.

6 MS. SMITH: Second.

7 MR. GRAHAM: It's been proposed and seconded.  
8 Any further discussion?

9 (No response.)

10 MR. GRAHAM: Okay. All those in favor.

11 (Chorus of ayes.)

12 MR. GRAHAM: All those opposed?

13 (No response.)

14 MR. GRAHAM: Hearing none, the recommendation  
15 carries.

16 Okay. The second recommendation is with regard  
17 to encouraging the creation of the new exchange for small  
18 and emerging companies, and although the regulatory  
19 regime under which U.S. equity markets operate permit  
20 flexibility in establishing listing standards, the  
21 Committee believes that these markets often fail to offer  
22 a satisfactory listing venue for small and emerging  
23 companies.

24 And the failure of the U.S. equity markets to  
25 offer a satisfactory listing venue undermines

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1 entrepreneurship and weakens the U.S. economy, and so we  
2 believe that establishing a separate U.S. equity market  
3 specifically for small and emerging companies where they  
4 would be subject to a regulatory regime strict enough to  
5 protect investors but flexible enough to accommodate  
6 innovation and growth offers promise of providing a  
7 satisfactory listing venue.

8 We're talking about newly public companies.  
9 We're not talking about going the other way and having  
10 existing companies somehow participate in this  
11 new exchange. It is seen as something that would be  
12 evolutionary, if you will, where a private company  
13 instead of jumping straight to your standard framework,  
14 if you will, this could be kind of an intermediate step.

15 A possible future feature of this, of course,  
16 is that you'd limit investor protection or -- pardon me -  
17 - investor participation to sophisticated investors who  
18 meet a standard that would be designed to assure that the  
19 regulatory protection afforded these investors is  
20 appropriate.

21 The business of creating exchanges is not ours.  
22 It's not the SEC's, but clearly the SEC has a role in  
23 terms of regulation, and it would be our recommendation  
24 that the SEC should facilitate and encourage the creation  
25 of such a separate market for small and emerging

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1 companies in which, again, investor participation would  
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4 be limited to those who are sophisticated or accredited  
5 and so that small and emerging companies who are  
6 initially going public would be subject to a regulatory  
7 regime strict enough to provide the necessary investor  
8 protection, but nonetheless would be such that it would  
9 accommodate innovation or growth by such companies.

10 So that's in effect the recommendation, and  
11 I'll open it up to discussion. Any thoughts?

12 MR. WALSH: Oh, good. He's back. I was going  
13 to ask Lona to maybe give his opinion on this matter  
14 because I'm still a little bit befuddled by it.

15 MR. NALLEGARA: I don't have an opinion on  
16 anything.

17 MR. WALSH: Your personal opinion then. How's  
18 that?

19 MR. NALLEGARA: But before I do that, David  
20 Shillman is an Associate Director in our Trading and  
21 Markets Division. If there's anything about exchanges  
22 that I have a question on, as there always is, I always  
23 call Dave. So we're glad to have Dave join us for any  
24 technical questions we have on this.

25 So I think the recommendation, just to maybe

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1 frame this and then Dave can help, there's nothing really  
2 that would stop -- I don't think there's particular  
3 rules, our rules, that would prevent an exchange from  
4 forming a smaller exchange as this described in the  
5 rules. So, I think there's likely more  
6 business considerations around whether an exchange like  
7 this would be successful, whether there are -- whether  
8 there's an interest. I mean, if a security of a company  
9 that would qualify for an exchange like this, if it's  
10 going to be traded on this exchange, you need market  
11 makers. You need the infrastructure to develop around  
12 the exchange for that to be successful. If someone is going  
13 to make a market, someone's going to take the risk on  
14 quoting a security on that exchange. There is risk  
15 associated with doing that. Are they going to do that if  
16 there isn't an appropriate incentive?

17 And there are examples of smaller exchanges.  
18 So I think the recommendation is crafted not as one  
19 designed for the SEC to actually do anything other than I  
20 think it's an encouragement or to facilitate, but there  
21 isn't any -- and Dave is not correcting me, so I think  
22 I'm right -- there's nothing in our rules that would  
23 prevent something like this from developing, but there is  
24 another piece of this that would be challenging, which is  
25 if you build something like this, will people come and

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1 actually use it.

2 MR. SHILLMAN: Yeah, I think that's right, and  
3 just perhaps for your general background in discussing  
4 this issue, exchanges, we oversee exchanges through the  
5 rule filing process. Whenever an exchange wants to make  
6 a material change with a trading system or soliciting  
7 standards, they file rules with us. We put them out for  
8 comment, and then we either approve them or not depending  
9 on the input from the commenters and whether they meet  
10 certain statutory standards of, you know, being in public  
11 interest, protection of investors, designed for fraud  
12 manipulation, fair, non-discriminatory and the like.

13 Listing standards, if an exchange wants to  
14 establish new listing standards, new, more flexible  
15 listing standards, then they are free to file those with  
16 us, and we would then review those to make sure they meet  
17 these general statutory standards.

18 So as Lona indicated, there's nothing that  
19 would prevent exchanges from developing new sets of  
20 listing standards proposed with us, and you might be  
21 interested in the NASDAQ affiliate. The BX Venture  
22 Market went through this process with us a few years ago,  
23 and we approved new listing standards for this exchange.

24 We just focused on smaller companies. We had  
25 substantially lower, you know, quantitative standards,

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1 public float, number of shareholders, share price, some

2 additional flexibility on governance issues. So that  
3 exchange exists. Those listing standards exist.

4 I don't believe that exchange is yet functional  
5 in part for the business reasons. Going back to your  
6 issue number one, unless there is sufficient liquidity  
7 provision to ensure that trading will occur  
8 smoothly and effectively, it's difficult to launch these  
9 businesses.

10 So as context to your discussion, there is  
11 quite a bit of freedom for the exchange proposed and new  
12 listing standards and I think we have some freedom under  
13 the Exchange Act to approve those, but there are these  
14 overarching business issues of in order to have effective  
15 trading on the exchange, you need liquidity, and how do  
16 you track a liquidity provision?

17 MR. BORER: Stephen? I'm sorry.

18 MR. GRAHAM: Go ahead, Greg.

19 MR. YADLEY: Yes, this may sound a little form  
20 over substance, but it seems to me that this  
21 recommendation should come after we talk about different  
22 disclosure because I think there are two sides to this.  
23 One is what David just said. What do the markets require  
24 in terms of the trading activity and sort of the rules of  
25 the game within which people trade, but the product is

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1 the company, and so the question is: how do you get good  
2 companies to be willing to go public?

3 And we've been focusing on the burdens. So it  
4 seems to me the piece that we would have to address  
5 before this would be realistic would be the disclosure  
6 aspects and the regulation, and what can you do to  
7 protect investors and still not have so many prescriptive  
8 rules about so many things that require management to  
9 spend money and take their time.

10 So I guess that's sort of the same question Tim  
11 had. This seems like a good idea. I think, again, it's  
12 one of the things that the SEC could encourage, can't  
13 make happen, but just maybe a little more background on  
14 the recommendation.

15 MR. NALLEGARA: Greg, that's another element,  
16 and part of it is listing standards that the exchanges  
17 have responsibility for, the things that Dave mentioned  
18 on market cap and share prices, those types of things,  
19 and then some of the corporate governance requirements  
20 are through listing standards, but many of the things  
21 that I think all of you are talking about for smaller  
22 companies to be able to trade on an exchange may not  
23 necessarily line up exactly with listing standards or may  
24 have a root, you know, in sort of our own rules with  
25 respect to disclosure requirements.

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1 So part of this discussion is listing standards  
2 that the exchanges can propose and we will consider, but  
3 also part of this, I think, is because it feels like it's

4 a market for this range of companies where only  
5 accredited investors can trade, I think -- and I could be  
6 wrong -- I think we're talking about a different  
7 disclosure regime for these companies as well, which  
8 you're right, Greg. It does bridge. I mean this sort of  
9 bridges both your first recommendation and your third  
10 recommendation in creating liquidity for a place for  
11 liquidity for these markets, which tick size is thought  
12 to increase as well as reducing the burdens which a  
13 scaling of disclosure for companies would also  
14 facilitate.

15 MR. GRAHAM: Yeah, the devil is always going to  
16 be in the details, but to my way of thinking, the  
17 disclosure aspect is the most important aspect. The  
18 exchange rule, the listing requirements aspects is  
19 plumbing, and again, the devil is going to be in the  
20 details, but the notion is that we all understand the  
21 regulatory framework that companies that want to be  
22 public are subject to and everything that kind of goes  
23 into putting together an S-1 registration statement, and  
24 we all understand, you know, what is required in the way  
25 of continuous disclosure with the '34 Act reports.

0060

1 And then at the other end of the spectrum, we  
2 know that if you do a 506 offering with solely accredited  
3 investors there's absolutely no information requirement.

4 Can't commit fraud, but there's no information  
5 requirement.

6 And so the idea is that you facilitate  
7 companies going public that fit somewhere between those  
8 two ends, and as a result of that, by definition the cost  
9 of going public would be a hell of a lot less, and the  
10 cost of continuing to be public would be a hell of a lot  
11 less because you would have disclosure requirements that  
12 would be geared toward accredited investors and sophisticated  
13 investors as opposed to trying to make sure that everyone  
14 who might participate in the market is covered.

15 Now, we have the business issues, and again,  
16 I'm not in the exchange business, and maybe,  
17 presenting this opportunity is something that exchanges  
18 would say "This isn't going to work. It's a  
19 bad idea."

20 But to the extent that the exchanges think that  
21 it is a good idea, what we'd be asking for is the  
22 collaboration and cooperation on the part of the SEC to  
23 make sure that, everything that they can do is  
24 done to facilitate the establishment of such an exchange.

25 MR. ABSHURE: I guess my real question would be

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1 what is this failure to offer a satisfactory listing  
2 venue because until you identify specifically what the  
3 failures are, you're just throwing darts at what you're  
4 fixing, and I go back to something that David mentioned  
5 with the BX Exchange. We worked with NASDAQ on that for

6 two years, if not longer, with the idea that the BX  
7 was going to be for those companies that didn't hit the  
8 listing standards on either the big board or NASDAQ, but  
9 they didn't need to drop all the way down to the pink  
10 sheets.

11 They got SEC approval, and I don't know what  
12 happened. You know, I don't know where that went, but in  
13 terms of providing secondary liquidity, we already have a  
14 number of options, between the over-the-counter  
15 bulletin board, pink sheets, things like that, some of  
16 the things that SecondMarket is doing and proposing  
17 and discussing with us right now are very innovative.

18 SharesPost is the same way. I'm a little  
19 hesitant to really support encouraging a secondary market  
20 unless I have, I guess, a better grasp on what's the  
21 failure on the alternatives we have out there now. What  
22 was the failure with BX? What was the big holdup there?

23 And this bit about flexible enough to accommodate  
24 innovation and growth, what exactly about the existing  
25 market alternatives inhibit innovation and growth?

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1 That's another statement I don't understand.

2 MR. GRAHAM: I guess a couple of things. You  
3 know, I'm not up on what was done with BX, but was part  
4 of that a less robust disclosure framework, reducing the  
5 compliance costs in a significant way?

6 MR. ABSHURE: I think the idea -- and, David,  
7 correct me if I'm wrong -- but I think the idea was it  
8 provided a trading outlet for those companies that had  
9 missed the listing standards for the New York Stock  
10 Exchange or the NASDAQ.

11 MR. SHILLMAN: Right. I think that's right.  
12 These would all be registered public companies, but the  
13 listing standards would be loose and --

14 MR. GRAHAM: Right. And then the focus of this  
15 recommendation is in essentially reducing the cost of  
16 compliance, and I think SecondMarket and SharesPost  
17 and that sort of thing, I think those are designed for  
18 liquidity and secondary shares and don't provide much in  
19 the way of enabling or encouraging private companies to  
20 go public.

21 MR. NALLENGARA: Just sorry to interrupt.  
22 There was a - just to correct, because the BX hasn't failed.

23 I think there's questions about how  
24 successful it has been. So still a trading venue that's  
25 available, but the business considerations are ones that

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1 have posed challenges to sort of the vibrant market that  
2 may have been --

3 MR. ABSHURE: But in terms of reducing the cost  
4 of compliance, which is really just reducing the cost or  
5 the amount of disclosure when you're talking about  
6 supporting secondary trading systems, so a periodic  
7 report done, in other words, your '34 Act-esque

8 reporting, I think I would be very, very, very concerned  
9 if your price of stock was based upon anything other than  
10 material, publicly available information about the  
11 company. I think that leads itself to market  
12 manipulation, washed trades, things of that nature.

13 Now, I can't say that I would be opposed to a  
14 more streamlined disclosure standard where you still had  
15 material information about those companies, but at the  
16 point that you start talking about reducing compliance  
17 costs and understanding that all federal securities laws  
18 are a disclosure regime, what you're really saying is  
19 we're going to provide less information, and that always  
20 gives me concern, especially when you're talking about a  
21 market mechanism that's going to set a price for  
22 secondary market trades.

23 MR. GRAHAM: Well, you know, again, the devil  
24 is going to be in the details, and the idea not to  
25 provide no disclosure but to kind of understand what that  
0064

1 disclosure might look at, you know, given the nature of  
2 the investors who will be participating.

3 And so, again, on the one hand you're dealing  
4 with just your standard 506 accredited investor only  
5 offering where there are no information requirements to  
6 full blown, you know, S-1 prospectus-type disclosure, and  
7 what we're saying is that this new market, the disclosure  
8 requirements would be streamlined and fall somewhere  
9 between those two, but there wouldn't be an absence of  
10 disclosure.

11 MR. YADLEY: Here's sort of my question,  
12 Stephen, and maybe I'm just missing it. Is this market  
13 for companies with the class of equity securities registered  
14 under the '34 Act and we're talking about trading those  
15 securities? Are we talking about pre-'34 Act reporting  
16 companies?

17 MR. GRAHAM: We are talking about private  
18 companies going public and once it went public they would  
19 be subject to the '34 Act.

20 MR. YADLEY: Okay, and I guess that was the  
21 point I was trying to make earlier, obviously not very  
22 artfully. I understand the rules around the marketplace,  
23 but fundamentally it's what does the company have to  
24 report.

25 So if when we get to our next discussion and we  
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1 come up with, to use Heath's words, streamlined or more  
2 rational or I prefer principles-based disclosures where a  
3 company is a fully functioning, fully compliant, publicly  
4 traded company and now what we're going to do is have a  
5 marketplace that more readily accepts the fact that it's  
6 untried. There's not going to be a lot of volume. Tick  
7 sizes are bigger. Maybe the costs of trading are higher.

8 There are a lot of things that are going to cause these  
9 companies not to have the same liquidity as a larger

10 company. So let's have an exchange that supports them.  
11 I think that's an excellent idea.

12 But it calls into question if we do that, would  
13 we even need to limit it to accredited investors, because  
14 if, in fact, the company is providing all material  
15 disclosure, just it's more flexible disclosure, it's more  
16 principles based, there's stuff that, you know, executive  
17 compensation is really important. It's really  
18 interesting to read. As a lawyer I get to spend a lot of  
19 time counseling my clients about it, but most investors  
20 don't really care about that and they care about it less  
21 if the company is going someplace, if it's moving ahead,  
22 and Conflict Minerals, which we'll get to again, these  
23 things don't matter, but that's less the market than the  
24 disclosure.

25 So I'm not opposed to this, but I don't quite  
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1 understand why we'd have to limit it to sophisticated  
2 investors if, in fact, you have a company that's public  
3 and can be sued just like any other company for failure  
4 to comply with the disclosure obligations.

5 MS. JACOBS: And I think what I'd like to do is  
6 maybe help the Committee and let's go back up to 30,000  
7 square feet before we get into these issues because every  
8 one of them is valid, and the devil is going to be in the  
9 details, is to remember where this one came from. It  
10 started with a discussion of those Committee members that  
11 were associated closely with existing public companies,  
12 and even statements were made, "I don't even know why  
13 we're public anymore," or, "no company under a billion in  
14 revenue should be on any exchange."

15 From there it morphed into discussion where you  
16 have the big large cap, which represents the majority of  
17 the value of all exchanges as well as the trading volume,  
18 okay, and the small and micro caps and we're all painted  
19 with the same broad brush. We're all treated the  
20 same. We're all regulated, and we have to comply the  
21 same way that G.E. complies. There's no deference given  
22 to the little guys.

23 Then the question came up, well, then what do  
24 you do with the new IPOs, and it was viewed at the time  
25 that these current exchanges are an impediment. Why

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1 would any IPO company -- the question was: why would any  
2 newly listed company want to come on the NYSE or NASDAQ  
3 and put up with the hassle?

4 So that's where this came from. So I just want  
5 to put it into perspective, especially, too, if you were  
6 not part of it. We're trying to bridge a gap, but not  
7 necessarily create the infrastructure here. That's where  
8 I'm coming from. I think there's a lot of details. We

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11 were kind of going on the record as saying we'd like a



12 day two. You have the IPO on day one, and you go and you get  
13 your listing, but then you have a day two and what  
14 happens to them after that? That's where we were coming  
15 from.

16 MR. BORER: Stephen, if I could.

17 MR. GRAHAM: Yeah.

18 MR. BORER: I view the hole in the market today  
19 as not providing another venue for registrants, you know,  
20 reporting companies that are already there but just have  
21 less liquidity or something like that to have another  
22 place to trade. That exists. OTC markets do a good job.  
23 There are a lot of electronic venues for that sort of  
24 thing.

25 I view the hole in the market as being the  
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1 providing greater liquidity for secondary market trading  
2 of small company securities, and again, I would say  
3 whether they're equity or other instruments that those  
4 companies may have between sophisticated, accredited  
5 investors, if I own a private placement today and someone  
6 in this room is sophisticated, I can sell that to them,  
7 and there is a wide range, you know absent fraud, of  
8 things that I would be required to disclose and the buyer  
9 to either accept or reject in being willing to do that  
10 transaction. It happens all the time.

11 It happens on Wall Street, and it happens at  
12 the pizza parlor. I think that whether it's  
13 SecondMarket or SharesPost or various venues that exist today  
14 for secondary market trading of anything from MLP, REIT  
15 interest, private REITs, the -- what was the other part I  
16  
17 had -- oh, timeshares, I mean, there's markets for these  
18 things, and there are various disclosures that are  
19 required

20 I think, and again, because this is not  
21 something that the SEC can make happen, I think it's a  
22 question of do we go on the record to encourage the  
23 development of this market for secondary trading of these  
24 securities when, in fact, the legislators have already  
25 said: crowdfunding, let's let all of these people buy

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1 these securities.

2 But there's no natural venue for them to be  
3 able to re-vent them anywhere else, or the same thing  
4 with the broadening or the doing away hopefully with the  
5 restrictions on general solicitation. That will  
6 theoretically broaden the market and make more efficient  
7 the distribution of private securities for companies  
8 whether they be public or private companies. I think  
9 here we're largely talking about private companies, to  
10 have the secondary market trading of those securities.

11 If I think of SecondMarket, they're  
12 principally a venue for trading of either equities of  
13 public securities or derivatives of equities of public

14 securities, not of -- or maybe of a Facebook pre-public  
15 because there's lots of information or lots of buyers.  
16 There's liquidity and those types of thing, but there's  
17 very little if anything else that provides that, and I  
18 don't think just the talk here about the BX Venture.  
19 That was one that they could create it, but I don't think  
20 anybody was going to show up to play ball because that  
21 market was already being served, in my view, and I  
22 remember when the publicity was going around and they  
23 were doing teach-ins around Wall Street and all of this  
24 with this. That's already been provided by, you know,  
25 the OTC markets, for example, and it didn't make economic  
0070

1 sense.

2           So you take a company that's trading all its  
3 volume today even though they were Bulletin Board OTC  
4 Markets and you say, "If you pay us a listing fee, we'll  
5 hold you to a higher level of accountability and you can  
6 come over here." I've never seen any real uptake of that  
7 yet in spite of all the work that went into it, and it  
8 was a lot.

9           And at the beginning I was quite enthusiastic,  
10 but then when those companies wouldn't be S-3 eligible  
11 and things like that, it really discouraged in my mind a  
12 lot of market participation from the brokerage community.

13           So I know I've said a lot there, but I think  
14 this is not for public companies. This is not for  
15 reporting companies. It may not even be for companies  
16 that ever are going to become reporting, but to create a  
17 secondary market for their securities.

18           MR. GRAHAM: Yeah, I guess there are a couple  
19 of things. One, the first one I may have heard you  
20 wrong, but you know, the idea is that there's kind of a  
21 one-way valve. An existing public company that's  
22 currently being traded could not move to the new  
23 exchange.

24           The whole idea is to provide an opportunity for  
25 privately held companies to take kind of an initial and  
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1 less costly step to go public, and that relates to my  
2 second point, and that is that you've got the development  
3 of things like SecondMarket and SharesPost, and that's  
4 great for those who are, looking for liquidity  
5 in the shares that they have purchased from a privately  
6 held company, but that does nothing for creating an  
7 opportunity for a company that is private and wants to go  
8 public and put themselves in a position to go out and  
9 raise their own capital.

10           MR. BORER: Well, to your first point, I think  
11 if somebody takes advantage of 12(g) and becomes a non-  
12 reporting company, my view is this type of venue would be  
13 an appropriate place for the holders of those securities  
14 that are no longer, you know, a publicly reporting  
15 company to take advantage.

16 Now, they can also show up on the skull and  
17 cross-bones section of the OTC Markets, you know, if they  
18 choose to do that, and that may be, you know, where they  
19 should go. With respect to the other pieces all around  
20 us, I think anything that encourages greater liquidity,  
21 and again, if the business model doesn't work, and I  
22 would look at whatever the model is of SecondMarket and  
23 say, "Is that working? Let's try to broaden it and make  
24 it available and encourage it for greater participation."

25 In my view and from my perch on Wall Street  
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1 over the years, I have generally sensed that the  
2 regulators, FINRA, SEC, et cetera, have discouraged other  
3 than, you know, the conventional path for companies to  
4 gain liquidity. It's just my opinion. It's either right  
5 or wrong. People can disagree with it.

6 And even around the issues before Facebook went  
7 public, some of the press, because I never got behind the  
8 details, but I knew some of the people where they had  
9 created these pools, pooled money, you know, under 100  
10 investors, bought Facebook shares, were doing types of  
11 things, I think that was actually healthy if done  
12 properly and within the lines as far as all the fraud  
13 statutes and conflicts of interest go, but to me I sense  
14 that there was a discouragement of that, and it was  
15 deemed to be not appropriate for individuals, no  
16 matter how wealthy or accredited, to be involved in those  
17 things. I never saw anything that came from it, but I  
18 think it was more of a press type thing.

19 I think if you just turn the switch and say  
20 appropriately not regulated but carried out under the  
21 existing laws and then encouraging a venue or deeper  
22 venue, and again, I look at crowdfunding portals. You  
23 see now the venture capitalists are funding crowdfunding  
24 portals, not only crowdfunding portals funding  
25 companies, but the venture capitalists are trying to lead

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1 that pack.

2 I don't know how those will ever make any  
3 economic sense. It doesn't seem possible to me, but  
4 that's up for the market to decide. I view this as a

5  
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7  
8 very similar potential exercise to provide liquidity for  
9 the tens of billions of dollars of securities that are in  
10 the hands of private people, and the companies may never  
11 be using this as a path to get public. They may fund  
12 themselves until they go sell themselves to a private  
13 equity firm or to a public company as opposed to becoming  
14 public.

15 MR. GRAHAM: You're exactly right, and you know  
16 the business better than most of the people in this room,  
17 but I think the idea is to create an environment that

18 will be receptive to someone who wanted to create this  
19 type of business. Whether that business would  
20 be successful or whether or not it would work or whether  
21 or not anyone would even make an attempt. I can't speak to  
22 that, but it's one way that might facilitate at least a  
23 partial return of the smaller IPO.

24 MR. BOCHNOWSKI: Stephen, Dave Bochnowski here.  
25 I share Greg's concern. When I look back at  
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1 when we became a public company, while we had our share  
2 of sophisticated investors, we had a lot who were not,  
3 and I think whoever -- I would rather see this Paragraph  
4 4 here, if we're trying to create or suggest that there  
5 should be a market created that would give more  
6 liquidity, I don't know that it's our place to limit who  
7 should be the participants. I think those who are  
8 creating that market should decide that, and then follow  
9 the path of bringing that forward to the SEC.

10 MR. NALLENGARA: Steve, I think the members may  
11 be looking at this recommendation from two different  
12 vantage points, one taking from the first conversation on  
13 tick size and how trading in smaller public companies can  
14 be encouraged and liquidity can be encouraged. That's  
15 one frame of reference in creating a market, a more  
16 vibrant market for those securities, and I think that's  
17 what Greg was mentioning, that these companies were  
18 already public and they already have a '34 Act reporting  
19 obligation. Why would you change that for trading on  
20 some new market?

21 I think what John is saying --

22 MR. GRAHAM: And you wouldn't.

23 MR. NALLENGARA: Pardon?

24 MR. GRAHAM: You wouldn't. You couldn't.

25 MR. NALLENGARA: Right, and what John is  
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1 saying, and I think what, Steve, you're saying, with  
2 506(c), with an ability to generally solicit to a group  
3 of accredited investors and potentially a broader pool of  
4 private capital and a need for liquidity, there may be a  
5 market or exchanges -- maybe "exchange" isn't the right  
6 word and maybe it's just a market -- maybe that's another  
7 or a separate recommendation, the first one being let's  
8 see what we can do to encourage liquidity in trading on  
9 exchanges, whether that's NASDAQ, New York Stock  
10 Exchange, BX or some other venue that piggybacks off of  
11 existing '34 Act disclosure requirements and listing  
12 standards, and then separately, is there a -- not using  
13 the word "exchange" -- but is there something that this  
14 Committee can recommend in terms of encouraging the  
15 creation of a market that would allow for private capital  
16 to be traded within the universe of accredited investors or  
17 whatever that universe would be, where quotes can be  
18 made, where people can have an understanding that there  
19 is a market to actually trade this private capital.

20                   So I think some may be bridging, putting both  
21 of these two together and not understanding how it could  
22 work, and one way to consider this is really two things,  
23 one being what can you do to encourage public trading,  
24 you know, trading on the public markets of already  
25 existing public companies. Tick size is one of them, the

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1 next recommendation on scaling of disclosure is one of  
2 them. There's other market making incentives that we  
3 can consider as well. That's one, the other being, in  
4 the private capital, is there a way to facilitate the  
5 trading?

6                   MR. GRAHAM: And when you say "facilitate the  
7 trading," you're talking about primary shares as well as  
8 secondary shares. Because I don't want to lose sight of  
9 the primary shares, which is kind of at least the primary  
10 thing that I think a lot of us have been focusing on.

11                   MR. NALLENGARA: Right.

12                   MR. GRAHAM: Because we want to enable smaller  
13 companies to form capital. I mean, this is a capital  
14 formation exercise, or at least is a capital formation  
15 desire. This may not be the appropriate way to go about  
16 that, but the idea is to get capital to these companies  
17 to create jobs and support innovation and all the rest,  
18 which obviously is different than enabling people to  
19 trade in secondary shares.

20                   MR. NALLENGARA: Well, I guess the proponents  
21 for markets like this would say if you know, if I'm an  
22 issuer trying to get this group of people to buy my  
23 securities, if I can tell them that there will be a  
24 market for your -- if you buy my stock, you're not going  
25 to be sitting with illiquid stock. There will be a

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1 market for it because we will participate in this market.  
2 We will provide information to this market to qualify  
3 for whatever the market requirements are.

4                   The proponents are saying that that  
5 encouragement that there will be liquidity down the road  
6 for you may draw in more investors into a company where  
7 you may be stuck with securities of a private company,  
8 where your only recourse may be to sell it back or have  
9 the issuer find you a purchaser.

10                   MR. YADLEY: Now, I do agree, Stephen, that I'm  
11 not opposed to the concept, and I have represented a  
12 number of companies that are ethical companies, and  
13 they're trying their best, and they're struggling, and  
14 one of the things that happens is that they trip one of  
15 the wires on their lowest public market, and now all of a  
16 sudden they're spending time, you know, going to try and  
17 have a hearing and get more time in order to be able to  
18 comply, and it must have an effect on the brokers and  
19 certainly investors because you have to disclose  
20 obviously. You've gotten a notice from NASDAQ that you  
21 could be de-listed, and that's the same issue we just

22 talked about on the sun setting on the other thing.  
23 I mean, that's a bad aspect of this. What I'm  
24 now, I think, hearing you say, Stephen, is companies go  
25 public. They do it the right way. They're not reporting  
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1 companies, and they're filing their '34 Act reports, but  
2 the marketplace in which they're hoping to have some  
3 liquidity is now yet another layer of compliance that if  
4 they default on, they're almost behind the eight ball,  
5 and the worst thing that will happen to the investors who  
6 we care about is that the company will be de-listed, and  
7 now all of a sudden there's no market, and then maybe  
8 that's an incentive for somebody to go dark, and now  
9 there's no information.

10 So conceptually I think this is a good idea, if  
11 I understand what you're saying is that you're going to  
12 make it a little easier for once you've gone through the  
13 drill and the process of going public, you're providing  
14 publicly available information hopefully on time, but yet  
15 all of these other ancillary things that are important  
16 for companies to operate transparently and with good  
17 governance, those are going to be a little more relaxed  
18 as companies go through some period of growth.

19 MR. GRAHAM: That's exactly right.

20 MS. GREENE: Can I say something real quick?

21 I think it has taken me this long to remember  
22 what this whole thought process was. So pull back to  
23 30,000 feet, and Greg just helped with existing public  
24 companies, the one size fits all even at the exchange  
25 level with the big board and with NASDAQ. Small  
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1 companies like myself can't compete against everybody  
2 else that's on those exchanges.

3 And so I think if you pull back to the 30,000  
4 foot view, having an exchange designed or -- that's not a  
5 red-headed stepchild, because I don't -- "Oh, you  
6 couldn't be a big board guy. So now you've got to be on  
7 the secondary stepchild kind of exchange" -- but  
8 something that's not as rigorous and as expensive and  
9 geared for the big guys might help those of us that are  
10 public, that have been public for a long time, you know.  
11

12 This is again kind of like tick size. There's  
13 an awfully large group of public companies that fit this  
14 small company. I mean, if you look at the percentages  
15 we're going to get into the next deal, 76 percent of the  
16 public companies have market caps of below 500 million.  
17 So where the value, as Chris said, the value of the  
18 shares that trade and the value of the companies is in a  
19 very select few of companies, maybe a legitimate exchange  
20 for the rest of us not trying to get attention from the  
21 market against the big guys that are trading all the  
22 shares and that have all the stories and have all the  
23 liquidity, maybe on a very simplistic view something like

24 an exchange designed specifically for companies like ours  
25 would make sense.

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1 Does that make sense?

2 MR. GRAHAM: That makes sense. The only issue  
3 though is that that would help as a process going forward  
4 in a company's evolution. It wouldn't help coming back  
5 the other way because as an existing public company  
6 you're already operating under an existing disclosure  
7 framework. You've got an existing set of investors, and  
8 there's not going to be a way to tell those investors,  
9 well, you're no longer qualified to hold my shares  
10 because I'm moving over to this exchange.

11 But I think, as far as existing  
12 relief is concerned maybe ultimately there is  
13 somewhere down the road where people have figured  
14 out that it makes sense to create an exchange for smaller  
15 public companies that are in a situation  
16 similar to yours, but for now the issues  
17 related to those set of circumstances will be addressed  
18 in the context of our scaled disclosure recommendations.

19 Tim.

20 MR. WALSH: One last question for Lona, Dave.  
21 Has an exchange ever come to you and said, "This is a  
22 good idea. We really think this is going to work"?  
23 Going back to the business question, that's my only  
24 hesitation. Everything's great in concept, but --

25 MR. SHILLMAN: The BX market example. If you're

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1 referring to an exchange that is designed for smaller  
2 companies that might not meet the listings in the major  
3 markets, they have -- and we had the example I mentioned  
4 earlier, the BX Venture market.

5 MR. WALSH: Right. That was a few years. I  
6 mean anybody recent?

7 MR. SHILLMAN: Nothing -- obviously we couldn't  
8 talk about any private discussions, but there have been  
9 no proposals.

10 MR. NALLEGARA: But there have been -- I mean,  
11 commentators have talked about and -- but you know, it's  
12 one thing to have a place, and as Shannon mentioned, you  
13 need to get -- you're struggling to get attention. Part  
14 of it is having -- having the place is one  
15 thing, but getting the attention is the other. So having  
16 market participants wanting to quote your securities is  
17 an important part of that.

18 And simply having a venue where the listing  
19 requirements are different or lower may not necessarily  
20 bring the rest of the infrastructure that you may need  
21 for a successful market, a successful trading venue. So  
22 some commentators just have talked about other incentives  
23 to encourage market making for smaller companies. That's  
24 something to consider as well.

25 Because I think the question of whether you can

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1 bridge the business reasons will be part of any question  
2 whether a company like Shannon's can get the attention  
3 from market makers to get more liquidity. I think you've  
4 talked about in prior meetings that you don't have a lot  
5 of trading in your stock and getting more people to  
6 follow you and to trade and to quote your security would  
7 be better.

8 So that's something I think that could be  
9 considered as part of a mix of discussion on this topic.

10 MS. JACOBS: Tim, your question --

11 MR. WALSH: Well, I guess the question was  
12 limited to investors. That was my question.

13 MS. JACOBS: Tim, one of your questions, your  
14 initial question was discussions. In my travels in my  
15 panels there has been discussion from outside groups  
16 associated with exchanges and markets, et cetera, that  
17 something needs to be done for the small, the micro cap,  
18 and the newly IPOed companies. I can't speak for NASDAQ,  
19 but I think it was June 20th of this past summer the NYSE  
20 went on record talking about the small and the micro cap  
21 companies and wanting to do many -- and sort of leaving  
22 the door open for suggestions and relief.

23 They know we are suffering, but I have had and  
24 heard discussions on the side about what to do with the  
25 newly IPOed, and do they need to come into the same waters

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1 that the rest of us are in with the NYSE and NASDAQ. And  
2 so anecdotally, I have an answer which is, yes, I have  
3 heard those discussions and those recommendations.

4 MR. SHILLMAN: My understanding was in some of  
5 the recent discussions that you may be referring to, good  
6 ideas around the market structure for smaller companies,  
7 such as tick size or issuers paying market makers to make  
8 markets or other ways to concentrate liquidity, give some  
9 sort of trading priority or other incentives to those  
10 market makers that are taking the risk to follow a  
11 company, to put its quote out there when there at least  
12 now is not a lot of trading.

13 So I've heard suggestions around market  
14 structure ideas. I've not heard much recent discussion  
15 on the listing standards side of it though.

16 MR. GRAHAM: So to kind of summarize, I think  
17 the objective that we're talking about, to just kind of  
18 keep going back to 30,000 feet, but so let's go back  
19 there for a second, and that is that the IPO  
20 engine is suffering. For decades the small IPO  
21 has been driving growth and innovation in this country.  
22 Over the last decade we've seen a significant decline in  
23 small IPOs. That's a trend, and it's a trend that has  
24 not been reversed.

25 You know, historically these are the companies

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1 that have driven the bulk of job growth in



2 this country, and so we think it's important just from  
3 kind of an overall economic wellbeing of this country  
4 that we find a way to kind of reinvigorate that market,  
5 and it's not going to happen with one thing. I think  
6 that you need a number of ideas, and maybe the best idea  
7 hasn't been articulated by anyone just yet. Oftentimes  
8 you've got to come up with ideas that eventually prove to  
9 be bad ideas so you can kind of trigger good ideas.

10 But what we're talking about is trying to  
11 add to the toolbox of what may be possible and  
12 having those who have a role in the system to do whatever  
13 can be done to create the kind of environment that would  
14 be receptive to the return of the smaller IPO.

15 And in terms of what form that might take,  
16 we're talking in the context of a new exchange. Maybe  
17 that's not something that anyone would decide  
18 to build a business around. Maybe once we get general  
19 solicitation taken care of in the context of what  
20 recommendations have already been made by this Committee  
21 and that already are reflected in the JOBS Act in terms  
22 of general solicitations in the context of a 506  
23 offering, maybe there's something that's added to that  
24 which would help to facilitate the capital formation on  
25 the part of companies that continue to be private.

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1 But as far as this set of issues is concerned,  
2 there's not much that we can do other than to share  
3 ideas, support those ideas that we think might make sense  
4 and to encourage those that do have a role in helping  
5 those ideas kind of come to fruition in the event  
6 somebody decides to pursue them, you know, encouraging  
7 them to do what they can to cooperate and  
8 facilitate.

9 MR. BORER: Stephen.

10 MR. GRAHAM: Yeah.

11 MR. BORER: I would be interested, and I'm not  
12 sure whether for competitive or other reasons they might  
13 not be interested in participating, but I know, for  
14 example, that SecondMarket has been represented in the

15 Diversified Reporting Services, Inc.

16 (202) 467-9200

17 audience at these Committee meetings several times over  
18 the last year. I would think it might be valuable to  
19 hear from a market participant of someone like that,  
20 their perspective on what the impediments or other things  
21 that may be helpful and encouraging the development of  
22 that market, and again, I'm talking about private  
23 securities, secondary trading.

24 It's to Lona's point. This is not a venue just  
25 like, you know, NASDAQ doesn't go out and do an IPO.

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1 It's done by market participants, underwriters,  
2 brokerage firms and things like that. It's the  
3 secondary venue that allows for trading, and without the

4 secondary market, the primary issuance of private or  
5 public securities is just not going to take place. It  
6 will not happen.

7 Oftentimes people come to us and say, "Oh, nice  
8 private placement. You know, what if six months in I  
9 want to sell my warrants? I don't want to exercise.  
10 They run for five years. There's a very good imbedded  
11 derivative value there. I don't want to give up that  
12 value. What do I do with them?"

13 We tell them you come back to us. We will find  
14 an appropriate buyer on the other side. We will make it  
15 a market, an over-the-counter market, find you a buyer on  
16 the other side, somebody who participated in the same  
17 transaction or somebody who is into delta hedging and  
18 likes those types of things on a public company.

19 Oftentimes we'll pick up the phone and we'll  
20 call SecondMarket to see what they have on the other  
21 side of that because they're -- this is not a commercial.

22 I have nothing to do with them, but it has provided a  
23 level of secondary liquidity that is not available on any  
24 of the exchanges, OTC Markets or just for us calling up  
25 other brokerage firms because they're not involved and

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1 there really are not very many clearing houses in the  
2 middle.

3 I think to the extent we could get some  
4 information, it might be very helpful in guiding  
5 encouragement or recommendation or let's let it lay as it  
6 is right now because there's no market for it, but I do  
7 think there's a hole, as I said earlier, in that  
8 secondary trading which encourages capital formation at a  
9 very currently inefficient end of the marketplace.

10 MR. YADLEY: Stephen, sort of picking up on  
11 that and going back to the thrust at least in your mind,  
12 I think, of this recommendation which is an emerging  
13 growth company on ramp, newly public company, have a  
14 little bit more hospitable venue than exists, but I agree  
15 with John. My reason for reluctance in supporting our  
16 recommendation on 3(b), Reg A+ is, okay. So you've  
17 raised the money, but if you're not going to be public,  
18 what's the use. Why not do a private placement?

19 And if you're going to be public, you want  
20 liquidity. So maybe a subset of this of a separate  
21 recommendation would be because the Commission gets to  
22 think about and propose rules on what kind of information  
23 should be available under the new 3(b)(2) exemption,  
24 there you don't have to do everything that even an  
25 emerging growth company has to do theoretically. You can

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1 go out and raise \$50 million or you can generally  
2 solicit. You can take indications of interest first, and  
3 now what?

4 A market won't develop if all that's out there  
5 is a once a year financial statement, but maybe those

6 companies don't need '34 Act regulation. They need  
7 something, and if that something is less than what the  
8 big markets require, then this market for limited numbers  
9 of investors who are able to better evaluate the lower  
10 level of information to me would make sense. So I don't  
11 know if that's something that you think we ought to think  
12 about.

13 MR. GRAHAM: Help me with that because it  
14 sounds like you are essentially kind of rearticulating  
15 what we've been discussing but in a different way, but in  
16 the context of 3(b)(2).

17 MR. YADLEY: Yeah, I think we're all coming at  
18 this from our own different perspectives, and Lona said a  
19 minute ago, you know, and I think, John, your focus is on  
20 a private company and do we ensure liquidity for these  
21 companies which are still in a really early growth stage,  
22 and then we have the new IPO companies, and then we have  
23 the companies like Chris' and Shannon's that are already  
24 out there in no man's land and need to find help. We've  
25 agreed one size doesn't fit for all. I think this

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1 recommendation reflects all of those concerns and  
2 probably needs to be broken down and thought about  
3 separately.

4 So my last point was we do have pretty fertile  
5 ground and pretty untrod ground on Reg A+ because  
6 what, there were 28 Reg As in 2011 or something like  
7 that? So there's a model, but there's certainly not any  
8 after-market secondary trading model there. Maybe in  
9 support of less than \$50 million public offering via  
10 exemption we could craft the kind of disclosure rules  
11 that would be enough for accredited investors and support  
12 a marketplace that would be beyond some of these private  
13 markets but less than an exchange.

14 MR. ABSHURE: And then, in fact, I think the  
15 framework for what you're describing is already there.  
16 From what I've heard the big concern is for these  
17 companies, whether they're pre-IPO companies or companies  
18 in which you want to facilitate some sort of secondary  
19 trading, you have to have information requirements. You  
20 can't have a secondary market without it.

21 However, what you have under the new Reg A+  
22 is authorization for the Commission to develop both  
23 '33 Act-Lite and '34 Act-Lite reporting requirements. So  
24 I think that type of obligation could be placed directly  
25 at Lona's feet to have knocked out in about a week and a

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1 half.

2 And I think the other differences between Reg  
3 A and 506 offerings or other private offerings, of  
4 course, the Reg A securities are not restricted  
5 securities. So you're not going to have a holding  
6 period. You're going to be able to tout the liquidity of  
7 those securities, and especially if a market develops for

8 those.

9 Now, I do believe the distinction will be with the  
10 Reg A securities are-- you can sell those to unaccredited  
11 investors. That's the only other distinction I can think  
12 of.

13 MR. YADLEY: Well, that's good. I know  
14 obviously where you're coming from, and a beneficial  
15 distinction here is that there is an offering process in  
16 Reg A+. So it's not a full-blown registration  
17 system, but I know the fear of state regulators and all  
18 concerned people, is do a private placement and maybe  
19 this group of accredited investors gets what it wants and  
20 negotiates the information it wants, but then if it's  
21 just out there and the company doesn't have any  
22 continuing reporting obligations that may not  
23 be good for every person.

24 MR. ABSHURE: Exactly, because whenever you talk  
25 about, as I said before, whenever you talk about making  
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1 the process cheaper and easier on the issuer, inevitably  
2 what you're saying is a politically acceptable way of  
3 saying we're going to provide the investor less  
4 information or a different type of information.

5 What makes us comfortable about Reg A is that  
6 the SEC retains the ability to determine what should be  
7 disclosed on both your '33 Act  
8 side and the periodic reports. Obviously if the  
9 provision within Reg A is that the SEC has the  
10 discretion to require '34 Act-Lite reporting, well,  
11 that's to facilitate secondary trading. It's the only  
12 reason it's there.

13 So I don't think that we have an issue with '34  
14 Act trading, and in fact, if Reg A could be tweaked to  
15 fill this hole, I think it's a fabulous idea.

16 MR. YADLEY: I love fabulous ideas.

17 MR. GRAHAM: Yeah, I think, any  
18 system we come up with I would envision some  
19 level -- devil is in the details -- to be determined, but  
20 some level of appropriate disclosure under the '34 Act.

21 MR. YADLEY: A practical consideration, and I  
22 hate to get bogged down with practical considerations,  
23 but, in fact, there are issues in lightening up the '34  
24 Act. We'll get to that. Some are appropriate, but there  
25 is inertia and there is concern about backing off.

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1 Starting over, be it in the new world of 506 with general  
2 solicitation or Reg A, I think, allows the SEC to use  
3 its knowledge and creativity, which is there, and sort of  
4 create a new model, and I understand the realities of  
5 trying to back off of the regime that we've had since  
6 1934 because there are lots of people who say, "Well, if  
7 you do that, this, this, this."

8 Here it's not a blank piece of paper, but it is  
9 an opportunity to start and get input from this Committee

10 and other committees and interest groups.

11 MR. GRAHAM: Okay.

12 MR. ABSHURE: But I do think you keep the stair  
13 -step approach, and at the top you always have the full-  
14 blown disclosure that we have now so we can maintain our  
15 reputation of having the gold standard when it comes to  
16 the world's markets.

17 You know, I don't think any state regulator is  
18 opposed to a stair step, a more formal business  
19 development cycle, but I think at the top we've always  
20 got to keep the best.

21 MR. YADLEY: Sure, and hopefully investors will  
22 demand the best at the top, and that's why it's there.

23 MR. GRAHAM: Any other comments?

24 MR. ABSHURE: Well, a couple of things. Again,  
25 what we're trying to do is to come up with ways to

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1 facilitate private companies going public  
2 helping to ensure that there is a framework that will  
3 encourage those companies that otherwise would not have  
4 gone public to go public, and we know everything that  
5 goes into that.

6 It has been made clear from this discussion  
7 that there are a number of issues all interrelated about  
8 companies' ability to do an initial public offering, how  
9 that is tied to liquidity in the secondary shares, how  
10 we're developing existing markets that are currently  
11 providing that kind of liquidity. And maybe there are  
12 ways to somehow reengineer things so that the existence  
13 of that level of liquidity, you know, can be used to  
14 somehow create additional liquidity or enhance the  
15 ability of private companies to raise capital.

16 But perhaps there are things around the edges  
17 that can be done in the context of developing the  
18 framework around Reg A+. Perhaps there's things  
19 that can be done around 506 as we complete that  
20 rulemaking, and so as far as the recommendation that is  
21 on the table, you know, I'd be inclined to modify it to  
22 recognize those other areas where this overall  
23 objective can be achieved.

24 Again, we can't do much more as a Committee,  
25 and the SEC can't do much more other than be a

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1 facilitator in the event that someone wants to, you know,  
2 pursue some of these avenues, and of course, a big part  
3 of that is coming up with an appropriate disclosure  
4 framework.

5 But it seems to me that what we should do as a  
6 Committee is to, you know, recommend that the Committee  
7 do what it can do to help facilitate these things to the  
8 extent that others come along and say, "This is a  
9 business that we think is worth trying to develop."

10 Any thoughts?

11 MR. YADLEY: One suggestion might be because

12 the recommendation, I think, is well framed in general,  
13 would be maybe in the preamble try and fit in some of  
14 these other thoughts that we've discussed showing that  
15 this could appeal to and be attractive to market  
16 participants and investors from a number of fronts,  
17 including a newly public company as well as under the new  
18 rules to be developed for Reg A+.

19 And you might want to add it to private  
20 offerings as well, but that probably muddies things up.  
21 Maybe we ought to consider that separately.

22 MR. BORER: To the point that I think was being  
23 referred to there, I think that this is as important to  
24 issuers, to companies trying to build themselves a  
25 capital base because of the secondary liquidity than it  
0095

1 is to the companies and anything they can do for  
2 themselves.

3 Now, maybe some market develops where companies  
4 are allowed to subscribe to this service to provide  
5 secondary liquidity through means and would undertake,  
6 you know, a relationship with this market. It's not an  
7 exchange clearly, you know. It's a bulletin board  
8 posting, those types of things, because most of these  
9 transactions would probably still take place between  
10 registered dealers that are, you know, highly regulated  
11 by FINRA and SEC.

12 And I think that having something in here that  
13 recognizes the fact that this isn't so much for the  
14 issuers in primary, but in secondary benefit it would be  
15 because it's providing liquidity in their securities  
16 after they've already been distributed. I think that's  
17 where the biggest impact would be here for the earlier  
18 stage companies, not for under Reg A and those types of  
19 things because just to use another analogy, 144A  
20 wouldn't work unless there was Portal in the ability --  
21 in the after-market for institutions to be able to trade  
22 these things.

23 So I think if we recognize that in there, at  
24 least in just some kind of tone, that might be helpful.

25 MR. GRAHAM: Okay. So with John's latest  
0096

1 modification and the changes that I outlined, I propose  
2 the recommendation as modified.

3 PARTICIPANT: Second.

4 MR. GRAHAM: Any further discussion?

5 (No response.)

6 MR. GRAHAM: All those in favor?

7 (Chorus of ayes.)

8 MR. GRAHAM: Any opposed?

9 (No response.)

10 MR. GRAHAM: Okay. The recommendation carries.

11 It is a little bit before lunch. So before  
12 going to the third recommendation, let's break for lunch  
13 and start up again at 1:15, 1:15.

14 Okay. Thank you.  
15 (Whereupon, at 11:50 a.m., a lunch recess was  
16 taken.)

17 A F T E R N O O N S E S S I O N

18 MR. GRAHAM: Okay. Let's reconvene.

19 So the next recommendation is with regard to  
20 the expansion of Commission rules providing for scaled  
21 disclosure and other requirements for small public  
22 companies. And as you know, the SEC has provided for  
23 simplified disclosure in reporting for smaller issuers  
24 for more than 30 years, and under the current Commission  
25 rules, small reporting companies have certain scaled

0097

1 disclosure and reporting requirements available to them.

2 Kind of the threshold issue that we might, you  
3 know, have is simply with the definition of smaller  
4 reporting company. Right now that definition is  
5 companies with a common public equity float to \$75  
6 million, with some alternatives, but the main thing is  
7 the \$75 million number, and we were thinking that it  
8 would make sense to raise that number, and the  
9 recommendation as you recall talks in terms of \$250  
10 million.

11 As you're also aware the JOBS Act created a new  
12 category of company called "emerging growth company," to  
13 which certain scaled disclosure and other requirements  
14 apply at the time of the company's IPO and for a specified  
15 period, namely, until kind of the character changes in  
16 the way that is outlined or it has been a public company  
17  
18 for five years.

19 And an emerging growth company is defined as a  
20 company with total annual gross revenues of less than \$1  
21 billion. The JOBS Act includes a start date condition  
22 for fitting into this category, and only companies whose  
23 IPOs occurred after December 8, 2011 may be considered an  
24 emerging growth company.

25 So the scaled disclosure requirements available

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1 to smaller reporting companies overlap with those available  
2 to emerging growth companies, but the provisions are  
3 not identical, and you know, certain companies that are  
4 smaller reporting companies that have revenue considerably  
5 less than \$1 billion, there are some things that they may  
6 not take advantage of simply by the fact that they went  
7 public at the wrong time.

8 We talked a lot about this the last time we got  
9 together in San Francisco, and we were of the view at  
10 least at that time and I think that view has continued  
11 that expanding the scaling and other regulatory relief  
12 provided to smaller reporting companies to include some of  
13 the regulatory relief provided to emerging growth  
14 companies under the JOBS Act would be helpful to  
15 facilitate innovation and job creation by these

16 companies.

17 We also believe that regulatory relief should  
18 be provided to the smaller reporting companies with respect  
19 to certain of the Commission's other disclosure  
20 requirements that place a disproportionate burden on  
21 smaller reporting companies in terms of the cost of and the  
22 time spent on compliance with these requirements.

23 We also believe that the current, again,  
24 threshold is too low and that expanding the companies that could  
25 qualify would further encourage the more robust smaller

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1 company participation in the capital markets without  
2 adverse effects in investor protection.

3 In coming up with the \$250 million number, I  
4 can't say that it was necessarily scientific. I think we  
5 can hear from the staff as to what might serve as a  
6 rationale for that number and how the original \$75  
7 million number was arrived at in the first place.

8 I will note that according to data provided by  
9 the staff, in 2011 there were approximately 8,100  
10 operating companies that filed annual reports on Form  
11 10-Ks, and approximately 59 percent of those companies had  
12 a float of less than 75 million. So you're looking at  
13 smaller reporting companies equaling about 59 percent of  
14 the companies that were listed.

15 And the staff estimates that about 11 percent  
16 had a public float between 75 million and 250 million,  
17 which means that by bumping up the number to 25 million  
18 would add another 11 percent to that 59 percent. I think  
19 of certainly particular interest is that when you look at  
20 companies with market caps of up to a billion, they make  
21 up 72 percent of the listed companies, but only five  
22 percent of the total market cap, and the top seven  
23 percent of listed companies make up about 75 percent of  
24 the market cap of listed companies.

25 In looking at the structure that has resulted,

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1 we now have kind of these three buckets: smaller reporting  
2 companies, emerging growth companies, and companies that,  
3 you know, maybe would be considered emerging growth  
4 companies, but they had their IPOs on a date earlier than  
5 December 8, 2011, and I think one of the primary things  
6 that we are asking, you know, be done is that there be a  
7 cost-benefit analysis to just really kind of understand  
8 the impact of a lot of this disclosure, of any  
9 disclosure, any disclosure regime that is proposed to  
10 maintain; that we really try to understand the impact on  
11 smaller companies.

12 So in terms of recommendations, we would,  
13 again, revise the definition of smaller reporting company  
14 in Rule 405 and Item 10 of Regulation S-K to include issuers  
15 with a public float of up to \$250 million, and that would also  
include

16 non-accelerated filers.



17           So that's kind of changing the rules, if you  
18 will, of who fits into these various buckets, and I think  
19 it would help to kind of rationalize the system that we  
20 currently have that, again, is smaller reporting companies,  
21 emerging growth companies and companies that would have  
22 been smaller or would have been emerging growth companies  
23 but they went public too soon.

24           Once you have those buckets, then it's the  
25 whole notion of scaled disclosure and what do we do

0101

1    about that, and the recommendations outline a number of  
2    points in that regard, and I would just, you know, bear  
3    in mind and we'll hear from those who are kind of at the  
4    front lines in terms of dealing with these issues, but I  
5    know that, you know, you have to be careful about saying  
6    that it's an either/or proposition, that we either have  
7    disclosure that is not costly or we protect investors,  
8    and you know, again, I guess that shouldn't be looked at  
9    as a false choice, but nonetheless what we're looking at  
10   are a set of requirements that in order to comply are  
11   pretty expensive, and we've clearly decided  
12   that in the smaller reporting company regime there are some  
13   things that are appropriate for these smaller companies  
14   where the regulations don't have to be quite as robust.

15           And so that's kind of where we're  
16 going this afternoon, looking at some of these ideas and  
17 deciding whether or not these changes do  
18 make sense. But I understand that each one of  
19 these requirements has a cost associated with it, and  
20 again, just because there's a cost associated with it  
21 doesn't mean we don't do it because there is the investor  
22 protection aspect.

23           And I think that underlying all of this -- and  
24 it's always easier said than done -- but underlying all  
25 of this is we're looking at things where you can draw the

0102

1    conclusion that all things considered, you know, this is  
2    disclosure that isn't necessarily required to enable an  
3    informed investment decision when it comes to the smaller  
4    companies that we're talking about.

5           And someone I am sure has done the numbers, but  
6 again, there is a cost associated with each one of these  
7 requirements, and when you look at the thousands of  
8 companies that are out there that are incurring these  
9 costs and you multiply saving those costs by those  
10 thousands, it's a big number, and it's a big number that  
11 could be used to create jobs. It's a big number that we could  
12 use to grow companies and support innovation.

13           So you know, maybe individually a lot of these  
14 things may not amount to much, and maybe each one does,  
15 but certainly collectively I think we're talking about  
16 things that could have a significant impact on job  
17 creation and just the health of this sector.

18           As far as the specific recommendations are

19 concerned, again, the idea is to revise the disclosure  
20 and other rules applicable to smaller reporting companies,  
21 to incorporate exemptions from the requirements which are  
22 available to emerging growth companies under the JOBS  
23 Act. The first one is the requirement to conduct shareholder  
24 advisory votes on executive compensation and on the  
25 frequency of those votes. The second is a requirement to

0103

1 provide disclosure about and conduct shareholder advisory  
2 votes on golden parachutes.

3 Then there's a requirement in Dodd-Frank to  
4 provide disclosure of the ratio of the median annual  
5 total compensation of all employees of the issuer to the  
6 annual total compensation of the CEO.

7 Then there's a requirement to provide  
8 disclosure of the relationship between executive  
9 compensation and other issuer financial performance, and  
10 then in the case of new or revised financial accounting  
11 standards that have different compliance dates for public  
12 and private companies that smaller reporting companies  
13 could take advantage of the private company date.

14 That any rules of the Public Company Accounting  
15 Oversight Board requiring mandatory audit firm rotation  
16 or an auditor discussion and analysis, to be exempt from  
17 that; that the Commission revise the material contracts  
18 exhibit filing requirement in Item 601(b)(10) of Regulation S-K to  
19 provide that smaller reporting companies will not be  
20 required to file schedules or similar attachments unless  
21 those schedules or attachments contain information which  
22 is material to investment decisions and which is not  
23 otherwise disclosed in the actual agreement or the  
24 disclosure document.

25 And finally the suggestion that the Commission

0104

1 revise its rules to provide an exemption for smaller  
2 reporting companies for the requirement to submit  
3 information in XBRL format for periodic reports and other  
4 public filings.

5 I thought that it might make sense if we just  
6 kind of go back and kind of tick through the  
7 recommendations that are outlined, and, well, let's see.

8 I think the first one we want to do, let's take  
9 separately the definition of smaller reporting company.  
10 So, again, the suggestion is that we change that  
11 definition from 75 million to 250 million, and so I will  
12 throw that out for comment.

13 Yes?

14 MR. YADLEY: Do we know how long the 75 has  
15 been intact?

16 MR. GRAHAM: Matthew and Gerry?

17 MR. LAPORTE: Yeah, it was 2006, early 2007, I  
18 think.

19 MR. YADLEY: Okay.

20 MR. LAPORTE: Maybe 2008, but it has been a few

21 years.

22 MR. GRAHAM: And how was that number arrived  
23 at?

24 MR. LAPORTE: The release says that it was  
25 similar to the \$75 million figure that was already in the  
0105 rules for use of Form S-3.

1 MR. GRAHAM: So --

2 MR. LAPORTE: It was a number the Commission  
3 had used before.

4 MR. GRAHAM: Okay.

5 MR. NALLENGARA: I don't think we know exactly  
6 the root of \$75 other than it was a number that was used  
7 before. We can track that. We can track down the  
8 source, the reason \$75 was chosen.

9 MR. GRAHAM: Okay.

10 MR. YADLEY: And it was also a change from the  
11 prior definition that related to revenues and other  
12 things. So it was qualitative.

13 MR. GRAHAM: So it's like a lot of these  
14 numbers. You know, correct me if I'm wrong, but like a  
15 lot of these numbers, it's hard to come up  
16 with a precise formula or kind of  
17 the one you would use and apply to kind of come up with a  
18 number. I think a lot of it does involve judgment and  
19 just kind of thinking about the  
20 size of particular companies and within the context of  
21 those companies and what they're doing and their  
22 compensation, what the compensation structure of a  
23 company like that, et cetera, might be, and just coming  
24 up with a number.  
25

0106

1 MR. NALLENGARA: And at least I've found that  
2 although it's instructive, but it may not be always  
3 entirely determinative to go back to why, what the  
4 reasons were for selection of a particular threshold when  
5 it was originally put in without considering what other  
6 things you should consider as part of that. Five years  
7 ago, ten years ago, 15 years ago something may have been  
8 important in determining what a threshold was. The  
9 markets have changed. The individuals buying and selling  
10 the securities have changed. The companies have changed.  
11 What was a small company 20 years ago or what was a big  
12 company 20 years ago may not be a big company now.

13 So thinking about it in terms of what a  
14 threshold means today is equally as important as why a  
15 threshold was selected years ago.

16 MR. GRAHAM: Exactly. I think you're exactly  
17 right because you have to take the context of when that  
18 determination was made, but it still might be kind of  
19 instructive, you know, how you might go about coming up,  
20 you know, deriving a number for today's circumstances,  
21 but certainly that's part of deciding whether  
22 or not \$250 makes sense, and the argument would

23 follow those lines.

24 That things have changed. The markets have  
25 changed. How you might define what's big and what's

0107

1 small may have changed, and as a  
2 result it seems to make sense to us at least that 75 is  
3 too small. Probably 500 is too big, and far as  
4 what's just right, I think you look at data points, but I  
5 think at the end of the day it's going to be a judgment  
6 call, and right now we're looking at 250 million.

7 MR. BORER: I think, Stephen, in my  
8 perspective, my view on this point, we may have discussed  
9 this as we were going through various things over the  
10 last year on scaled disclosure and, you know, the JOBS  
11 Act implementation and those types of things. I think a  
12 way that it would be instructive to look at is why did  
13 Congress decide that a substantially higher number  
14 would be good for companies that are coming to market  
15 fresh, and not deal with the already seasoned group of  
16 companies that are public which have a number that is  
17 less than ten percent of the billion dollar, I  
18 think, number.

19 It's less relevant to me where did 75 come from  
20 in the first place because somebody else who's spoken  
21 legislatively has said then because of the IPO on-ramp  
22 report and all these things which encourage them to do  
23 various of these things have said it's a lot higher. So  
24 even 250 is still very pedestrian in light of a billion  
25 dollars.

0108

1 One other quick question I had and maybe  
2 somebody with the statistics who came up with these could  
3 help is, is there a sense of, say, of the 59 percent that  
4 are below 75 million, how many of those, in fact, do go  
5 through and comply with the higher disclosure  
6 obligations?

7 Because I've been in board rooms before where  
8 they've said, "Well, we're at 70. We don't need to do  
9 this, but if we're back above 75, then we'll have to go  
10 and do it again," and you know, the experts who do these  
11 things, the outside consultants and those types of things  
12 would have to restart that process.

13 Is there any other statistics? Anybody gone  
14 through and looked at that metric?

15 MR. NALLENGARA: We don't have that, but part  
16 of the -- well, we don't have that here, but part of the  
17 challenge of getting that information is a company may  
18 have that market cap, may not view themselves or check  
19 off that they're a smaller reporting company, and even if  
20 they do they may choose in certain areas to provide  
21 additional information that they may not otherwise have  
22 to provide, whether it's because they think it's good  
23 information to provide or whether some investor has said,  
24 "I'd like to see a certain type of information."

25  
0109

So for us to go and see all the companies that are below 75, what they're actually doing, that may be a more manual pick-and-shovel process that would be more challenging for us to be able to do, to have a real sense of what companies below that are actually doing that because many of them would have not been smaller reporting companies but for a stock price drop, and they will just continue to report as not a smaller reporting company. So there will be some muck in those numbers.

MR. YADLEY: I think also from some securities lawyers' perspectives it was a new set of rules to learn and the lawyers and the accountants and the analysts were all familiar with other rules, and so a lot of companies almost by default, I think, that were close just didn't bother to learn those rules.

Another point of reference, the Small Business Advisory Committee that issued its final report, I think, in April '07 was looking at 75 million as a break point, but I think that was picking up at the time, which is ancient history now, but something like 85 or 87 percent of the then registered public companies. Does that ring a bell, Lona or Gerry?

I think it was something on that magnitude. I'm not sure there's any real magic to this, except that 75 million is way too small, and 250 seems like a good place to start, and again, if it works for 250 and

0110

there's a demonstration that there are companies that another couple hundred million more are more like smaller companies than bigger companies, I think it can always be changed again.

So I think this is a good place to start, 250.

MR. NALLEGARA: Just to John's question on the IPO on-ramp, the billion dollars, remember that's a revenue number, not a market cap, and I'm not sure what data was used or what analysis was undertaken to set that number. I'm sure lots, lots, lots, so much was done to do that, but that number, remember it's not a permanent place you sit, right? It's five years, and at the most it's five years and then you come out, and it's a different sort. The emerging growth company is to incentivize companies to consider IPOs, and at some point you stop being an emerging growth company.

So, one, it's revenue. Number two, it's finite, and this being a place, you know, something to consider, a company that's going to be in a certain spot or expected to be in a certain spot for a longer period of time, and to encourage companies like that to continue to be public companies in that size. So maybe a billion dollar number or that big number may not be appropriate for consideration, I guess, or it might be, but keep in mind that it is a finite period for the

0111

1 billion dollars.

2 MR. BORER: A question on that though. To the  
3 extent that someone goes public under the JOBS Act  
4 provisions and has the scaled disclosure for the five  
5 years, the five years expires and they have a \$173  
6 million market cap, I assume they then would fall under  
7 this other provision.

8 MR. GRAHAM: Absolutely.

9 MR. BORER: Right. Okay.

10 MR. GRAHAM: Absolutely.

11 MR. BORER: And if they went public and they  
12 never expected to be at the higher number, they could  
13 initiate just under this, if we set it at 250, under  
14 these provisions as well, correct?

15 MR. GRAHAM: Just be a smaller reporting company  
16 and just be done with it.

17 MR. BORER: Right. Okay. Thanks.

18 MS. MCGOWAN: I just wanted to voice that I am  
19 in agreement with the 250. If you think that a smaller  
20 biotech company comes out at 70 or 75 million and they  
21 need some room to grow, the 250 sounds like a reasonable  
22 number.

23 I was also wondering if we could add to the  
24 proposal that we have 100 or \$100 million in sales or --  
25 I'm sorry -- revenue, if that could be something that we

0112

1 could add in. At one point it was in there and then it  
2 came out and I was wondering if that could go back in for  
3 revenue.

4 You were at 250 million or revenue of up to  
5 \$100 million. If you hit either of those qualifications  
6 you would be a smaller reporting company.

7 MS. JACOBS: I don't recall the 100 million in  
8 revenue. I need some help. Do you recall it?

9 MS. MCGOWAN: I'm sorry. It was 50 million.  
10 Could we make that -- it was in there and now it has come  
11 out. It's in Section 2.

12 MR. GRAHAM: Yeah.

13 MS. MCGOWAN: After considering that.

14 MR. GRAHAM: So in other words, the way that  
15 was set up was that it was 75 million, but if for some  
16 reason you couldn't figure out your float --

17 MS. MCGOWAN: Right.

18 MR. GRAHAM: -- then you revert to the 50  
19 million.

20 MS. MCGOWAN: You revert.

21 MR. GRAHAM: And I would think that a similar  
22 system would be set up in this context.

23 MS. MCGOWAN: Okay.

24 MR. GRAHAM: That the number is 250, but if for  
25 whatever reason you can't figure out your public float,

0113

1 then you can fall back to a revenue number, and let's  
2 drop it to 100.

3 MS. MCGOWAN: Okay. Thank you.  
4 MR. GRAHAM: Any others?  
5 MS. JACOBS: Are you sure that --  
6 MR. GRAHAM: It works.  
7 MS. JACOBS: Fifty million on 75?  
8 MR. GRAHAM: A hundred and 250.  
9 MS. JACOBS: I don't know that the 100 is high  
10 enough. That's what I'm doing.  
11 MR. YADLEY: I think 100 million sounds good.  
12 I mean, revenue -- and I think public float is the better  
13 number as the base number because revenue, depending on  
14 what kind of company it is, of course, may not really  
15 reflect. It may be a big number, but it's commissions or  
16 dollars going through.  
17 But I think if we're going up, 100 million is  
18 pretty small, I think, for purposes of having disclosure.  
19 So I'm --  
20 MR. GRAHAM: I think that sounds right, and  
21 it's going to be a default number anyway. It's seldom  
22 going to be used I would imagine.  
23 Any other comments?  
24 MS. GREENE: If they're using a billion  
25 dollars on the JOBS Act five-year ramp for revenue, 100  
0114  
1 million, knowing that most companies would know what  
2 their public float is so that it's irrelevant, but  
3 doesn't \$100 million in revenue seem really small?  
4 MR. GRAHAM: No, because again, as Lona  
5 was pointing out a moment ago, it's a little bit apples  
6 to oranges because we're talking about setting up a  
7 permanent system where as long as you qualify, you're  
8 there forever versus the JOBS Act regime that  
9 sets up a system to kind of get people on and up and  
10 running, and five years later it's over.  
11 MS. GREENE: Okay.  
12 MR. CHANG: Should the number be on valuation  
13 rather than float? Because now you can play games on how  
14 much do you let it go public with, percentage of the  
15 company.  
16 MR. GRAHAM: I'm inclined, you know, not to  
17 think so. I think you play games with valuation, too.  
18 I'm not sure to what extent -- I'm not sure to what  
19 extent going in that direction would make sense. Do you  
20 have a thought on that?  
21 MR. NALLENGARA: On valuation, you have to  
22 check it. It's a lot easier to determine your market cap  
23 than it would be -- you'd have to hire somebody around  
24 here to do it, I guess, on an every year basis. I'm not  
25 sure. So that's one question on whether valuation is.  
0115  
1 Is a practical method to do it?  
2 And I guess the other, and this is a question  
3 for you, we're talking about public reporting  
4 obligations. So this is the reporting obligations you

5 really have to your public shareholders. Are you focused  
6 on -- you know, do you care about the ownership as part  
7 of this question? Are you concerned about the ownership  
8 of all the security holders? Are you concerned about the  
9 float that you have publicly offered?

10 That's another question to consider.

11 MR. CHANG: But the point I think is, I think, that we  
12 are addressing these issues because of the resource  
13 availability of the company, and so if the market cap is  
14 very large, then theoretically they have more resources,  
15 right? See, they need less help.

16 MR. GRAHAM: Right.

17 MR. YADLEY: Yeah, I think Lona's last point is  
18 the most persuasive at least for me, is that the  
19 regulation is there to protect somebody, and that somebody  
20 primarily ought to be people not close to the company who  
21 might otherwise, to make an analogy of the private  
22 placements, have an ability to know what's going on. So  
23 it's the public shareholders, and the public float is  
24 probably the best number, the best metric to be able to  
25 gauge that, even though imperfect.

0116

1 MR. GRAHAM: Okay. Okay. Well, I think it  
2 might make sense to at least take this separately before  
3 I go down to the specific recommendations. So I would  
4 like to recommend that we adopt a recommendation to move  
5 the threshold from 75 to 250.

6 PARTICIPANT: Second.

7 MR. GRAHAM: Those in favor?

8 (Chorus of ayes.)

9 MR. GRAHAM: Opposed?

10 (No response.)

11 MR. GRAHAM: Okay. Carries.

12 Okay. So now --

13 MR. CHACE: Can I just ask a quick question?

14 MR. GRAHAM: Yeah.

15 MR. CHACE: Could somebody just remind me what  
16 the key provisions or the key scaled disclosures are that  
17 you'd be expanding from the smaller reporting companies,  
18 if that makes sense, not the items that we've outlined,  
19 but what the scaled disclosure that smaller reporting  
20 companies currently enjoy that you'd be expanding to the  
21 larger market cap group?

22 MS. JACOBS: CD&A is one. There a --  
23 Diversified Reporting Services, Inc.  
24 (202) 467-9200

25 MR. GRAHAM: We've got a list. I don't have

0117

1 that list committed to memory.

2 MR. YADLEY: The material ones or --

3 MR. GRAHAM: Can we --

4 MR. YADLEY: Jennifer will walk us --

5 MS. ZEPRALKA: If I can remember them all. I  
6 haven't looked at them lately. It would be you could do



7 two years of financials instead of three. And, Gerry,  
8 jump in if I'm getting this wrong. I think the selected  
9 financial data is not required, the whole table.

10 MR. YADLEY: Right, nor supplemental --

11 MS. ZEPRALKA: Or supplemental financial data.

12 MR. YADLEY: -- financial information.

13 MS. ZEPRALKA: There's no CD&A in the exec comp  
14 disclosures. There are fewer exec comp disclosures.  
15 They don't have to do all the same tables that the larger  
16 companies need to do. MD&A, you could just cover the  
17 years that are covered in your financial statements if  
18 you choose to do two years instead of three years of  
19 financials.

20 What am I forgetting? That's the biggest --

21 MR. YADLEY: I think the comp committee report,  
22 some other minor things. I think those are --

23 MR. NALLENGARA: So, Dan, in terms of things  
24 that you care about based on what you said at other  
25 meetings, I think I guess that you're going to get less

0118

1 financial information. I think you've indicated in the  
2 past you haven't been -- in your real job, you haven't  
3 been concerned about executive compensation information,  
4 but there's less of that.

5 You know, the three years versus two years,  
6 once you've reported once, it's not a -- I think it's  
7 executive compensation information that really helps the  
8 smaller reporting company, those tables and the narrative  
9 discussions around those, particularly the new CD&A  
10 disclosures can be time consuming, and so I think in the  
11 end that's where the bulk of it is.

12 Kara, is that -- am I getting it? Yeah.

13 MR. GRAHAM: And as far as the financial  
14 reporting is concerned, I think that as a practical  
15 matter that requirement would change or be less, but I  
16 think as a practical matter, as Lona is suggesting, that  
17 maybe sometimes there's a one-year gap, but I think most  
18 of the times there's never a gap because outside of the  
19 fact the company is not required to do it, they do it  
20 anyway because it's a marketing issue.

21 Okay. So let's walk through the  
22 recommendations. The first one that shows up, this is in  
23 the draft recommendation. This would be the bullets  
24 under Paragraph 2. The first one we talk about the  
25 auditor attestation requirement, the 404(b). I think

0119

1 that both -- correct me if I'm wrong, guys -- but I think  
2 that both smaller reporting companies and emerging growth  
3 companies are currently exempt from that, and this is  
4 just by way of noting that this would be a  
5 benefit, but that companies in that third bucket would  
6 now get by virtue of the fact that we have -- well, we  
7 haven't done it, but should the threshold be raised from  
8 75 to 250, then there are companies that are currently,

9 you know, outside of the definition of emerging growth  
10 company by virtue of the fact that when they went public,  
11 they're going to take advantage of that.

12 So that's just kind of a point of clarification  
13 of why that's there.

14 The second recommendation has to do with the  
15 requirement to conduct shareholder advisory votes and  
16 executive comp and the frequency of those votes. The  
17 smaller reporting companies are exempt, and emerging growth  
18 companies are exempt until they cease to be emerging  
19 growth companies.

20 MS. JACOBS: No, a clarification. Say on Pay,  
21 it starts in 2013. This is the one --

22 MR. GRAHAM: Oh, now they're not losing it.  
23 They're not losing it, right, right, right.

24 MS. JACOBS: Yeah. The smaller reporting  
25 companies have had an exemption --

0120

1 MR. GRAHAM: Right.

2 MS. JACOBS: -- until this year. Emerging  
3 companies get it as part of the definition. So the issue is  
4 Say on Pay for smaller reporting public companies is, we  
5 have been exempt from CD&A because the market caps are  
6 below 75. Now you have a shareholder vote on Say  
7 on Pay and frequency on Say on Pay, which is incredibly  
8 expensive because you've not had to put out the expensive  
9 and detailed CD&A, and yet your pay packages have to go  
10 to shareholders for a vote, and then that vote is how  
11 often the shareholders want to weigh in on the vote, and  
12 you're in a position now of campaigning, and it is a  
13 distraction. It is incredibly expensive because you do  
14 have to now begin to create the tables and the exhibits  
15 which typically go into a CD&A, which would let folks  
16 vote, and there is an additional complication of now you  
17 have ISS and Glass-Lewis weighing in on small and micro  
18 cap companies of which they are not really able to digest  
19 because this is a big influx of work.

20 And so we have an additional distraction and  
21 expense of having to have people now monitoring and  
22 watching and working and trying to get the ISS  
23 recommendations in place, the Glass-Lewis recommendations  
24 in place, as well as the expense of the disclosures. And  
25 so the question here is: could we have a level playing

0121

1 field wherein the smaller reporting companies, if you fall  
2 below that threshold, do not have to go through the  
3 burden and the expense of shareholder outreach?

4 And that's the background for Say on Pay and  
5 frequency.

6 MR. NALLENGARA: So what it is, you've got to  
7 go to your shareholders and ask them what they think of  
8 your compensation package, and it's not a determinative  
9 vote. It's an advisory vote. The Board takes that back  
10 and decides what they do with what the shareholders say.

11           The next one on golden parachutes is the same  
12 concept. It just deals with compensation packages in  
13 connection with the business combination transaction.  
14 So, again, it's an advisory vote. Go with your  
15 shareholders. Check their temperature. If they all vote  
16 no in those votes, you're going to have to do something  
17 with it. You're going to have to respond to that. You  
18 have to respond to that vote.

19           So what Chris identified is that the cost  
20 associated with putting that information together -- you  
21 know, proponents for this stuff say it encourages  
22 engagement with your shareholders. It gets you talking  
23 to your shareholders about your compensation. Some would  
24 say it more closely aligns your compensation with  
25 performance because you have to, as Chris said, sell your

0122

1       compensation package.

2           So, but, Chris identified that that takes work.

3           MS. JACOBS: Right. Every public company that  
4 has to go through this exercise right now would say, you  
5 know, there's no boilerplate. Everything has to be  
6 created from scratch, which is a burden. It's expensive,  
7 and your largest shareholders know where comp is.  
8 Believe me, they do, and for some of us-- I don't know  
9 about the other public companies, but I mean, you've had  
10 comp disclosures in there before. Your large shareholders,  
11 you're assuming you've got quarterly conference calls.  
12 You have interactions with your large shareholders.  
13 Believe me, we know who they are and we talk to them and  
14 they know what's up with compensation.

15           So it just seems that you've got to be kidding.  
16 If the JOBS Act up to a billion dollars in revenue,  
17 we're just trying to level the playing field. That's it.

18           MS. JENNY: I can't agree with you more. I  
19 think the practical application of this from a cost and a  
20 time perspective would just detract from actually running  
21 the business, and the reality of it is that you're 100  
22 percent right. If you are running your business, you  
23 speak to your investors; you speak to your shareholders,  
24 and there's dialogue, and there's nothing that's new or  
25 surprising.

0123

1           And if you were to put compensation in there  
2 that was actually put up for discussion or feedback, to  
3 me it would be mind blowing that every single person  
4 would come back because you would have had to make some  
5 major change that would have probably had to be 8-K-able  
6 at some point or something to create that sort of a  
7 change.

8           So I just think the practical application of it  
9 and the cost for small businesses would be -- you know, I  
10 don't think you'd get the benefit of what you really  
11 wanted to get for the effort that you'd be putting in.

12           MR. YADLEY: Let me underscore this because

13 this is something as a securities lawyer I really like  
14 for the reason that Chris said, is that it's not anything  
15 off the shelf. I mean, I have to engage with the client,  
16 and they need to spend a lot of time, and I attend their  
17 board meetings, and a lot of things that there's  
18 consensus on among the compensation committee now has to  
19 sort of be described more formally, and even something as  
20 simple as, well, we benchmark; well, wait a minute. What  
21 do you mean by benchmark? Because for big companies,  
22 benchmarking means something.

23 Well, no, we don't really benchmark. We look  
24 at what some other companies our size and in our industry  
25 do.

0124

1 He said, "Okay. Well, tell me more about  
2 that."

3 And it almost can become confrontational,  
4 except I'm a really nice guy and my clients are all  
5 really nice, and we get through it, and the next year we  
6 may not have to do that, but by the next year, I mean, it  
7 doesn't stay fresh very long because things happen, and  
8 as the economy changes, you evaluate it. It's almost  
9 like some of the internal controls where they're there  
10 and everybody understands them, but to document them is a  
11 really huge, expensive deal, and every time you change it  
12 it's a huge expensive deal, and is it something that  
13 people really care about?

14 The other thing is with smaller companies  
15 management tends to own more stock. There tends to be  
16 fewer shareholders, and hopefully, especially if  
17 companies make good disclosure and they do well, there's  
18 a longer time line where people are looking for them to  
19 be profitable.

20 With the focus on large companies of "what have  
21 you done for me this quarter and what are you going to do  
22 for me next quarter," compensation becomes very important  
23 because that's the hammer that the institutional  
24 investors really have.

25 And then as Lona mentioned, even though it's

0125

1 only an advisory vote, if you get a strong advisory vote  
2 that says we don't like your compensation package," now  
3 that's another very interesting board meeting where you  
4 have to counsel them. "Okay. Your shareholders don't  
5 like it. So now let's listen and think what does that  
6 mean and what does it mean not just for disclosure, but  
7 for these 15 executives that have been working really  
8 hard, and we didn't have a great year and, you know,  
9 somebody put you in a box because it may not even be that  
10 the compensation is excessive, but the mix of  
11 compensation isn't what's really important to the  
12 institutional investors this year, or maybe the equity  
13 part of the award is, quote, too large but makes sense  
14 for this company. You'd rather pay in equity than --

15 there's a lot of very individual decisions that as the  
16 disclosure becomes more formalized and becomes much  
17 longer, it really is a burden, and given my experience  
18 from the lawyer side, it's not the most important thing  
19 on investors' minds.

20 MR. GRAHAM: Any other comment?

21 (No response.)

22 MR. GRAHAM: Chris, do you want to do CEO  
23 pay relative to all employees?

24 MS. JACOBS: Okay. Does that assume then that  
25 there was a discussion on golden parachutes? That was our

0126

1 next item.

2 MR. GRAHAM: Lona kind of wrapped --

3 MS. JACOBS: I mean, Lona kind of wrapped it  
4 up. They're one and the same.

5 MR. GRAHAM: Right.

6 MS. JACOBS: Okay. The next one is disclosure  
7 of the ratio, median annual total comp of all employees  
8 to the issuer. This is not adopted yet. We're assuming  
9 that it will be adopted, and so this is a bit of the  
10 preemptive that -- for those of you who are not familiar  
11 with this, this is sort of an internal benchmarking, if  
12 you will, of CEO comp to compensation of the employees of  
13 the company.

14 Now, my understanding, and you all can fill in  
15 the blanks, this is going to be a tough one because how  
16 that ratio is determined, there appears to be a lot of  
17 comment. In my world there is a lot of comment in and  
18 around how is that determined. Does it include equity,  
19 no equity, et cetera?

20 Where we're coming from, and I'm speaking  
21 internal to our public companies, whatever good was  
22 intended in this ratio, and again, this type of  
23 disclosure, I don't know how it's possibly going to  
24 outweigh the costs and the disruption in-house. It  
25 appears almost as if this is a shareholder activist issue

0127

1 versus one that a reasonable investor would need to  
2 determine how they behave where their investments are  
3 concerned.

4 MR. NALLENGARA: And, again, I think this is  
5 one of those things that take on much greater importance  
6 when you're talking about companies where the CEO  
7 compensation is in the tens of millions as opposed to  
8 what you typically might find in the context of the  
9 smaller reporting company.

10 And I think there was mention of this, but just  
11 to reiterate, and you guys correct me if I'm wrong, but  
12 this is something that doesn't -- it's not currently a  
13 requirement. It will be a requirement under Dodd-Frank,  
14 assuming that those rules are ultimately implemented.

15 MR. GRAHAM: Yes.

16 MR. NALLENGARA: So we're already saying that

17 emerging growth companies are excluded, and what we're  
18 recommending is that we include smaller reporting  
19 companies.

20 MR. GRAHAM: Right. Discussion?

21 (No response.)

22 MS. JACOBS: Silence. Okay.

23 MR. GRAHAM: Okay.

24 MR. CHACE: You know, just all of these are  
25 pretty noncontroversial to me in terms of things that are  
0128

1 low value add from an investor perspective.

2 MS. JACOBS: Okay.

3 MR. CHACE: So rather than comment on each one  
4 I just say generally speaking every one of them is  
5 something that, I mean, while in some cases can be  
6 interesting, isn't central to an investment decision in  
7 my opinion.

8 MR. NALLENGARA: I'm not sure if you want --  
9 I'm happy to offer the perspective that proponents of  
10 these provisions have made in terms of why some of these  
11 provisions are helpful for investors and why they --

12 MR. GRAHAM: But helpful for investors in the  
13 context of a smaller reporting company as opposed to --

14 MR. NALLENGARA: Well, I'm just -- I would just  
15 be offering what proponents for these provisions have  
16 articulated as why these provisions are -- some may see  
17 these provisions as not helpful, not material for  
18 investors. That's what some of the folks that are  
19 challenging sort of the usefulness, the materiality of  
20 these provisions, and investors don't need this  
21 information or they're not looking for this information.

22 Others may say that investors are looking for  
23 this information or may find this information helpful in  
24 making determinations of compensation and the scope of  
25 compensation and incentives of executives.

0129

1 So there is a viewpoint that this information,  
2 both pay ratio, pay for performance, which is the next  
3 one, and even the Say on Pay are for investors, that is,  
4 information or a viewpoint that they would like to have  
5 because it gives them the sense of compensation  
6 questions. It allows them to understand, you know, if  
7 there's a big ratio, if there's a big disparity in median  
8 pay versus CEO pay. What does that say about  
9 compensation incentives? What does it say about how a  
10 CEO is being compensated?

11 So there is a perspective on whether there is  
12 some value to shareholders here, but that's the  
13 articulated view.

14 MR. GRAHAM: But is that all companies?

15 MR. NALLENGARA: Yeah, that's a question for  
16 all of you to determine.

17 MR. GRAHAM: Right.

18 MR. NALLENGARA: Whether the investors in the

19 companies we're talking about, whether that's the kind of  
20 information they need or it's the kind of information  
21 they want.

22 MR. YADLEY: I think, Steve, subject to being  
23 able to complete the agenda as you and Chris have put it  
24 out, I think it adds a little more force to our  
25 recommendation if Lona does that and we conclude that,

0130

1 okay, that's great, but we don't think it applies to  
2 these companies.

3

4 MR. GRAHAM: We think that's great, Lona, but  
5 we don't think it applies.

6 (Laughter.)

7 MR. BORER: I have a question.

8 MR. NALLENGARA: The dismissal of my views are  
9 a regular occurrence for me. So I'm used to it.

10 MR. BORER: You said you didn't have opinions.

11 MR. NALLENGARA: I don't, absolutely not. I  
12 have no --

13 MS. JACOBS: To Dan's point, if the rest of the  
14 Committee is comfortable with what he just said, we can  
15 skip then to material contracts, finish that list rather  
16 than take it unit by unit, unless somebody had a  
17 statement in and around any specific one.

18 MR. CHACE: I just clarify what I said before,  
19 too. I think certainly in certain cases this information  
20 can be material, and it can be in certain instances, but  
21 in the aggregate and given the cost, I think it's less  
22 material.

23 MS. JACOBS: And you know, Dan, to your point,  
24 it is additive, every single one of them right on down to  
25 conflict minerals. You don't get economies of scale from

0131

1 your regulations, and it is additive. So thank you for  
2 making the point.

3 MR. GRAHAM: Okay. Shall we skip down then to  
4 the recommendation with respect to material agreements?

5 And again, the idea is to revise those  
6 requirements to provide that smaller reporting companies  
7 will not be required to file schedules or exhibits to  
8 material contracts unless those schedules or attachments  
9 contain material information that not otherwise disclosed  
10 in the document or in the disclosure document.

11 A comment on that?

12 MR. BORER: I have a question real quick. How  
13 easy is it -- I don't have a dog in this hunt, but just  
14 as a business person -- how easy is it to define what is  
15 material or not? Who does that? Do you need to hire an  
16 outside consultant to tell you whether it is or not?

17 MR. GRAHAM: Yes.

18 MR. BORER: Or is that just the internal  
19 financial control people within a company?

20 MS. JACOBS: Right. It typically -- well, in a

21 little company, almost everything must be determined to  
22 be material. You know, a million dollars to us, our  
23 attorneys and auditors will tell us it's material, and so  
24 this gets to be a real cluttered landscape with the  
25 little companies that seek to comply, but these

0132

1 attachments, and these legends, and these things that must be  
2 Edgarized, et cetera, it is, some of them, a very  
3 specific burden.

4 It's very dangerous to a small company who must  
5 put in an attachment to go along with your material  
6 contract. Now, in the real world, for those of us that  
7 are public, we can apply to the SEC for a reprieve, more  
8 money, more time, and really an incredible hassle, but to  
9 have to include your customer list or what percent of  
10 business that customer is or in some cases maybe a bank  
11 account or a number that can do legitimate harm to the  
12 little guy, that's what this is about.

13 MR. GRAHAM: Yeah, and I think in terms of  
14 determining what is material, I meant there's some  
15 contracts that are material by definition, and then as you  
16 know, there are going to be contracts that are going to  
17 require a judgment call just like any other disclosure.

18 There is some lack of clarity, and so once  
19 you've made that call and once you are dealing with a  
20 contract that is material, there's some lack of clarity  
21 as to what extent do you have to file everything that's  
22 attached to it, and that's what this is intended to  
23 address.

24 MR. BORER: Is this issue of materiality in the  
25 context that we're discussing it the same when you're

0133

1 deciding what is material to a company as opposed to  
2 where this is material to an investment decision?

3 MR. GRAHAM: Same thing.

4 MR. BORER: It is?

5 MR. GRAHAM: Same thing as the --

6 MR. BORER: Because that's in the mind of the  
7 investor. Is it material? And you have to decide what's  
8 material to them as opposed to when you're talking with  
9 your accountants about is some number a certain  
10 percentage of something and therefore, you know, there's  
11 a problem with your financial statements or something  
12 like that.

13 MR. GRAHAM: Sometimes it's kind of hard to  
14 separate those two.

15 MR. YADLEY: Some of this is prescriptive. I  
16 mean, as Chris was saying, it's the exhibits and the  
17 schedules which can be, you know, a lot of contracts as  
18 you all know in business, it's basically a master  
19 agreement which sets out a bunch of garbage, and then a  
20 lot of detailed information, some of which in technical  
21 agreements, communications agreements and so on will just  
22 be pages and pages of numbers which are pretty



23 meaningless, but it's a material contract, and others of  
24 it is confidential.

25 The other thing Chris was referring to is to  
0134

1 apply for confidential treatment on this, which the SEC  
2 staff is perfectly agreeable and reasonable and  
3 businesslike in addressing that, but it's nothing that,  
4 you know, your reviewer can just over the phone say,  
5 "Yeah, yeah, you don't have to put that."

6 I mean it's a process, and it ends up taking  
7 time, and time is money, and so I think it's pretty  
8 important, and then when you Edgarize it, there's just a  
9 cost every time you add another ten pages.

10 MR. BOCHNOWSKI: Stephen, I'd like to add. If  
11 we could get some guidance as to what materiality really  
12 means because, again, as a small company, we all might  
13 agree or disagree as to something that's material. It's  
14 kind of like the old definition of pornography. You know  
15 it when you see it, but if you're in that gray area, you  
16 know, the words that maybe Greg has spoken to some of his  
17 clients is out of an overabundance of caution we ought to  
18 do this, and then you run into the cost because we're  
19 being cautious as opposed to really knowing the  
20 definition.

21 MR. GRAHAM: Well, you're not going to really  
22 know that definition. That's going to be up to your  
23 securities lawyer, whoever is advising you on disclosure,  
24 and it's not something that we can come up with kind of a  
25 black and white definition for. You're going to look at

0135

1 things that are going to, in your view, impact the  
2 company in a material way, and the things that in your  
3 view would just kind of change the total mix of  
4 information out there that investors are considering in  
5 deciding whether or not to buy or sell your stock.

6 And then you're going to fall back on  
7 experience and judgment. And there are always securities  
8 lawyers or securities litigators out there that are  
9 willing to help you define that.

10 MS. JACOBS: Yeah, but in the small reporting  
11 world I'll bet our list is much larger than, say, a  
12 J&J's.

13 MR. GRAHAM: It could be, but my --

14 MS. JACOBS: Do you know what I mean?

15 MR. GRAHAM: -- my real point is that that's  
16 not the point of this recommendation

17 MS. JACOBS: Right.

18 MR. GRAHAM: The point of this recommendation  
19 is materiality is already there. That's something that  
20 we have to deal with. We've always dealt with it.

21 MS. JACOBS: Right.

22 MR. GRAHAM: We're going to keep dealing with  
23 it, but the question is once you've made that  
24 determination that a contract is material, what do you do

25 with the exhibits. That's all that this is referring to.  
0136

1 XBRL?

2 MS. JACOBS: XBRL, the background for those of  
3 you -- is everybody, all of the Committee members,  
4 familiar with XBRL? It's a reporting format that we all  
5 have to comply to. We're looking for common language on  
6 our financial statements, but now we have the additional  
7 task of then tagging footnotes and exhibits, et  
8 cetera. So the CFOs at the table will, I'm sure, have  
9 plenty to say about XBRL.

10 In preparation for today, there was an article  
11 that came out January 22nd in the Wall Street Journal by  
12 Columbia Business School that talked about the  
13 reliability of the data coming into question, the  
14 simplicity and the intent of this particular toolbox for  
15 investors. It's not simple to use. Less than ten  
16 percent of investors have used XBRL. There is a lack of  
17 user tools and the authors even question the stability of  
18 the underlying taxonomy.

19 Now, to take those statements then and distill  
20 them down for the small reporting companies, it started  
21 out tens of thousands of dollars, but it's ended up to be  
22 tens more because every time there is an update for XBRL,  
23 we have to go into a tizzy, but there's something that  
24 perhaps the authors and the folks that launched this hadn't  
25 been contemplated, and that's what it's done to the

0137

1 closing of the books of the small reporting companies  
2 because we have to Edgarize.

3 So that's one turn. That's one exercise. Now,  
4 we are doing Edgar and XBRL. Small reporting companies  
5 do not have the in-house expertise to comply. So we  
6 outsource, which is yet another expense. All right?

7 So we've outsourced the XBRL, but for that to  
8 be correct -- and let me talk about investors. There's  
9 nothing that we small reporting companies would like to  
10 do more, there's nothing we wouldn't do to avoid a  
11 restatement, and this has added to the risk and the  
12 burden of the small companies one more level of the  
13 ability to make very grave errors because you not only  
14 had the Edgar part of it. That has to be correct. That  
15 has to be edited, turned, et cetera. Now we've laid  
16 another layer of this on top where we're outsourcing.

17 It does go with our financials, and data entry  
18 by these outsourcing folks that we have to pay, and now  
19 we have to correct their work, and we have to be able to  
20 correct and have several turns with our outsourcer, has  
21 shrunk the window of our ability to close by up to five  
22 days. So our world just went like this, which is an  
23 incredible, expensive burden with nothing at the end of  
24 this except a misstatement, and if less than ten percent  
25 of the investors have looked or are using this, then what

0138

1 is the utility, and isn't this identified as a  
2 disproportionate burden on a small company?

3 When you have a public float, an average daily  
4 trading volume of less than 28,000 or whatever the small  
5 caps have, to have this kind of a burden thrown on us and  
6 our investors not caring, we've not had one single  
7 request in and around XBRL. So if less than ten percent  
8 of the shareholders or investors are looking at it, it  
9 has turned out to be a very frightening, costly burden  
10 for the little companies, and that's why it's here.

11 So I would be glad to hear what the rest of the  
12 Committee says.

13 MS. GREENE: Ditto to what Chris said.

14 MS. JACOBS: What?

15 MS. GREENE: Ditto.

16 MS. JACOBS: The gallery.

17 MS. GREENE: Yeah, because it does. It shrinks  
18 the time because you've got to get stuff out to your  
19 outsourced XBRL people. So your window to file on time  
20 without problems, you just shrunk that window  
21 considerably to get it out to them and back in order to  
22 file on time.

23 So everything Chris said --

24 MS. JACOBS: Did you outsource?

25 MS. GREENE: Absolutely.

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1 MR. NALLEGARA: If there was a way to prepare  
2 your, let's take a 10-Q for example; if there was a way to  
3 prepare your 10-Q, at the same time that you prepared  
4 your 10-Q you could tag the information. What this does  
5 is it -- what this XBRL does is you have your document  
6 and you tag certain financial information and through  
7 this tool analysts, investors can pull the information  
8 and sort the information in a way that they can use it.  
9 They can do comparative analysis across companies. So in  
10 theory this is for analysts and for investors trying to  
11 compare companies. They can compare like information  
12 similarly, not questioning the cost associated with that.

13 But how would it change -- and this is a  
14 question for us. Matt Slavin is part of the group that's  
15 sort of responsible for our XBRL effort, and he can --  
16 help me here. How would that change that five days  
17 you're talking about if you could do it at the same time  
18 rather than create your document, send it off to somebody  
19 and have them go and tag all the information?

20 MS. JENNY: I think the question is the people  
21 on our finance teams that are preparing -- finance  
22 departments that are preparing and reviewing disclosures  
23 with our outside counsel, with our auditors, from my  
24 understanding the XBRL has been much more of a -- it's  
25 not the same background. It's more of a technology in

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1 the sense that you're tagging. It's almost not the same  
2 skill set that the person has who's actually writing the

3 financials.

4 If there was a way to bridge that where you're  
5 writing your financials and there's just some sort of  
6 easy mapping that those of us who aren't developers --

7 MR. NALLENGARA: Right, right.

8 MS. JENNY: -- could follow, then that would not  
9 be as burdensome, but when you start talking about  
10 something that has to be bringing tables in and exporting  
11 --

12 MR. NALLENGARA: right.

13 MS. JENNY: -- most, at least from my  
14 experience, the people who are actually drafting, writing  
15 disclosures, all of us, that's not our core competency or  
16 something that we feel comfortable with.

17 So I think that's the way to minimize the  
18 timing.

19 MR. SLAVIN: No, I understand that. What we  
20 have seen with companies that have been doing this for a  
21 while is that the effort up front is a lot larger, and so  
22 companies that have already been through the phase-in  
23 process have found that after they have submitted their  
24 10-K for the first time in detail tag, that they tend to  
25 go more into a maintenance mode with a lot less effort

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1 around this.

2 Now, the smaller reporting companies are still  
3 in their phase-in. They're actually at the point where  
4 they're about to submit 10-K. So this is, you know, the  
5 most challenging time, the highest level of effort. But  
6 we have seen and the financial executive research group  
7 did a survey recently that stated this, that they found  
8 that after they got through this that the level of effort  
9 had reduced, and they went into more of a maintenance  
10 mode. So they weren't doing as much work.

11 So essentially when they had to create what  
12 they call an extension taxonomy, after that effort it was  
13 more or less just rolling it forward for the new quarter  
14 and then making some changes, and if there was a new  
15 taxonomy with some new accounting standards updates, that  
16 would roll in. That would be some effort, but it  
17 wouldn't be that large effort that they put in during  
18 their phase-in, and the small reporting companies are  
19 about to go through what is really the toughest filing  
20 right now.

21 MS. JACOBS: But I think, too, in closing our  
22 books it's tough, it's tougher. We don't have staffs who can  
23 automatically adapt. Small reporting companies, I don't  
24 know about you all, but I mean, these are groups that  
25 maybe have less than five people, and I don't see it

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1 because we do a lot of transactions, and I'm going to ask  
2 you all to weigh in.

3 We do a lot of transactions throughout the  
4 quarter that oftentimes are material. They are

5 important, and we need to work with our auditors that we  
6 are accounting for it correctly. And don't get me wrong.  
7 Our financials and the accuracy is nonnegotiable in our  
8 world. That's the world we live in. So I want them to  
9 be correct.

10 But oftentimes there are negotiations going  
11 down right to the final hour with our auditors over  
12 transactions and things that have happened throughout the  
13 quarter. The slightest change where this tagging is  
14 concerned, including the footnotes, and I just don't see  
15 the relief because, again, this is one of these things  
16 where had we had a say, I would have said, "For God's  
17 sake, can we have four years' reprieve, work out all the  
18 bugs with the big guys that can afford to work it out  
19 with you and then give it to the small reporting  
20 companies when it's running smooth?"

21 But it isn't and we're not, and I think there's  
22 just a disproportionate amount of not only costs, but  
23 disruption, and I think the risk to investors, frankly,  
24 is larger because if we have misstatements, because we  
25 don't have 60 people to put on this, you know, I'm trying  
0143

1 to protect our investors and make it good for them, too,  
2 which is not putting us into a box where we make errors.

3 MR. SLAVIN: Well, one of the things that we're  
4 actively assessing is something called inline XBRL, and  
5 the idea is that this would be an option where your XBRL  
6 is essentially imbedded in your HTML, your Form 10-K or Q  
7 so that when you're creating one, you're creating the other  
8 so that the data in one is the data in the other. And we  
9 see this as simplifying the creation process, and what  
10 we've seen is that companies that are starting to use  
11 disclosure management solutions, more and more of them  
12 are becoming available in the market, are finding that  
13 they're actually having efficiencies in some cases with  
14 their process, and we think that this inline is going to  
15 potentially have an impact on that and also on the  
16 reliability of the data in terms of there would be  
17 potentially less errors as a result of having to support  
18 two different documents that say the same thing. Here  
19 you've got one with the information imbedded in it.

20 MR. NALLENGARA: I don't think --

21 MS. JACOBS: We did that, too. We want to make  
22 sure that all -- we don't become -- we don't get so  
23 wrapped up in the technology and the potential for the  
24 technology and lose sight of the fact of ten percent of  
25 investors have used it. Let's not lose sight of the  
0144

1 utility of it, and if the investors are not going to use  
2 it, then why are we doing it?

3 MR. NALLENGARA: Well, I don't think we're  
4 questioning all of the costs and the time associated with  
5 that. We recognize that it's costly. We recognize that  
6 it's time consuming, and we recognize that there's --

7 that we need to do -- and we're focused on looking at  
8 those challenges, and we're also focused on looking at  
9 the report that Columbia Business School put out on the  
10 usefulness of the data.

11 Some of that I'm not sure how much that looks  
12 at, how much third party data is sourced from XBRL data.

13 Folks here may be getting data from third parties that  
14 aggregate XBRL data and they may not realize; they may  
15 not realize that.

16 We also know that there are some providers.  
17 Some of the providers have errors in the way they are  
18 recording some of your XBRL data, and to the extent that  
19 there are errors in that data, it makes the usability of  
20 the data challenged, and so users of the XBRL data are  
21 questioning why would you use it if there's going to be  
22 errors.

23 So we need to do work on helping providers get  
24 better at what they're doing. We also need to do work on  
25 facilitating all of you in your use of, in your

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1 collecting and preparing this XBRL data. So we  
2 absolutely recognize that there's work to do.

3 MS. JACOBS: Well, yeah, that's the -- we are  
4 not saying throw out baby, the bath water, all of it.  
5 We're saying, "Would you extend this to your smaller  
6 reporting companies?"

7 Shannon, Kara?

8 MS. GREENE: Yeah, I was just sitting here  
9 thinking. I have yet to hear -- I mean, I think I  
10 understand what the concept of XBRL was, which was  
11 somehow it would make comparisons between different  
12 companies easier, but you know, part of the whole theme  
13 of the discussion is the one size doesn't fit all. I  
14 don't think you can take -- I mean, you put my current  
15 assets footnote or my inventory footnote against anybody  
16 else's, I mean, whatever, I mean, how stupid is that?  
17 It's totally irrelevant.

18 The investors, our investors, the people that  
19 are looking at us don't look at some big computerized  
20 thing and go, "Oh, you know, oh, yeah, they really stand  
21 out against an IBM or a GM or whatever." I mean,  
22 everything that happens with my investors, it's very  
23 manual. It's very hands on. They're calling management,  
24 and they're dissecting financial statements, and they're  
25 spending the hours in your office doing your due

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1 diligence. You can't put a bunch of machine language in  
2 a big pot and then separate it all and say, you know,  
3 here's this company standing up against this one because  
4 I don't think small cap investors look at it that way.

5 Maybe the big guys, maybe the Fidelities of the  
6 world that look at the IBMs do and they run charts and  
7 they show up on technical radar screens or whatever, but  
8 people that invest in small companies aren't investing

9 because my inventory ratio against IBM's is something.  
10 They're looking at every single line individually, and  
11 they're reading the spirit of the footnote and they're  
12 talking to management on the phone.

13 It's not a boiler plate, put it all in to make  
14 it easier to compare you against somebody else. So at  
15 the end of the day, maybe eventually costs will go down.

16 The providers will get better. The tagging gets easier  
17 or whatever, but as Chris said, I don't see my staff,  
18 since it's just me, and I'm not a tech. I don't want to  
19 be an IT person. So, you know, I don't ever see us doing  
20 the XBRL stuff in-house. I think it's always going to be  
21 outsourced.

22 So when your outsourcing anything, you're  
23 provider says, "Hey, you've got to give me more than 15  
24 minutes to take your final information and turn it into  
25 something to get ready for you to file." You're going to

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1 always have to give them time just like we would expect,  
2 just like attorneys or accountants.

3 So at the end of the day we're still talking  
4 about our 45-day or 90-day crunch on 10-Qs and 10-Ks is  
5 tight anyway because we're so small. You back out five,  
6 six, seven, ten days, and I'm with Chris. We're  
7 scrambling, hoping I sent them a final document, hoping  
8 there are no changes at the end because then we're  
9 looking at, you know, are we going to be late in filing  
10 or what.

11 So I still don't see how for companies our size, I  
12 don't see the benefit of throwing us up against the wall  
13 with a bunch of other people because our investors and  
14 the people that potentially invest in us don't look at it  
15 like that. They look at each individual company  
16 individually and very manually, not some automated what  
17 sticks on the wall against everybody else.

18 MR. BORER: You know, my guess, the charge of  
19 this Committee is not to decide whether it was a good  
20 idea in the first place or necessarily whether the  
21 intended beneficiaries of it are benefitting from it.  
22 It's sort of what are the burdens on small companies in  
23 light of, and the SEC and others can decide whether the  
24 risks, and if the rules are supposed to enhance investor  
25 protection through greater disclosure, I don't see how

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1 this does it. It makes it easier for Bloomberg,  
2 Thompson, Capital IQ, and a bunch of business school  
3 people to do big studies of financials and ratios and  
4 all those other kinds of things. I don't think it makes  
5 it. That's my opinion.

6 Our charge here is, is it something that we  
7 should exempt these small companies from for a period of  
8 time? Is that the question?

9 MR. GRAHAM: Yes.

10 MR. BORER: Okay. That seems pretty

11 straightforward. We probably discussed that sufficiently.

12 MR. SLAVIN: If I just may add some of the  
13 feedback that we've received from investors and, indeed,  
14 in the Columbia surveys that they are interested in this  
15 data because they do not currently have access to this  
16 information for smaller reporting companies and they see  
17 that as benefitting them and even pointing out in the  
18 study that the information in the financial statement  
19 footnotes is of interest to them.

20 MR. GRAHAM: Any other comment? Greg.

21 MR. YADLEY: No, I was just going to ask a  
22 question of Matt. I hear the same thing from my clients.  
23 I'm wondering because I don't know how this works in  
24 practice. The investors that are interested in smaller  
25 public companies, would there be a small amount of

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1 information, you know, really sort of top line stuff that  
2 would allow them to do some particular ratios, you know,  
3 profitability, margins, you know, four or five things  
4 rather than the entire financial statements? Because at  
5 least theoretically would that be helpful?

6 Chris, if the Commission is not prepared to  
7 dispense with this and exempt smaller companies entirely,  
8 if you had to send it to your provider and they only had  
9 to tag ten lines rather than all the financial statements  
10 and the footnotes and everything, would that -- or am I  
11 just splitting hairs here and it's not a good question?

12 MS. JACOBS: No, I think that along with the  
13 other suggestion of, you know, look. When these sweeping  
14 changes come in would you give the little companies --  
15 give them a runway? Give them four to five years. Work  
16 the bugs out with the big guys who can afford the work  
17 with the SEC to fix it.

18 I'm not on the page of saying, "I want to deny  
19 investors anything." I'm in the cost-benefit mode with  
20 the benefit of doing it every day. But in this  
21 particular instance, I don't think it's ready. I don't  
22 know that being partially there would solve the issue of  
23 us signing up for outsourcing and the rest of it. I  
24 think I'd rather say let's exempt it, work the bugs out,  
25 and look at putting it into place at a later date

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1 because, to what has already been said, small reporting  
2 companies and companies our size, the investors, they  
3 enjoy a very close relationship with us, and they buy the  
4 story. They buy the story first and the financials.

5 They don't come looking for us unless it's a  
6 big index fund like Fidelity or Vanguard, who have to buy  
7 our stock, but for the most part our large holders are  
8 folks that have bought into the story. Then they look at  
9 our financials, and they're not going to benchmark us  
10 necessarily. They're either already in the medical  
11 device sector or service sector or whatever.

12 I don't know, again, what utility that would



13 have for the base and the type of investors that the  
14 micro caps have because the information is there, but  
15 they buy our story first or our challenges or our sector,  
16 and a lot of times, Greg, they're going to come in and  
17 they already know what the medical device sector is or  
18 what the service sector or what your gross margins ought  
19 to be or your operating income, and again, I've had no  
20 indication whatsoever, and I've asked the top three  
21 shareholders if they have looked at or used it as  
22 pertains to our company, and all of them have said no.

23 MR. BORER: That sounds logical.

24 MR. GRAHAM: Okay. Any other comment?

25 (No response.)

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1 MR. GRAHAM: I guess what I'd like to do is  
2 move that we adopt the --

3 MR. YADLEY: Excuse me, Stephen. I didn't have  
4 another comment on that, but generally would it be good  
5 to add an additional new Paragraph 6 at the end which  
6 picks up some of the language of the introductory Point  
7 7? These are all very specific, and I agree with them  
8 and intend to vote for this, but where the Committee  
9 recommends that the Commission review its rules as they  
10 pertain to smaller reporting companies, the other  
11 disclosure requirements that place a disproportionate  
12 burden on smaller companies in terms of cost and time  
13 spent on compliance without a corresponding benefit to  
14 investors, and considering enacting new rules, providing  
15 an initial exemption and phase-in period so that smaller  
16 reporting companies will have the benefit of larger  
17 companies' experience implementing such new rules. I  
18 mean, just so that we've gone on record as saying we've  
19 looked at these specific rules relating to emerging  
20 growth companies because they're out there and they don't  
21 quite line up, but there are other rules that also ought  
22 to be looked at and certainly new rules there ought to  
23 be.

24 And the Commission does do this. I mean, they  
25 do cost-benefit. They look at disproportionate effects

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1 on smaller companies, but underscore that they should do  
2 that and, in particular, sweeping changes, however we  
3 want to term that, that there be an initial exempt period  
4 and phase-in just sort of as a new mindset.

5 MR. GRAHAM: Greg, I think that that's a great  
6 idea. Let's --

7 MS. JACOBS: That's a great follow-on point to  
8 make.

9 MR. GRAHAM: Where would we add that, Greg?  
10 I'm sorry.

11 MS. JACOBS: Here.

12 MR. YADLEY: After the XBRL just add another --

13 MR. GRAHAM: Oh, we're adding a new number,  
14 adding a new Number 6.

15 MS. JACOBS: Adding a Number 6.  
16 MR. GRAHAM: I was looking for that Number 6  
17 that you were adding to. Okay.  
18 MS. JACOBS: Sort of a follow-on statement.  
19 MR. GRAHAM: Got it. Okay. I move that we  
20 adopt these recommendations as modified.  
21 MR. BOCHNOWSKI: Second.  
22 MR. GRAHAM: All those in favor.  
23 (Chorus of ayes.)  
24 MR. GRAHAM: Opposed?  
25 (No response.)

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1 MR. GRAHAM: Okay. The last one is really kind  
2 of something that we all, I think, feel is important, and  
3 we feel a little bit frustrated that there is not a whole  
4 lot that we can do about it. And that relates to the  
5 situation we find ourselves in with the Conflict Minerals  
6 requirements.

7 You know, we've noted that in recent years  
8 legislation has been proposed or enacted that would  
9 require or does require or directs the Commission to  
10 amend its rules and forms to impose disclosure  
11 requirements on issuers relating to matters that the  
12 Committee believes is outside the scope of the mission of  
13 the Commission, and again, we're all familiar and we  
14 spent some time discussing Conflict Minerals at our last  
15 meeting.

16 Notwithstanding the fact this is something that we  
17 recognize that is not within the power of the  
18 Commission to provide relief in this regard, we're  
19 looking at an act of Congress. Nonetheless we wanted to  
20 go on record and note that, at least in our view, Congress  
21 should take action to exempt small businesses from these  
22 provisions that are imposing disclosure obligations on  
23 smaller reporting companies that relate to Conflict  
24 Minerals.

25 It seems to us that this is an example of

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1 Congress working at cross-purposes, where attention is  
2 focused on things like the JOBS Act in an effort to  
3 enable companies to obtain capital and to preserve  
4 capital, and then those kinds of efforts are followed by  
5 establishing a disclosure regime that imposes a lot of  
6 costs and thousands of smaller issuers requiring  
7 compliance with requirements that are there to further  
8 policy or social or humanitarian ideas, where, you know,  
9 separately it might be a good policy; it might make a  
10 whole lot of sense, but to use the disclosure regime to  
11 kind of further those policies kind of strikes us as  
12 misplaced because, again, you're imposing certainly a  
13 tremendous collective burden on smaller reporting companies  
14 by imposing those requirements without a corresponding  
15 benefit in terms of generating information that is useful  
16 to those who invest in those companies.

17 So, discussion?

18 MR. BORER: Stephen, just a quick question.  
19 This is one that to me in my mind is a little bit  
20 different than many of the things we've dealt with. This  
21 is us telling Congress that we don't like or would  
22 encourage them to take a different approach to something.

23 MR. GRAHAM: You're exactly right. This is  
24 different.

25 MR. BORER: I'm not sure if we have a protocol  
0155

1 officer in this. When I studied parliamentary procedure,  
2 there were certain things that you could do and certain  
3 things that you couldn't, and I, by the way, as most  
4 people know, I have opinions and I don't mind expressing  
5 them. This is on the Internet. So the Internet must be  
6 true.

7 What does this accomplish? I happen to agree  
8 it's a very, very nicely worded and a sincere approach  
9 and makes a point here. What do we accomplish by doing  
10 this? Do we send this to the head of the Senate Finance  
11 Committee and --

12 MR. NALLEGARA: I can speak to the --

13 MR. BORER: Thank you.

14 MR. NALLEGARA: -- protocol. Your charter  
15 instructs you to make recommendations to the Commission  
16 on-- broadly -- small business questions, capital formation,  
17 all the stuff that we've been talking about, and as you  
18 can see, the three other recommendations here are  
19 characterized as recommendations. The ones before them  
20 were characterized as recommendations.

21 This is different. This is a "the Committee  
22 believes." So as a technical matter you're charged with  
23 giving us recommendations, giving the Commission  
24 recommendations within a narrow scope.

25 Now, the question is: within that scope are  
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1 you allowed to make a statement as to your belief?  
2 That's an open question on whether as a technical matter  
3 you are permitted to agree as a group that this is what  
4 your belief is because it's not necessarily a  
5 recommendation to the Commission.

6 Now, on your question as what does it do, I  
7 think you're just expressing a view. When you're making  
8 specific recommendations to us on things that we should  
9 look at, if it's an active rulemaking, it informs our  
10 active rulemaking. It informs part of the comment  
11 letter, you know, the comments that we receive on a rule.

12 It would be part of what we consider. The rule writing  
13 teams would read and review those and consider those  
14 among the comments.

15 This really isn't asking us to do anything.  
16 There's nothing we're working on right now that relates  
17 to this specifically. So it really is just what that is.

18 It's a statement of the belief of the Committee.

19 MR. BOCHNOWSKI: Stephen, I think --

20 MR. GRAHAM: Yes, David.

21 MR. BOCHNOWSKI: First of all, I'm in total  
22 agreement with the issue in Conflict Minerals, but when  
23 we as a group tell Congress what they should not do, they  
24 should not use federal securities laws in the  
25 Commission's disclosure requirements, when I read this, I

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1 just focused on federal securities laws and I wrote in:  
2 sanctions, embargos, and national security.

3 There might be a set of circumstances under  
4 which all of that is appropriate.

5 MR. GRAHAM: Right. And so right now --

6 MR. BOCHNOWSKI: I'd hate to have this come  
7 back to us.

8 MR. GRAHAM: Well, I'm not going to concern  
9 myself with sanctions and embargos, at least not yet, but  
10 one thing that we clearly are concerned with and we spent  
11 a lot of time talking about, and that is just the burden  
12 of compliance and the cost that that means, you know, to  
13 individual companies and the overall cost to the system  
14 when you aggregate the cost that is experienced by all  
15 the companies kind of fitting into these categories.

16 And so it certainly is something that I think  
17 frustrates us as a Committee, and that was the impression  
18 that I had after the Committee's discussion in San  
19 Francisco on this subject. And as you might recall, I was  
20 personally not in favor of doing very much in this  
21 regard, you know, for the reasons that have been  
22 articulated.

23 This is Congress acting. There's not a lot  
24 that the SEC can do. As far as any recommendation that  
25 we can come up with, there's not a lot in the way of

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1 teeth with respect to that. But it seemed to be the  
2 consensus of the Committee that the Committee wanted to  
3 go on record in this way, and we have formulated a  
4 recommendation accordingly, and that's kind of where we  
5 are and we can go forward with it or not, but that's kind  
6 of why it's on the table and kind of its effect.

7 MR. YADLEY: As an alternative, maybe we could  
8 reformulate "Recommendation 1" that the Committee urges the  
9 Commission to share with the Oversight Committees the  
10 Committee's belief that this provides disproportionate  
11 costs with not commensurate benefit, and then delete the  
12 second one, which we sort of have up in the preamble  
13 anyway as our thoughts, and the Commission can in  
14 whatever form it deems desirable or not say, "Hey, you  
15 know, we had this Advisory Committee and this was  
16 something that they felt for very little benefit."

17 And I know Chris shared that at our first  
18 meeting the particular impact it could have on a small  
19 company like yours just because you used one of those  
20 minerals.

21 MS. JACOBS: I do, rhodium and tantalum.  
22 MR. GRAHAM: Okay. There's data with that.  
23 MR. BOCHNOWSKI: Sure, and I was going to  
24 suggest something very similar, which is in Paragraph 2,  
25 just to limit us to this specific issue, that in the case

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1 of Conflict Minerals the Congress should not be using.  
2 Either one is fine. I just didn't want to have us  
3 appear, Stephen, to be pushing back to Congress that we  
4 weren't in sync with other objectives they might have in  
5 other arenas.

6 MR. GRAHAM: Fair enough.

7 MR. BORER: Well, tacking a little bit here,  
8 I'm not familiar with the whole provisions of Dodd-Frank.  
9 I don't know who is. Is there a way that we could  
10 recommend to the Commission within the terms of this  
11 provision that the enforcement or implementation of this  
12 requirement on disclosure, is there flexibility that  
13 would reduce the burden on companies, whether they be  
14 small or other types of companies that would allow us to  
15 phrase this back to the Commission and say, "Here's how  
16 it's currently being implemented."

17 So you have a software company in Silicon  
18 Valley with six employees has to do certain disclosures  
19 whether they're even required to disclose if they're  
20 public on Conflict Minerals when clearly it wouldn't  
21 apply to them or not. Is there something within the four  
22 walls that we could recommend?

23 MR. GRAHAM: We thought about that. We bounced  
24 it off of Lona and others, and --

25 MR. NALLENGARA: It's hard where the Commission  
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1 is being sued on these two Dodd-Frank provisions on the  
2 rulemaking. So we're sort of stuck. Really we won't be  
3 able to sort of talk through that kind of analysis with  
4 you. We are embargoed. So it's just not something we  
5 can talk about.

6 So Greg's proposal is an interesting one. I  
7 mean, remember because this is a Federal Advisory  
8 Committee, your draft recommendation is on our website,  
9 and also people know you have this draft recommendation  
10 out there. So expressing your view, you've expressed the  
11 view. Everyone knows it's a draft recommendation, but  
12 Greg's proposal also is something to consider as well.

13 MR. BORER: So if I can just ask one more quick  
14 question, I'll go back to law school and propose a  
15 hypothetical

16 MR. NALLENGARA: Yes.

17 MR. BORER: If you weren't embargoed with your  
18 hands tied, generally would there be flexibility in how  
19 the rulemaking has been done here?

20 MR. NALLENGARA: I -- I --

21 MR. BORER: Okay. It was a hypothetical  
22 because this may be one we want to sit on.

23 MR. NALLEGARA: I mean "embargoed" is just a  
24 word I used because --  
25 MR. BORER: I understand.

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1 MR. NALLEGARA: -- David did as well. But we  
2 can't. Everyone asks these questions about, you know,  
3 interpretive questions about these rules. We're sort of  
4 in a place where we can't talk about it or at least the  
5 three of us can't.

6 MR. BORER: Well, the question comes down to  
7 should we expose our thoughts to Congress. I think  
8 they're probably sincerely felt amongst this committee,  
9 and I think that's more the issue here as opposed to the  
10 substance of does Conflict Minerals apply to small  
11 companies and is it a good use of resources?

12 MR. GRAHAM: Yeah, and I think the sense in San  
13 Francisco is that we should expose our thoughts to  
14 Congress, but this is a Committee, and so it's on the  
15 table and we can all vote on it.

16 I was initially not in favor because I thought  
17 it was kind of pointless because it just kind of lacked  
18 any real authority, but I've come around to at least see  
19 it as not harmful and possibly helpful that a Committee  
20 that is charged with looking at the regimes that we  
21 currently impose on smaller or public companies and to what  
22 extent it might make sense and to what extent, you know,  
23 the cost involved is appropriate, that you know, but for  
24 the fact that it's coming directly from Congress, this is  
25 precisely the sort of thing that we're talking about.

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1 And so I think it does make some sense to  
2 express a view.

3 Any other comments?

4 MS. JACOBS: We need a motion.

5 MR. GRAHAM: We need a motion.

6 MS. JACOBS: So moved.

7 PARTICIPANT: Second.

8 MR. GRAHAM: With Greg's modification?

9 MS. JACOBS: Yeah. Second?

10 MS. JACOBS: Greg. He seconded.

11 MR. GRAHAM: Favor?

12 (Chorus of ayes.)

13 MR. GRAHAM: Opposed?

14 (No response.)

15 MR. GRAHAM: Okay. Thank you all.

16 What we will do is redraft these  
17 recommendations and send them out to you so that we can  
18 confirm that we got it right and that everyone is on the  
19 same page. Once that's done, we'll send them on to the  
20 Commission.

21 As far as our next meeting is concerned, I  
22 think we've tentatively blocked out May 1st. So you  
23 might want to put that on your calendar. It would be in  
24 Washington.

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And in terms of developing an agenda for that meeting, I think a lot would depend on what happens between now and then in terms of things like new proposed rules coming down that might be of interest to this Committee that we might want to comment on.

So unless anyone else has anything for the good of the order, I will entertain a motion to adjourn.

PARTICIPANT: So moved.

MR. GRAHAM: Second?

Okay. We're done. Thank you.

(Whereupon, at 2:57 p.m., the meeting was concluded.)

\* \* \* \* \*

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PROOFREADER'S CERTIFICATE

In the Matter of: MEETING OF ADVISORY COMMITTEE  
FOR SMALL AND EMERGING COMPANIES  
File Number: OS-265-27  
Date: Friday, February 1, 2013  
Location: Washington, DC

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

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(Proofreader's Name)

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(Date)

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REPORTER'S CERTIFICATE

I, Mary Jo Mitchell, reporter, hereby certify that the foregoing transcript of 163 pages is a complete, true and accurate transcript of the testimony indicated, held on February 1, 2013, at Washington, D.C. in the matter of: MEETING OF ADVISORY COMMITTEE FOR SMALL AND EMERGING COMPANIES.

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

Date: \_\_\_\_\_  
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In the Matter of: MEETING OF ADVISORY COMMITTEE  
FOR SMALL AND EMERGING COMPANIES  
File Number: OS-265-27  
Date: Friday, February 1, 2013  
Location: Washington, DC

This is a letter to inform you that we do not release our tapes and notes. I do maintain them for a period of one (1) year.

Sincerely,  
\_\_\_\_\_