MS. HANKS: Okay. Good morning and welcome. Welcome to the Advisory Committee on Small and Emerging Companies. And first I need to ask Sebastian if we have a quorum for the meeting. Are we quoried?

MR. GOMEZ: We do, Sara.

MS. HANKS: Okay, excellent. I am Sara Hanks and I am here without my co-chair, Steve Graham, this morning. He is by the side of his wife, Joanne, who is recovering successfully from a major surgery. Steve, if you're watching this, know that everybody in this room is thinking of you and sending thoughts and prayers for Joanne's continued recovery, and we are looking forward to seeing you next time.

We have a wide-ranging agenda today. We are starting this morning with a discussion on the limited liquidity in secondary markets for holders of shares of smaller companies. We want to focus in particular on two types of companies, companies that are providing annual and semiannual reports following a Regulation A, Tier 2 offering; as well as SEC registered and reporting companies who are filing quarterly reports but are not listed on any exchange. We have asked two preeminent blue sky lawyers to present to the committee in order to help us navigate these issues, because as you know one of the problems in this area is that there is no state preemption for resales of these securities.

Following that, we are going to return to a topic of long-held interest to many of us, the broker-dealer status of finders; that is, people who help small companies find sources of capital. During our October meeting, we received an update on this topic from Stephen Luparello, the then-director of the Division of Trading and Markets. It was clear at that time that there was nothing in the immediate works in terms of rulemaking or other division action to redefine the definition of broker-dealer. So we are going to spend some time this morning discussing whether we'd like to reiterate, once again, a recommendation for action in this space.

After lunch, we're going to take up a question that many have been asking, which is why are more companies choosing to stay private. Or, to put it a different way, why aren't more companies choosing to do an IPO. We are going to be joined by a lawyer, accountant and a venture capitalist who have lots of direct experience with companies making these decisions and it's going to tee up a very interesting discussion.

Finally, I am hoping that we are going to finalize our recommendation to the Commission regarding diversity on corporate boards and the ways that the SEC's disclosure...
requirement in this area could be improved.

But before we move into the agenda for the day, we are pleased to have with us this morning for opening remarks Acting Chairman Mike Piwowar and Commissioner Kara Stein.

Chairman Piwowar.

COMMISSIONER PIWOWAR: Thank you, Sara. Good morning, everyone. And, Steve, if you're listening, as Sara mentioned, all of us are sending our best wishes your direction.

I've always enjoyed these advisory committee meetings and I am pleased to be here in my new role as acting chairman.

I'd like to extend a special welcome to our newest committee member, Michele Schimpp, who is representing the Small Business Administration. We very much appreciate having the SBA's insights and we look forward to working with Michele. Welcome.

No matter where you are in the United States, small and emerging companies raise the tide for so many people to succeed. The freedom to innovate and grow has always been fundamental to American success. And we, as regulators, must constantly assess how our work meets the needs of today's innovators. That's why this committee is so valuable.

Committee recommendations put forward in early 2012 about lifting the ban on general solicitations, expanding Regulation A and raising the Section 12(g) registration thresholds helped lead to the enactment of the JOBS Act. In 2015, the committee recommended that the Commission modernize Rule 147 to help facilitate interstate offerings and I'm pleased the Commission did just that.

As of last month, the related rule -- amended Rule 504 is now in effect, and the new Rule 147A will go into effect in April, providing more options for companies looking to raise capital.

The committee also recommended raising the financial thresholds in the smaller reporting company definition to expand the number of smaller companies that qualified for scaled disclosures. In line with that recommendation, the Commission proposed amendments to raise those thresholds last year.

The list of your valuable recommendations and discussion topics goes on and on. And it seems Congress was so impressed with your efforts that in December it codified the committee into law. The bipartisan Small Business Advocate Act of 2016 put into the Exchange Act two new provisions. The first establishes the Office of the Advocate for Small Business Capital Formation, headed by a new advocate for small business capital formation. The second establishes a Small Business Capital Formation Advisory Committee. These are parallel provisions to the Dodd-Frank act that established the Office of Investor Advocate and the Investor Advisory Committee.

I am proud to say that we are already taking steps, including working with our appropriations committees, to stand up the new office. I anticipate that we will begin the search for a new advocate for small business capital formation in the near future. The law requires that the new advocate be someone who is not a current SEC employee, so I hope you all will encourage good candidates that you may know to apply.

In the meantime, we want you to continue down this exciting path. The charter of this advisory committee doesn't expire until September and I know that between now and then you will continue your efforts to bring forward ideas to facilitate capital formation for small and emerging companies.

Your agenda today, as Sara mentioned, secondary market liquidity, finders and why companies are not going public reflect important topics facing small and emerging companies. Secondary market liquidity for shares being held by investors in Reg A securities is becoming an increasingly important issue.

Between June 19, 2015, the day when amendments to Regulation A took effect, and January 31 of this year, there were 181 offerings filed using Regulation A. One hundred and three which have been qualified by SEC Staff for the issuer to begin making sales; 28 issuers have reported selling approximately $259 million in the aggregate.

I look forward to any recommendations on ways to remove frictions that may stand in the way of investors being able to readily exit their investment.

I'm also pleased that you are discussing why more companies are choosing not to go the route of an IPO. While the menu of capital raising choices available today for small businesses presents more flexibility and more alternatives than ever before, there is always more we can do to provide robust public capital markets.

I look forward to your input on these and the other topics on your agenda today.

Thank you again for your service on this committee and your continued commitment to facilitating capital raising by small businesses.

MS. HANKS: Thank you.

Commissioner Stein.

COMMISSIONER STEIN: Thank you. I also want to extend my thoughts and good wishes to Steve and his wife.

Welcome, Michele.

Good morning to everyone else. In this dynamic environment, I think the ability to work on consensus topics is even more important. This committee remains focused on
fostering and supporting healthy marketplaces for fledgling
going companies while protecting investors. And this is a
focus that we can all stand behind. And your commitment and
work towards this goal, as always, is much appreciated.

Today's agenda reexamines topics that have been
previously discussed. But we now have the added benefit of
the inflow of initial information and data about how certain
JOBS Act regulations are working in practice.

One aspect of your discussion concerns secondary
market liquidity for smaller companies that are using the new
Reg A Plus reg. you know. And secondary market liquidity, I
think, from my perspective, is a rather complicated topic.

For example, our Equity Market Structure Advisory Committee
has also looked at this issue.

One of the things that's been most interesting to
me is the availability of more data and current research that
seems to be informing us on the role of information and
transparency and the relationship to secondary market
liquidity and firm value for OTC firms.

While your discussion today may be primarily
focused on state securities laws and their impact on
secondary market liquidity, I don't think it needs to end
there. Blue sky requirements that apply to secondary sales
of Reg A securities also are intended to provide a layer of
protection for investors against fraudulent activities within
each state in which the transactions occur. I think from my
perspective, state laws have often provided a protective
guardrail in an attempt to balance efficient capital
formation with robust investor protections.

That said, I mean, I think it's fair to examine
whether the current blue sky regime may negatively be
affecting secondary market liquidity. I'm particularly
interested in learning more about how compliance with state
securities laws is working for Reg A, non-exchange listed
securities.

I look forward to the discussion of the pros and
the cons of blue sky laws and what if any improvements need
to be made.

Finally, if there are inefficiencies with blue sky
compliance regimes, how can the current regime be adjusted?
For example, is there a means by which NASAA, working with
the states, can improve the availability of manual exemptions
across more states?

The other item on your agenda that I'm sure will
generate significant discussion concerns the relative lack of
IPOs as compared to prior periods. What does the data
reveal? What are the current observations and explanations?
I can tell you again from my perspective, depending
on what market participant you talk to, they have very
different explanations.
forward to your afternoon discussion and welcome any ideas you may have that would promote further activity in the IPO market.

Before closing, I want to acknowledge the other members of the Corporation Finance Staff at the table with me. To my right, Betsy Murphy, a very important member of the division's senior leadership. Next to Betsy is Sebastian Gomez, the chief of the Office of Small Business Policy. And to his right is Julie Davis, the senior special counsel in that office.

As you are all well aware, I need to give the standard disclaimer for any Staff member speaking today, which is that any remarks made by any of the SEC Staff members reflect his or her own views and not necessarily those of the Commission or any other member of the Commission Staff.

And with that, I'd like to thank you for letting me join you this morning and I look forward to listening to your discussions.

MS. HANKS: Thank you, Shelley.

So we're going to move on to the secondary market liquidity. As you've known, over the course of the last few years in a variety of formal and informal ways, this committee has taken up issues surrounding the lack of sufficient liquidity in the securities of small companies.

Today, we would like to focus more narrowly on the topic of secondary liquidity in the context of issuers that are subject to ongoing reporting requirements and thus have updated information available in the marketplace.

In the case of a company that's done a Regulation A offering, they are obligated to file on EDGAR annual and semiannual ongoing reports and current reports. Companies that have done a public offering, i.e., registered public offering, they are subject to the ongoing disclosure regime which includes quarterly reports.

The availability of these ongoing updates means there is available information to help establish pricing and transparency in the secondary market. Yet, as we have heard in our previous discussions, investors in Reg A securities are likely to have a difficult time when they are ready to resell their shares. One key factor in this space is the friction that comes with having to find state exemptions for each trade, since blue sky -- state blue sky laws do apply to secondary sales.

We have invited today two highly regarded attorneys who specialize in blue sky matters and can help educate us on the current legal framework. First, I would like to introduce Richard Alvarez, principal of the Law Office of Richard Alvarez. Richard currently serves as vice chair of the State Regulation of Securities Committee of the ABA, American Bar Association.

And next to him is Martin Hewitt. Martin is chair of the same state regulation securities committee of the ABA.

Martin may look familiar to you because he often attends these meetings and the SEC staff think maybe he's a member of the advisory committee fan club.

(Laughter.)

MS. HANKS: We're very happy to have both of you here to share your expertise and help us delve further into this very important topic.

And I think Richard, you're going to go first?

MR. ALVAREZ: Yes, I will. Thank you, Sara.

MR. ALVAREZ: Unfortunately, I didn't bring my own membership key for the advisory committee. Martin decided not to share that with me.

MS. HANKS: We're designating you a member right now.

MR. ALVAREZ: Thank you, Sara. That's very gracious.

(Laughter.)

MR. ALVAREZ: Good morning, everyone. Thank you for inviting Martin and I to speak with you today on the topic of blue sky compliance that is applicable to Reg A Plus, Tier 2 offerings and, more broadly, to the securities...
law issues, that while likely unpopular with many state
regulators, the existing state regulatory framework that is
applicable to secondary trading activities for certain types
of securities and market participants has become overly
burdensome, rooted in a view of a national securities market
that defers to larger, more mature companies at the expense
of newer and untested companies. This bias has the effect of
stunting growth and innovation and is not, in my view,
responsive to both the rapid evolution of the markets
resulting from technological innovation, and to the shifting
imperatives of Congress reflecting the desires of their
constituents for greater opportunities for capital formation
and investment opportunities.

This is not to say, of course, that these
imperatives demand that investor protection, which is one of
the principal mandates of state regulators, should be
diminished or eliminated. However, to me, it does mean that
as securities markets evolve and the objectives of the
markets overall change by emphasizing the importance of
capital formation and job creation through more robust
marketing opportunities for issuers and investors alike,
existing regulation should also evolve. Oftentimes,
evolution cannot be incremental. Disruptive change is
sometimes necessary.

At this point, I would like to sidebar for a moment
to give a brief overview of the state of play regarding state
regulatory secondary market trading exemptions. As we all
know, the securities of companies who are listed on a
national securities exchange enjoy full preemption.
Certainly, the listing standards and the abundance of
available real time information for those companies offers
the basis for reducing the amount of needed regulatory
scrutiny.

Preemption is also available for securities that
are the subject of nonissuer secondary market transactional
exemptions under Section 4(a)(1), that is for transactions by
a person other than an issuer, underwriter or a dealer, and
for broker transactions executed in reliance on 4(a)(3) of
companies who report under 13 and 15d of the Exchange Act.

We should note here that for securities that are
sold in reliance on 4(a)(3), while enjoying covered
securities status, there are a handful of states that
obligate an issuer to file a notice to claim preemption, if
you will, for securities to be eligible to be traded in their
state in reliance on that preemptive provision.

There is also a federal preemption of state
regulation enjoyed by transactions in securities made in
reliance on Section 4(a)(4) of the '33 Act, which deals with
unsolicited broker transactions. It would seem obvious that
that exemption has some limitations, particularly in the
context of a desire to create and develop a robust secondary
market in -- in outstanding securities. Certainly, if a
broker cannot solicit its customers, it cannot create a
market. And certainly if a -- if a broker seeks to share its
research for a particular company with its clients, that will
also defeat an assertion that the transaction, if it were
initiated by the client, would be wholly unsolicited, making
that exemption unavailable.

There is also an institutional investor exemption,
which all of you are familiar with. Again, that focuses on
the nature of the investor as opposed to the type of
transaction. Although transactions with institutional
investors don't enjoy covered status, it is a
universal exemption at the state level. The trouble, of
course, in mentioning that exemption in the context of Reg A
Plus, Tier 2 offerings or for the securities of small
emerging growth companies is that that category of investor
is not normally found making investments for those -- in
securities of those issuers. So I question whether, in the
discussion about developing a robust secondary liquid market
for Reg A Plus, Tier 2 issuers and securities of
nonreporting, nonlisted public companies, whether the
institutional investor exemption has any real validity.

Last but certainly not least is the exemption that
Sara mentioned, the so-called manual exemption. Most of you
are familiar with the state exemption that is currently
available in, depending on who you speak to, 39 or 44 states.
And there, that simple statement demonstrates why this is
such a problem area. There is not even unanimity on which
states actually offer an exemption that is usable for
secondary market purposes.

Well, what does the manual exemption provide? It
offers an exemption for secondary trades in -- by -- by
nonissuers through a licensed broker-dealer, provided that
the issuing company has financial and other information
published in a -- in a designated standard manual. Up until
the middle of last year, the two main reporting manuals were
Emergence and Standard and Poor's. Standard and Poor's has
given up the ghost and is no longer involved in this space.

However, I do understand that the OTC Markets has been
developing its own manual to replace -- I suppose to replace
the Standard and Poor's manual. And that is their Best
Markets. And, as I understand it, with Vermont -- Michael --
his state leading the way, it is now an accepted manual in 19
jurisdictions. I think that's right. With two others on
board to adopt the manual as part of its manual exemption.

The obvious problem for purposes of our discussion
this morning with the manual exemption is the, A, the lack of
complete coverage in all 54 U.S. jurisdictions of that
exemption. And, further, the fact that even among the states
that have adopted a manual exemption, there are substantive
differences in how those exemptions are applied, focused on
the -- the type of uniform securities act that the state
follows. There are, for those of you who don't know, two
uniform acts that the states generally model their statutes
after. One is a 1956 vintage act, that has been around for
quite some time, obviously. And the second is a more
current, updated version adopted in 2002, which about 20
states have adopted.

But again, the exemptions under both of those model
acts differ. Perhaps not substantially, but sufficiently
that the lack of uniformity doesn't lend itself to promoting
a national secondary trading exemption that is usable for
companies that don't enjoy federal preemption.

A secondary market that must rely on these
disparate exemptive provisions at the state level will, of
course, be fragmented and far from the liquid secondary
markets enjoyed by larger capitalistic companies. The
question then is why are robust liquid secondary markets for
smaller companies important? Whether owning securities in
large or small companies, investors generally don't want to
hold their investments indefinitely. A liquid secondary
market allows investors to realize gains, minimize losses,
generally make decisions to manage their portfolios and
investments. A liquid secondary market also helps issuers
since even the prospect of a liquid secondary market makes it
more likely that they will attract needed investment capital
from potential investors, who are assured of an exit ramp for
their investment, thus providing capital to foster job
creation and entrepreneurial innovation. Regulatory
impediments to a robust secondary market frustrate those
objectives.

This picture is not all wine and roses, however.
An unchecked market will undoubtedly offer opportunities for
unscrupulous operators to game the system, to the financial
disadvantage of the groups that would benefit the most from a
less rigid regulatory scheme, smaller companies and their
investors.

So how to balance these equally important but
competing interests? A robust and liquid secondary market as
currently exists for exchange-listed and SEC reporting
company securities must be based on realtime availability of
information about a company. The ability of an investor to
find, examine and rely on information that he or she deems
critical to an investment decision foster investor confidence
in the markets, as much as the knowledge that regulators are
standing by to protect their interests.

Certainly, though not ideal, the states' manual
exemption recognizes this fact, since it relies on the
availability of accurate, current information about an issuer
as the basis for the availability of that exemption.

However, the lack of uniformity, as I mentioned before,
between and among the states in applying this exemption,
coupled with the fact that more than a dozen states don't
even recognize the exemption, frustrates investor efforts in
many states to make investments based on what should be a
coordinated, consistent regulatory environment.

Here then are my suggestions for addressing the
lack of a meaningful secondary market liquidity for Reg A
Plus, Tier 2 securities. I'll address that first.

In my view, federal preemption should be extended
to include all secondary market trades in securities for the
securities of a Reg A Plus, Tier 2 issuer. This can be done
through SEC rulemaking, by refining the definition of
qualified purchaser under Section 18 to include any person
who, in a secondary market transaction, buys or sells a
security of a Tier 2 issuer that is current in its reporting
obligations. This would result in any such security being a
covered security under Section 18 of the '33 Act, thereby
allowing a secondary market for such securities to develop
without the regulatory burden of having to ensure compliance
with state law requirements for secondary market trades.

The current definition of qualified purchaser which
is any person to whom securities are offered or sold in Tier
2 offering contains a limitation on the amount of Tier Two
securities a nonaccredited investor can purchase in a Tier 2
offering. It's my belief that that QP definition should be
revised to make clear that this limitation would not apply to
investor purchasing Tier 2 securities in a bona fide
secondary market transaction.

To continue to allow disparate state regulatory
requirements to apply to secondary market transactions in
what are at the initial offering covered securities
frustrates the objectives of promoting creation and growth of
vibrant, small emerging companies by continuing to impose
restrictions on the secondary market for these securities.

While taking the step to grant full preemption of state
securities laws to all transactions for Tier 2 securities is
significant, the impediments imposed by continued regulation
of secondary market transactions in Tier 2 securities to the
ultimate success of Reg A Plus will, to a large extent, be
tied to relieving the duplicative and nonuniform state
regulatory structure that exists today with a more market and
investor-friendly approach.

Each Tier 2 issuer has substantial initial
disclosure and ongoing reporting requirements which should
work to relieve concerns of inefficient -- insufficient
information available in the market for these issuers, which
is vital to the success of a robust secondary market.

I also have a proposal that I'd like to share with
the committee for facilitating secondary market trading by nonreporting, nonlisted publicly trading companies. For these issuers, available information may not be as fulsome as the type of ongoing reporting required under Title IV and certainly under the Exchange Act. State concerns over the type and quality of information for these companies argues for an increase in the reporting that should be required of these non-Reg A, Tier 2 nonreporting issuers.

The possible solution, in my mind, lies ironically in the very regulatory structure that impedes the formation and maintenance of liquid secondary markets for these types of issuers. A standard disclosure system comprised of a national standard securities manual modeled after the disclosures currently required to included in the manuals that are accepted under state manual exemptions as the basis for supporting preemption of state law requirements over secondary market trading of securities of nonreporting, nonlisted, non-Reg A Plus, Tier 2 issuers. By requiring these issuers to include information that is consistent with what existing manuals currently require, state concerns about a lack of current available information should be addressed, particularly if the states are partners in the development of such a national standard manual.

An example of a model that may be useful here, which I had mentioned earlier, is the recent success enjoyed by the OTC Best Markets manual. Though I'm not endorsing this particular vendor, my intention is to mention it as an example of a disclosure delivery system that offers a way for nonreporting companies to deliver the breadth and depth of information that will help investors while also demonstrating to the states that their concerns about disclosure as a basis for assuring that investors can make fully informed decision about companies they seek to invest in are being met.

Rulemaking that requires nonreporting public companies to publish information as required under current standards and including securities of issuers that meet these heightened disclosure and reporting requirements could be added as a category of covered security in connection solely with secondary market trading of those securities.

I certainly recognize that this proposal would increase the cost to small issuers. Of course, they would have to pay fees in order to have their information included in this new standard manual. However, on balance, the cost would be significantly less than would be incurred if such an issuer were to become a reporting issuer. Moreover, the preemption problem for the states is, in my view, addressed by having the states participate in setting the standards for disclosure. Since a majority of states already offer a manual exemption, assuming the new national manual provides the same or greater information, the regulatory concerns of most states should be satisfied.

In closing, I would urge the advisory committee to recommend to the Commission that each of these proposals be seriously considered as a means of starting or restarting the conversation around market liquidity for Tier 2 and nonreporting company issuers.

MS. HANKS: Thank you.

MR. HEWITT: First of all, I would like to thank Acting Chair Piwowar and Commissioner Stein and all of you for having us here today.

I want to take a different view of this and step back from the P word, preemption, for just a moment.

The question that I think is really important is what are the concerns of regulators generally, and specifically the states? And what I believe the problem is at this point is -- is a concern by the states and others that there is not sufficient information available to the small investor on the buy side. The sell side, obviously, they hopefully know, although that's questionable, too, and I'll bring that up in a moment. That there isn't sufficient information for somebody to make an educating investment decision.

And I believe, as someone pointed out -- I've been here at just about all the meetings -- a while back, I believe that Acting Chair Piwowar made an interesting observation. I hope I have this right. And you were talking about the fact that in some ways, we are no longer looking at capital formation and investor protection, but protection from fraud and prohibition of investing. And that is something that sort of got me thinking back then and I've been thinking of since. And to me, the question could be further refined of not investor protection, because investors I don't believe have to be protected, per se. What they need is to be empowered. And by that, I mean have sufficient information to make intelligent investment decisions.

I think that there are concerns from the states that when you do not have sufficient information, there are certain various things that can take place. And although not necessarily in the Reg A Plus market, although I think to a certain extent it could be, in publicly traded, nonlisted REITs and BDCs, what often happens -- and again, it's a similar sort of lack of liquidity situation, you end up with what's called a mini tender, where vultures of some sort or other -- I'm probably not picking the best word -- would make an offer to unsuspecting investors to sell their securities way below the value of whatever it is at that time, even if it's depressed from the actual purchase price.

That is troubling on many levels. Because, yes, there are disclosure requirements under Reg A Plus. But are they as robust as they would be for a listed company? That
is a question that I think has to be considered.

Also, to the extent that when you have a private offering, if somebody is interested in buying, to get information on a company, what you end up having is the bigger players have access to information that the small investor doesn't have. So in fact if what we're concerned about is a level playing field and investor empowerment, I think before we get to a discussion of preemption, we have to first think about what it is that is needed as a minimum for investors to be able to, in fact, make that intelligent decision.

And I think to a certain extension -- to a certain extent, 4(a)(7) was a good indicator of that, which Sara knows that better than anyone. That had had the backing of NASAA because it had certain informational requirements, including knowledge of the, you know, who's running the company, is it a going concern, you know, up-to-date financials.

So my concern is more a shift away from how we normally look at the situation and trying to look at this in a slightly different way which is, instead of concentrating on preemption, we should all be discussing, together, not separately as in leave the states out of it with preemption, what is it that we can all agree on as information required at a minimum, as I said, to make a cogent investor decision?

At this point, there are plenty of times where in fact you have situations in which the investor has very little information. Reports to be filed are one thing, but if they just have the most basic of information, is that really what they need to make the decision? And I suspect it is not, at least not in all cases.

So one thing that we would have to consider, and I know I'm saying it a few times, but when -- when -- another way of looking at it is this way. What is it that all of us would like to see before making an investment decision? And doesn't every investor have a right to have that which we all think we need to see personally, sitting around this table? And to the extent that we do, the question isn't necessarily preemption. And I'm not sure the states would even have a problem with preemption to the extent that their concerns about the information required is actually addressed.

Now, as Richard said, if you want to -- you know, whether you have a more far-reaching manual exemption, that is -- that is acceptable to all parties, I don't think that's a bad place to -- to start. I think that in many ways, it has worked, except for there are a few holdout states. And for whatever reason. But to the extent that there has to be preemption, I think it has to be more not as in removing people from the table, but making sure that everyone is able to see -- to say what it is that their concerns are.

I know that one of the states has one time said to me that we want to facilitate investment, not speculation. With that information, it can only be called speculation. And I think that really drives home the point.

So I think that if there's any recommendation I have, it isn't so much to worry about preemption, per se. It's to worry about addressing the concerns of the states as to information that, at a bare minimum, we should have in some sort of manual, et cetera. But how we get there is a matter of discussion.

I just think everyone rushes too quickly to preemption, to go to preemption, without considering several things, including what is it that the states are concerned about. So I won't take up too much time, because I know we've both plowed through a lot of it already.

MS. HANKS: Thank you both.

If I could just sort of kick off the questions here, since we're focusing on the information that's available before we get to the P word, does anyone here have any experience in how different disclosure under Reg A ongoing reporting is to what's in a manual? And I've got to confess, it's been a long time since I looked in manuals.

May be I was a junior associate sometime back in the '80s when I last looked at these things.

Seems to me, and I'm hoping someone can challenge this, that when you look at the disclosure that's made under Regulation A, and we've had now several companies go through a year's worth of disclosure, you've got ongoing reporting, you've got annual reporting with audited financials, you've got semi-annual with unaudited financials, you've got 1Us.

You've got a lot of companies filing 253G2s, supplement information to keep the information rolling.

How do those compare? Is there anything in -- is there any way in which Reg A is not what you would want to see in a manual? Because I remember those manuals, you just go through and it was kind of unreadable. Can we compare and contrast those two sources of information?

MR. HEWITT: I'm actually glad you brought up the fact that they're unreadable. That's the other problem, is that whatever information is available has to be in plain language, which I know is always a goal. But it seems the more that we try to make plain language the goal, the document becomes thicker and thicker, which is great for killing trees but that's about it.

The comparison between the two, I couldn't tell you to the nth degree. But I think what you also have to look at is obviously Reg A Plus, these offerings are of companies with little or no history. And of course, if you're just -- if somebody is flipping out of that in six months to a year, where is that investor during the interim report supposed to
get the information to the purchaser? And I think that's the concern that, although there may be information out there, is it of sufficient detail and also of sufficient comprehensibility to be of any use to the investor?

MS. HANKS: But would that be any different under the manual requirements? I am totally not up to date with manual requirements.

MR. ALVAREZ: Sara, I think that it's fair to say that the reporting requirements that Tier 2 issuers are subject to, while something less than '34 Act reporting, is something more than what is included in a manual. The manual includes things like balance sheets, officers and directors, description of business, things that you would normally see that is a synopsis of a company. And I think part of the thinking on the manual exemption is that that is certainly a starting point for an investor. It is a collection of information that, if an investor wants more information, then they can -- they can go and find it either on EDGAR or wherever else.

But I think it's fair to say that Reg A Plus, Tier 2 issuers fall somewhere greater in their -- in their reporting responsibilities, and of the information that they -- that they are required to report under Reg A Plus than they would need to under -- in a manual. I would perhaps defer to Michael who may have more intimate experience with what his manual requires.

MS. HANKS: Well, we'll go to Michael and --

MS. TIERNEY: I'm potentially in a unique situation, which is I actually got a security qualified under the manual exemption three years ago. I think that I'm not mistaken but they no longer publish the information in a book. What they do is they will only allow you to qualify for the manual exemption, at least S&P, while they were still doing the business, if the information was being disseminated by a regulator. So the only entities who could qualify for the manual exemption at all were banks, thrifts, entities that were required to publicly provide information through a regulator, or companies that were qualified to trade on OTC Markets under the alternative reporting standards.

So you can't just qualify for the manual exemption; you actually have to be regulated in order to qualify for the manual exemption. So I think that's a really important point to understand. You can't just put out Reg A Plus, Tier 2 materials to the SEC and qualify for the manual exemption, unless the manual exemption has been amended to make that clear.

So secondly, I think that, at least the alternative reporting standards under OTC required more information than Reg A Plus, Tier 2. But that was to provide, you know, a trading market. It also has a $20,000 a year cost that some companies might not be able to bear. Where the manual exemption under S&P, I think, the initial fee was maybe like 5,000, so it was much less expensive to be qualified under Standard and Poor's than it is to do qualification under the alternate reporting standards, but you do get a trading market.

So I think it's really important to understand it's not just that you put information out and it's in a book someplace. That's no longer the case. It is literally it has to go out through a regulator and that is how they track that information has been updated. And there is a cost associated with that.

MS. HANKS: Michael?

MR. PIECIAK: Thank you, Sara. And good morning, everybody.

So I think to that question, specifically about what the differences are, when you're talking about the reporting requirements in the manual, I think, probably the Reg A, Tier 2 reporting, the things that are reported are pretty equal if not greater, as Richard had said. You know, I think some of the other requirements, getting beyond what's in the manual as components of the manual exemption, like the fact it goes through a broker-dealer, that would be a distinction and difference.

To Annemarie's point, I mean, there is -- you know, there is sort of a baseline in terms of what type of company can qualify for the manual exemption. And I believe, I had to -- you know, I had to look back at our statute but, you know, there's a period of time in which it has to be operating and there's a period of -- there's an asset value which has to be on its balance sheet. So there is sort of a minimum standard. But I'm not familiar with the requirement that has to be either bank holding company or an insurance company, but --

MS. TIERNEY: It wasn't that. It was that the information had to be disseminated by a regulator. It couldn't just be on the company's website. That was very clear to us from S&P. We had a public website, we said can we put the information on the website to qualify? And they said, no, you have to be -- that information has to be disseminated through a regulated entity. So it was OTC, it was the banking regulators and it was OTC Markets were the only options that would satisfy that condition, according to S&P three years ago.

MR. ALVAREZ: But we're talking about the access to the information under the manual exemption?

MS. TIERNEY: So again, and this is three years ago, and S&P I don't believe is doing this anymore. What S&P said to us is, send us your offering document, we'll review that. But you have to have a system for disseminating
information on an ongoing basis, and it needs to be through a
regulator; it could not just be our website.

MR. ALVAREZ: But the -- but the exemption, the
manual exemption at the state level, is predicated on an
independent third party publication containing information
that is provided by the issuer, plain and simple. Right?
The problem, of course, in the context of the discussion on a
liquid trading market for these types of issuers is the fact
that not all states cover the -- recognize a manual
exemption. And even in those states that do recognize the
manual, we have a variety of different requirements, whether
it's a 90-day waiting period or restricting trading to
securities by nonaffiliates.

So having the manual, the existing state manual, be
the basis for creating a robust, secondary liquid market in
these kinds of securities, I don't -- I'm not confident is
achievable. Which is why I suggested that the P word or why
the P word has again raised its ugly head. Anyway --

MR. HEWITT: However, I think one of the things we
have to consider is we're talking about the manual exemption
right now, which is all well and good, and perhaps there is
one that can be the gold standard. But in the meantime part
of what happens, part of what I think the states are
concerned about, you know, obviously part of the thing about
being an empowered investor is also having the ability to get
guidance from an adviser of some sort.

But there is a push for preemption and removal of
the broker-dealer or adviser so that, at the end of the day,
it's a one-on-one transaction. And the question is, the
person who is selling, there's no oversight there whatsoever.
They are not -- they are not a representative of the company,
they are not part of the issuer. They are selling and there
is very little that, at this point, as far as I am concerned,
that an unsuspecting and uneducated investor can rely upon in
that situation. At least if there is a broker-dealer
involved, you would hope that there is a minimal amount of
guidance.

So I think that while we're talking about the
manual exemption, we have to also consider a slightly
different point which is, if it's on a one-to-one basis, how
is that investor being protected by the seller?

MR. ALVAREZ: Counterpoint?

MR. HEWITT: Go ahead.

This is Jane Curtin and Dan Aykroyd sort of stuff
going on here, but that's okay.

(Laughter.)

MR. ALVAREZ: The one-to-one transaction is already
covered under 4(a)(1), all right? And that -- and we have
federal preemption for those kinds of transactions. I mean,
you know, the one-to-one transaction doesn't concern me, and

I don't think is impacted by the problems that we've spoken
about relating to blue sky law. I think the challenge is
trying to figure out how to fit the current federal/state
regulatory scheme to facilitate a liquid secondary market
where, you know, people come and go into the market, whether
through market participants or otherwise, without any
significant impediment, which is what we see today.

We see smaller companies struggling to convince
their investors that they will have an exit strategy, because
there is no comprehensive, uniform way for a company to -- to
tell a broker or to tell investors that their securities can
be bought and sold in Iowa, as an example. And I don't mean
to pick on Iowa if Iowa is listening.

(Laughter.)

MR. HEWITT: Pick on Vermont instead.

MS. HANKS: Patrick.

MR. HEWITT: I can't remember. Tier 2 requires
you to have a transfer agent? Does it require the company to
have a transfer agent?

MR. HEWITT: Yes, I think so. Isn't that --

MS. HANKS: Only in certain circumstances. Let's
assume that --

MR. REARDON: If you had a transfer agent, I mean,
you could condition execution of the transfer that the
transfer agent gets some sort of proof or representation that
there was an exemption. So that is a thought that I've had,
and you see that under Rule 144, that the transfer agent
won't transfer the trade -- won't register the trade unless
there's an opinion or a form, or used to be. I'm not sure
what exactly they require now. But that seems to me to be
something you should think about.

But I want to add this general observation and then
make another observation. First of all, illiquidity creates
a discount. So if you can't go and sell, then the value of
your company is less. And so we all need to keep that in
mind.

And the second thing is that my observation has
been that when regulation steps up and says you cannot do
something, and it's something that business people want to
do, and you can't do it, or it's very difficult to do it,
that's when you get noncompliance. That's when people start
looking, sneaking off from their lawyers or whoever their
broker is, and they go and they go around the law and do the
deal.

And I've said this before. I think our policy,
state and federal, is that we facilitate compliance. I mean,
we shouldn't make compliance so hard that people opt to
violate the law just because it's difficult to do. Or
impossible to do. In some cases, you're just saying
impossible.
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<td>MR. HEWITT: Well, because you have conflict of laws between states or state and federal.</td>
<td>MS. HANKS: To reduce friction or to increase it?</td>
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<td>MR. REARDON: Yeah, I mean, it's just got -- you know, there needs to be -- there needs to be something there.</td>
<td>MR. ALVAREZ: No, I mean, to the point of asking for --</td>
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<td>And the other thing is that I think -- I don't mean to pick you on, but I think maybe the blue sky people are -- you know, we have two conflicting interests here. We have investor protection and we have capital formation. And I think when you go into any securities regulator, SEC, FINRA, state securities law, and you ask, okay, how many people here have ever signed the front of a business check, have you run a business, and you're going to get very few hands raised. So you need to educate the people in these regulatory agencies that capital formation is part of their goal. Just saying no and protecting the investor is not -- is not -- at the end of the day, if you do that, there's no business in all your trade or treasuries.</td>
<td>MS. HANKS: Yes, I think, you know, if you're looking at who in this transaction has a role in doing the -- is there information, it's got to be brokers as opposed to -- and they do have those requirements -- as opposed to imposing these new rules on transfer agents. We'll go to Jonathan.</td>
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<td>MR. HEWITT: But here's the thing to respond to that is first of all you said that they are conflicting. And I don't necessarily agree with that statement. Because if there's not sufficient -- not investor protection, because again I think it's investor empowerment. If there isn't sufficient empowerment if there's all just the emphasis on capital formation, then there would be some nefarious people out there, they are there. Then what happens is the integrity of the market fails and people won't invest and there goes your capital formation. The point being is it's a balancing act and it's a very delicate one at that. But I don't think anyone is saying that these people shouldn't be able to invest. I don't think the states are saying that. I think the issue is really one of information and education. How you get there is what the discussion has to be about with all the regulators -- all the regulators in the room. That's basically what I'm saying. But I don't think you can say that those are conflicting at all. Because without one, the other is going to fail either way.</td>
<td>MR. NELSON: Is -- one of my experiences in a heavily regulated industry when I was a nurse and I worked in five different states, and every state had a specific licensure that you had to maintain as a nurse. But a number of states had actually gotten together and they had said, you know what, we're going to give each other reciprocity. Where if you actually qualify in this state as a nurse, it's a relatively simple process to go through and get licensed in another state. There is also a series of states called compact states, I think there's about 23 states where they said, we will just honor everybody else's licenses. I think one of the interesting things about you know, the SEC and government is, you know, yes, we regulate. But I also think that we have the ability to ask for -- to convene. Do state securities regulators get together on a regular basis?</td>
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<td>MR. REARDON: Ultimately, you're right, yes.</td>
<td>MR. HEWITT: What there is, is a -- I'm going to botch the words because I just can't think of it at this point -- there's a uniform process, at least on the registration level, with the states now, when you go through a Reg A Plus, Tier 2. So it's not like -- Tier 1, excuse me. It's not like there's just a morass. I think that the states are certainly working towards the goal of more uniformity. And, of course, the punch line to the '56 Act and the 2002 Uniform Securities Act is nothing is uniform by the time the legislators get done with it. That's part of the problem. The one thing I just wanted to address very quickly though is, when it came to the one-to-one transaction, I still think that there is a potential there, preemption or not, for the small investor to be taken advantage of by somebody who just wants to dump their stock. And I think that's probably a concern of the states, although I can't speak for them.</td>
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<td>MR. REARDON: Yeah, I mean, it's just got -- you know, there needs to be -- there needs to be something there.</td>
<td>MR. ALVAREZ: No. Plain and simple. With all due respect to Mike and NASAA --</td>
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<td>MR. HEWITT: Thank you.</td>
<td>MR. HEWITT: What there is, is a -- I'm going to botch the words because I just can't think of it at this point -- there's a uniform process, at least on the registration level, with the states now, when you go through a Reg A Plus, Tier 2. So it's not like -- Tier 1, excuse me. It's not like there's just a morass. I think that the states are certainly working towards the goal of more uniformity. And, of course, the punch line to the '56 Act and the 2002 Uniform Securities Act is nothing is uniform by the time the legislators get done with it. That's part of the problem. The one thing I just wanted to address very quickly though is, when it came to the one-to-one transaction, I still think that there is a potential there, preemption or not, for the small investor to be taken advantage of by somebody who just wants to dump their stock. And I think that's probably a concern of the states, although I can't speak for them.</td>
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<td>MR. ALVAREZ: We'll get to Jonathan in a second.</td>
<td>MR. ALVAREZ: No. Plain and simple. With all due respect to Mike and NASAA --</td>
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<td>I just wanted to respond on behalf of transfer agents, who probably all turned white when you said -- (Laughter.)</td>
<td>MR. HEWITT: What there is, is a -- I'm going to botch the words because I just can't think of it at this point -- there's a uniform process, at least on the registration level, with the states now, when you go through a Reg A Plus, Tier 2. So it's not like -- Tier 1, excuse me. It's not like there's just a morass. I think that the states are certainly working towards the goal of more uniformity. And, of course, the punch line to the '56 Act and the 2002 Uniform Securities Act is nothing is uniform by the time the legislators get done with it. That's part of the problem. The one thing I just wanted to address very quickly though is, when it came to the one-to-one transaction, I still think that there is a potential there, preemption or not, for the small investor to be taken advantage of by somebody who just wants to dump their stock. And I think that's probably a concern of the states, although I can't speak for them.</td>
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<td>MS. HANKS: We're looking at trying to make something less friction -- we're trying to reduce friction. And I think taking free trading securities and requiring the transfer agent to do something, I think that's going to reintroduce friction. So I just wanted to make that point.</td>
<td>MR. ALVAREZ: Right, and isn't that a broker's job, too?</td>
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But in terms of what you're saying, especially with the nurses' licenses, in fact, now lawyers, there's a common bar exam, much to my chagrin, having studied for a couple of them. So there is more and more reciprocity in various areas within the states now. Has it gotten -- has it risen to the blue sky area yet? Not to that level. But that doesn't mean that they are not working or trying to get, you know, the states together to make it more uniform or more user friendly.

Because, again, I don't think the states are trying to prohibit capital formation. I think, as you said, sometimes -- or I think Patrick said, sometimes you can actually protect the investor ultimately by just not letting him invest, and therefore there will be no problem. But that doesn't really solve the issue. Which is why it's a true balancing act.

And again, although I keep on drumming this point, is that we have to make sure that those issues -- those scenarios that have resulted in investors being defrauded are addressed.

I mean, we can't do away with all fraud. The key is to minimize it as much as you can. It's like a perfectionist isn't perfect, they just try damned hard not to make as many mistakes as everyone else.

MR. ALVAREZ: But counterpoint, in answer to your question, I mean, as the discussion about the standard manual illustrates, that exemption has been around from the beginning of time. Okay? It's an accepted exemption. But there are 54 different jurisdictions. Each one of them has their own view about what that exemption means.

Yes, I get that investor protection is a significant interest that needs to be -- that needs to be recognized. But I question whether this lack of uniformity as a basis for regulation is protecting anyone.

I mean, certainly the states continue to retain their fraud authority. And if there is a bad actor and an investor is harmed, they will complain to their state regulator. And that regulator has the full -- the full breadth of its -- of its securities law arsenal to go after those fraudsters. But different to, you know, your experience with nursing licenses, the states jealously guard their own interests, particularly by insisting that they alone understand the specific needs of investors in their particular jurisdiction. Which I don't doubt. But -- and perhaps has validity in the context of primary offering review. I get that.

In the case of a secondary market transaction, particularly for companies where there will be information available, for example a Reg A Plus, Tier 2 issuer, which has fulsome disclosures under the new law, or nonreporting public companies that have information included in a national manual, okay, the needs, the particular needs of the state, I think, need to take a backseat is the wrong word, but a backseat to the interests of developing a market, a liquid market in securities that benefits everyone, not just the people in Iowa, not just the people in Vermont.

MR. NELSON: I just -- every single lawyer that I've ever talked to about if you're going to actually sell a security and go under the blue sky laws, they're just like, dude, don't. That's just the third rail.

MR. ALVAREZ: Give them my number.

MR. HEWITT: No, give them mine, actually. (Laughter.)

MR. NELSON: No, but it essentially -- I do not think that there is an efficient market at all, because you just can't create it. And I think ultimately that this ends up hurting the smaller, less wealthy states, and it essentially starts concentrating business in large, wealthy cities because it tends to become who you know and it tends to be who you went to school with and if you went to a school with a bunch of wealthy people, then you can essentially go and start a business and create a security and end up selling it. And if you're poor and you want to start a business, you really can't start a business unless you can completely bootstrap it without any capital.

I'm just saying it feels very, very, very broken to me. And can we convene these state regulators and just say, dudes, let's just sit in a room and let's just work it out?

MR. HEWITT: Well, you've got to understand, first of all NASAA has several meetings throughout the year of the states. But again, you put all of us in this room, we have different ideas slightly, or greatly. But I think one thing you have to understand, I've been in the securities industry now for 35 years, which frightens me on many levels. But, you know, there was a day when there was an us-versus-them mentality between the states and practitioners and issuers. But over time, I have seen that shift dramatically.

And, you know, one thing that NASAA is trying to do, and they do meet with several groups throughout the year and, you know, we're always trying to talk about, quote, low-hanging fruit, what can we accomplish. And this is one of those areas where I don't think anyone is saying that there shouldn't be more information or there shouldn't be more easily understood information. I think it's a matter of having that discussion. But not everyone in their own little corner but, you know, out in the open and having the robust discussion. But I don't think the states are all sitting there going, oh, wow, how can I make myself so different as to totally derail anyone trying to either sell a security or raise funds to build a business? I don't think that's the
MR. ALVAREZ: But wasn't that discussion had during the lead-up to the adoption of Title IV? And, you know, my recollection is that there was -- there was --

MS. HANKS: That's fine. I just want to get to Laura. She's been trying to get a word in. Between the who of you, sort out who goes first.

MS. TIERNEY: I just want to take this back to I think something the committee has talked about several times, which is what is the public policy benefit of requiring a Tier 2 reporting company to also qualify for a manual exemption or to list under the alternative reporting standards on OTC Markets? That prohibition means, as Jonathan is saying, there's no opportunity for another market to develop, there's not an opportunity for another broker-dealer or an ECN or any other party in the market to try to create an efficient trading system for what are generally publicly offered and should be publicly traded securities.

So I think we go back to the original conversation I think back around the JOBS Act, there was a real push to get preemption for Tier 2 securities where the information being made publicly available. That ended up coming off the table in the final vote. But we've had, you know, some time now to look at how the market is adjusting.

I've made the comments before at least one or two times that we did a real deep dive and look at Reg A Plus after it got enacted. And all of the banks that we spoke to for the most part said that they would not be touching Reg A Plus as an offering option for their client companies, because their investors cared about liquidity. Unless there was clear liquidity for those securities, people are not going to invest in the securities.

And idea that right now, if you're investing in one of the 103 companies that have been qualified to issue Reg A Plus securities, there is no trading market for those securities. How is that beneficial to the people who are investing in them? They're stuck in securities unless the company goes through a process. And I fully support and respect OTC Markets, they are providing a great option. But they are the only option for trading these securities. And you have to go through a process, you have to pay a, you know, not insubstantial annual fee, and you have to provide more disclosure than is actually required in an offering or in the ongoing voluntary reporting. It just doesn't seem like there's a public policy or an investor protection benefit that I see that's being provided by that kind of activity. And it's a detriment to Reg A Plus and to the market developing, and I don't see why that is beneficial to the market or to investors.

MS. YAMANAKA: So I actually really agree with you.

Annemarie, but I'm putting a little comment about the insurance and the state just to educate people. I did a stint in dealing with insurers, regulatory compliance for insurance companies in all 50 states. And just from a cost perspective, regulatory compliance -- because each of the states are different, very much like we're talking about here, only they're a little bit more advanced in their compliance. They've gone through all the thing, we're going to get together, we're going to, you know, work together, and they come up with this common thing and they put it together and they put it on top of all their existing requirements.

So it's fine. It created jobs. It's great. It's a cost that gets passed on to the consumer, a cost of operating for the company. So in the company that I worked at, I probably had about 15 percent dedicated only to state compliance reporting. So think about what that means. 15 percent of that body count that we had. And if we are actually only making a 6 percent bottom line in some bad years, because it's insurance, at best maybe 20, that compliance component, even though it's not for the whole company, was costing.

So therefore what happens? If you want a company to do business in all 50 states, you've got to be big. And I worked with a big company and they said, just wanted to be able to say that we were listed in all 50 states. It gave them additional market branding, etcetera. Or you had small companies, insurance companies, and they only specialized in one. Sounding familiar here? Right. And so therefore, anybody in the middle, it's economically unfeasible.

So we want to tilt at that windmill, I think it's great. But, you know, better people probably have tried before. So unfortunately, as much as it pains me to say this, federal is probably the only way to go with that point in time.

However, the second point that I want to get to is, we're talking about increasing the availability of -- just increasing the market, right? So we don't worry about the institutional investors out there, they can take care of themselves. We don't worry about the small people, you know, that are doing the one-offs who actually know the business they're investing in. And again, now we're talking about the mid. And the mid just disappears, right?

And so to Annemarie's point, I want to reiterate, before we get down into the details and whatever, if we have our goal to accelerate the investment at the mid level, which means they're theoretically much more knowledgeable than the individual investor but don't have the funds and scalability of the larger investor, there's probably something in between regarding a regulatory perspective that we could take, which
I totally understand about working within the context we have, because I don't think we're going to be able to change things wholesale.

So whatever we can do to increase the potential for market, because Patrick, I think, I agree with your point. If businesspeople feel that it's a viable investment alternative, they will figure out a way to create that market offline with its own inherent set of risks. Or -- which will probably -- it could be 90 percent of the time, it really works. The 10 percent that fail spectacularly will be enough to kill it eventually. And then as an economy, all we do is hurt. So that's my only comment.

MR. REARDON: If I could add to that, I think if you're looking for something to sell preemption on, I think increased role for the states in fraud, in chasing fraud, in coordination with the SEC and the Justice Department, I don't know how you would do that. But I think everybody agrees that there is plenty of fraud out there to go and chase those people.

Are the Russians doing this?

(Laughter.)

MR. REARDON: Anyway, I think -- that's my only comment. I don't have anything really to add. But I mean, that does seem to me we're belly button gazing and thinking deep thoughts, that is one I've thought. Put the states in fraud and get them out of regulating transactions.

MS. HANKS: Thanks, Patrick.

We'll go to Michael and then Jenny.

MR. PIECIAK: Thank you, Sara. I just wanted to address quickly a point that was made by Patrick and Jonathan, just to give some information about what the states do and whatnot. And in the insurance regulator context, you know, I mean, the state regulators are the only regulator of the insurance market and the states do coordinate quite efficiently on the insurance side, in my opinion. There's accreditation for states. They have to have certain requirements or they're not part of the NIAC.

And similarly on the NASAA side, you know, we have two annual meetings a year, we have a board of directors, we have a whole structure that works up issues through committees up to the board, you know, disseminated out to the membership. And I encourage you to come to a NASAA meeting, you know, when you have an opportunity to. And I'm sure we'd appreciate inviting you.

But you know, again, sort of on the same vein and to Patrick's point, I mean, you know, the states have been, in my opinion, have been very responsive in this capital formation arena in the last few years and we take to heart this issue of the balance, you know, the balance between investor protection and capital formation. Because, you know, on the one hand, as you mentioned, you know, what happens if you focus too much on capital formation. But if you focus too much on investor protection, you know, the opportunities to invest, the opportunities to grow your retirement, to create jobs, that goes away too, which is not good for the investor. So that balance is very important.

Martin alluded to the coordinated review that the states implemented in Tier 1 Reg A. This, in our opinion, takes the burden off the individual issuer, puts it on the states to coordinate and get specific comments out to issuers. We've created a capital formation roundtable that meets once a year. We bring in industry, listen to ideas, listen to what, you know, is achievable and what we can push forward. And there's a number of initiatives just in the last couple years that have come out of those discussions.

We've worked more collaboratively with the SEC in recent years, Rule 147A and other initiatives, and I hope we can continue to do that. So the states have been very proactive in this area.

And we have been, you know, very engaged. I mean, the OTC Markets, just to comment, you know, OTC Markets came to us in March or April last year to Vermont and said, you know, the S&P manual is going away, there's only Emergence now. We looked at that as state regulators and said, there should be more options. We were concerned about that. We were the first movers. They came to us in March, we had a rule implemented in July of that same year. Nineteen states, as Richard has said, have followed suit. Three others have announced they're going to. So the states do act and we do communicate regularly and, you know, try to lead these initiatives in a quite ongoing basis.

MS. KASSAN: I have a question about state and regional secondary markets. I know in the past, we had a lot of more local exchanges, state level exchanges. Gone. They're gone, right.

But I'm just curious, yes it's a wonderful thing to have a national trading market. But, you know, there is some benefit to being able to buy and sell securities in your own state. So I'm just curious if that has been tried at all.

You know, what was the success of that? Is that something we could consider reviving?

MR. ALVAREZ: I think the demise of the regional exchanges was clearly an economic issue. I mean, you know, it costs a lot of money to do that stuff. And while there may be some theoretical benefit to reviving a concept of a regional exchange, I mean, Reg A Plus, Tier 2 is billed as a platform for national securities offerings. Right? So at least in the context -- and correct me if I'm wrong. But at least in the context of Reg A Plus, Tier 2 offerings, regional exchanges I don't think would necessarily solve the...
You know, and then I suppose the one way that you
could implement that is to designate whatever regional
exchanges are formed as national securities exchanges under
Section 18. But if I remember my Section 18 provisions
correctly, any national exchange has to meet the same
standards or similar standards to the NYSE and NASDAQ. So,
you know, I wonder whether we could ever get back to what
used to be the Midwest Exchange, the Pacific Exchange, the
Cincinnati and the like.

MS. KASSAN: I'd love to hear Michael's comments on
that, too. And also whether this has been discussed at
NASDAQ. And maybe it doesn't have to be an exchange. Maybe
it could be some kind of, you know, bulletin board or
something like that.

MR. PIECIAK: Yeah, I mean, I guess my initial
reaction is to sort of piggyback on Richard's is to say the
economic component, not just of running the exchange but, on
the other side, I mean, the supply, the demand, I mean, the
business element, I mean, the illiquidity, the lack of people
wanting to buy these securities. And I don't think -- I
think that's probably a discussion that we should have in
terms of secondary trading now in this larger discussion as
well.

Because regardless of, you know, the regulations or
whatever in place, I mean, is there actually a demand? You
know, people want to achieve liquidity and sell their
investment. But is somebody willing to buy it? And when
we're talking about, you know, what we're talking about
today, we're talking about smaller companies, small
investors, mom and pop investors that are doing the initial
buying and doing the subsequent buying and selling, so these
are not institutional investors, they're not largely
sophisticated investors. And I think that's why the investor
protection elements, you know, are important to
consideration. So, you know, I think it's economic. And,
you know, and business, in terms of the supply and the demand
of those securities.

MS. TIERNEY: Just a couple points. One is, and I
think that Richard mentioned this in passing when he was
talking about the different exemptions for secondary trading
at the state level. There is a complete disconnect between
the secondary trading exemption at the state level for
broker-dealers and at the federal level. So the context of
IPOs, for example, and I think Reg A Plus original offerings,
a broker-dealer who has a preexisting relationship, and I
think I've said this to the committee before, a broker-dealer
that has a preexisting relationship with a client, has done
suitability, understands their investment criteria, has
confirmed the status of the investor, can market any
opportunity in the primary context to their clients as long
as they believe that they're suitable for them.

It is the exact opposite in the secondary context,
because of the state law blue sky requirements, which are
that a transaction through a broker-dealer must be
unsolicited. That means that if I am a broker-dealer, I can
go out to every one of you if we have a relationship, say
would you like to buy Reg A Plus primary offering? But I
can't touch any of you to ask you if you want to buy those
securities in secondary market. That doesn't make any sense.
It has never made sense to me. These are clients of broker-
dealers.

And again, preemption solves that problem.

Preemption allows a broker-dealer to go out and touch their
existing clients -- not in a personal way, but in a
figurative way --

(Laughter.)

MS. TIERNEY: -- and ask them, are you interested
in investing in these securities? That is the only way we're
going to develop a robust secondary market around these types
of securities. Brokers have to be able to do their job, they
have to be able to locate buy side interest, they have to
make sure that the investment is suitable for their
investors. That's how you get the investor protection. You
have the disclosure point already out there, then you have
the broker-dealer protection.

And to Jenny's point, I don't think you're going to
see national exchanges come back into the fray. As a result
of electronic trading -- sorry, regional exchanges. Because
of electronic trading, the cost structure is just not there,
I think, to support regional exchanges, which is why most of
them were acquired, you know, as a matter of financial
interest.

Yeah, but I think what you are seeing is maybe an
increased proliferation of platforms, web-based platforms
that are in the primary space that could be in the secondary
space for Reg A Plus securities, crowd funding portals.
There are a multitude of players who are out there who would
be able to create a business model around this if it made
economic sense, if they had the preemption for the secondary
trading.

MS. HANKS: I think we're saying on that point, if
you look at how many ATSs there are at the moment, I was just
counting them the other day from the most recent update, I
think there's like 41. And some of those -- and some of
those are out clients -- are looking to be secondary markets
for Reg A securities as well.

MS. TIERNEY: And they can't, because of the blue
sky preemption on --

MS. HANKS: It is more difficult for them because
of that. Yeah.

MS. TIERNEY: And to the extent that like when we -- when I worked on getting the security approved for, you know, for blue sky manual purposes, it's a big deal that you can't do it in all 50 states. We should not underplay that. That's a big deal. What if you're an issuer in a state that doesn't have a manual exemption? You can't actually -- why would anybody buy your securities if they know for sure you can't ever get secondary liquidity? It is a big deal that it is not in every state. It is a big deal that it's a patchwork of requirements that it takes significant expertise, such as these gentlemen, to hire a lawyer to walk you through the requirements in every single state.

We did that when I was at Second Market. We did a big deep dive into the secondary markets. You guys have seen me. I presented to NASAA. It is a patchwork of unintelligible requirements that are driven by legislation, securities commissioner interpretations, that sort of thing. It is not consistent across all 50 states.

So again, don't underplay the fact that OTC is only approved in potentially 19, you know, states. That's a big deal and that is a real friction impediment to a market being created around Reg A Plus securities.

MS. HANKS: Michael?

MR. PIECIAK: So I think, I mean, I just wanted to address the one point on the unsolicited broker. And I'm not an expert in this arena. But there's certainly securities, as you've probably heard the phrase, that are not bought but are sold, you know? And I think that's sort of the driving impetus behind the unsolicited portion of the broker-dealer unsolicited exemption.

I mean, on the OTC piece, I'll just mention, you know, those 19 states -- three more are within the last seven or eight months --

MS. TIERNEY: Fifty percent --

MR. PIECIAK: Yeah, but I mean, you know, the speed in which we've done it, I think, is pretty rapid. And particularly when you look at some other historical context.

So, you know, I think that's an element to take into place. And then I think the other point, I just don't want us to lose -- I made this point already, but I don't want us to lose this idea about the information requirements that these investors need to make an intelligible investment decision. You look at the SEC. Joshua White, I think it was, had an interesting report recently, study, that looked at the OTC, and I would encourage everybody to read it. But essentially he looked at the three tiers. And as you move down in the tiers, the outcome for the investor and also the liquidity, you know, decreases. And I won't put an adjective there. I won't say if it's rapidly decreasing.

But there's a -- there's a corresponding decrease in investor outcome when there's less information. There's a corresponding decrease in liquidity when there's information. So I think, you know, the requirements and the framework that we're talking about are not all just for investor protection. I mean, they're investor protection. But, you know, they're also for the efficiency of the capital markets and ensuring there's sufficient information there for the flow of funds, flow of information, flow of securities.

MR. HEWITT: So what you're saying is information drives the markets?

MR. PIECIAK: That's what this report would suggest.

MR. HEWITT: Yes, exactly. And that's why, as I was saying earlier, it has to do with making sure that the investor is empowered to be able to make those decisions. Without that information, they're not going to buy anything.

MR. ALVAREZ: And doesn't that argue for preempting the nonuniform current state regulatory scheme with a -- with a category of covered securities specific to Reg A Plus, Tier 2 issuers who are subject to fulsome information requirements? I mean, would you be satisfied as a regulator that the information that Reg A Plus, Tier 2 issuers are required to provide under statute sufficient for purposes of allowing a secondary market transaction in your state, if they were -- let's assume that they were included in your manual. They would -- they would meet that requirement and it would be fine?

MR. PIECIAK: Yeah, I mean, speaking as a solely Vermont regulator, you know, our manual exemption, you know, requirements are self-executing, as I think they are everywhere. So, you know, what that means for those on the committee is that they don't file a notice filing with us, they don't get a prior approval, they don't -- you know, they don't contact us. They look at the requirements, they meet them, they execute the transaction. Which, you know, provides efficiency on the transaction side.

So, you know, for Vermont, if those guard rails stayed in place, you know, whether it's in our statute or federal statute, you know, the guard rails are in place and the investors are protected, the information is out there. But, you know, there are certain -- you know, that's the Vermont standard. And I can't say the same for even those in New England or those in another part of the country.

MR. HEWITT: But that's all the more important fact that that -- in coming up with whatever that federal fix might be, it has to be in consultation with the states that there is a standard upon which the states can agree. And then there's really no need at that point; you're satisfied with the information being provided and you take it from
there.

But I don't -- as you said, these are self-
executing, point one. But point two is, the -- the -- I
don't think the issue is preemption or not, as I said
earlier. I think it's making sure that there is consistent
information. If that takes the form of preemption, I would
think as long as it's in consultation with NASAA and the
states and something they could get behind, well, at least
that's an easier road to take, I think.

MR. ALVAREZ: But the framework already exists.
The informational framework already exists at the state level
in a majority of states. And the effort here would be to --
to unify what is a fragmented regulatory scheme. Right? And
if the only way to achieve that is through preemption, well,
you know, it's an unfortunate situation, I suppose, if you're
a state regulator. But the majority of state regulators
currently offer exemptions for secondary market trades,
provided there is information available, 39, 44, whatever the
number is.

So in order -- in order to get to that goal line of
full compliance, 54 jurisdictions, so that you can then give
the secondary markets for these kinds of issuers a fighting
chance to survive, well then perhaps preemption is the fix.

MS. HANKS: Can we stay on the point of preemption
and the secondary markets here? Because a point you made
earlier, Richard, was if we do preemption, we should do
preemption on the basis of qualified purchasers being just
someone who buys a Reg A, period, no restrictions on the
investment levels as there are on primary markets.

And this is a question for both of you. Is this
secondary market -- why would you make that distinction? Is
there less pressure in a secondary trade? And I don't think
I'm hearing that from Martin. Or is the information somehow
more sufficient in a secondary trade than it is in a primary
trade? Why make that distinction and how is the secondary
trade different than the primary?

MR. HEWITT: Well, I think with the secondary
trade, at that point, you know, you're one generation, so to
speak, removed from the issuer and from the IPO. And the
need for -- for more robust disclosure I think is probably
more critical on the secondary trade, if I understand your
question correctly.

MS. HANKS: So you would need more information --
MR. HEWITT: Not necessarily more, but equal to.
Because what happens is, you know, as -- once you're done
with the IPO, the company, the issuer, has their money. Now
we're just talking about moving money and securities between
investors. And the question is, since you can't go -- the
investor cannot go and call up the chief financial officer of
the issuer, you know, and kick the tires, so to speak, in the

same way, for instance, an institutional investor might. I
think what you're saying is you need sufficient information.

What that is, again, is obviously up to discussion and
disagreement.

But I think that's why it's important at the
primary level to make sure that while you may not have
disclosure equal to that which is on a national exchange,
although to me that's the gold standard. I understand
there's a lot of expense involved with that and it could be
prohibitive to produce that information. There still has to
be sufficient information such that the investor is going in
with his or her eyes wide open as to the risks and the
rewards.

MS. HANKS: And that's different than in the
primary situation? I'm trying to sort of drill down on the
one on one thing here.

You've got a buyer who has just gone out there and
posted some securities and said -- I'm sorry, a seller, who
has posted securities. I'm selling securities. And then
there's a seller who comes along -- and there's no broker
involved, so they're searching. They're going, oh, this is
an interesting company. Is there a different dynamic there
in the secondary market than there would have been in the
primary?

MR. HEWITT: Go ahead.
there has to be some watchdog, some minimal amount of -- and I hate to use the word protection -- of empowerment of the investor, so that they -- at that point, they're really just left to their own resources. If they can find the information, great. If they can't, that's too bad.

    And to the extent that they decide to buy from this person, well, why are they buying? Is it because they've done thorough research or is it just because they're -- you know, it's a dartboard investment? And for the small investor, a dartboard investment can be devastating to their retirement. So my concern is that, as you move further away from the issuer, the investor really is going at it haphazardly and not necessarily getting all the information that could be out there, whether it's accurate or not. I mean, they're getting this from the seller at that point.

    So there is only so much due diligence the small investor can do for his or herself. And I think that's the concern to me, which is why a universal manual exemption, which I don't think we disagree on necessarily, is certainly a step in the right direction. Now, whether or not that takes the form of preemption, you know, that depends. Again, as long as you can get the states on board --

    There are some areas in which, look, even Bill Beatty in his testimony before Congress on May 1, 2014, clearly stated there are some times, there are some instances in which it is not a priori wrong that there is preemption.

    It's not that it should never occur. The thing is to make sure that what you are doing is well thought out and addresses the issues that the states, if they were not preempted, would address.

    And I think that's one of the key considerations here, is to figure out exactly how much information, what sort of information, how it's verified for the small investor. The larger investor can get all the information he or she wants. That's not an issue. The question is, what is the smaller investor getting, from whom and how can they rely on it. That's my concern. And I suspect that might be the concern of the states. But I'm not speaking on their behalf.

    MS. HANKS: Is it Annemarie or Laura who is --

    MS. YAMANAKA: Actually, I just wanted to just bring in a comment. No matter what we do or we choose not to do, I think we really need to understand what the implication is to the general economy and all the states. So right now, as how it's -- in my opinion, how it's laid out, it favors certain economic areas. So even if we stay status quo, we don't do anything else, to Jonathan's point and, frankly, everybody here, the money is going to stay where the money knows, has the relationship, in certain economic centers. And what we will do is continue that process as we go along.

    And then actually to the point, Martin, you know, when you were asking Sara about that secondary -- you know, what's the difference between the first and secondary, Annemarie and I were talking. We're going, well, statistically, the longer a company has been in business, isn't that a sign in and of itself that it has a higher --

    MR. HEWITT: But the question is, how long are these companies necessarily in business before somebody flips out of the stock? That's what I'm talking about.

    MR. ALVAREZ: We don't ask those questions about listed company securities.

    MS. YAMANAKA: Exactly.

    MR. HEWITT: And it should be noted that during 2008, during the crash, almost a third of the stocks on the New York Stock Exchange went away. So it's not that there's any guarantee there either. And that's something that's important for people to understand. The small investor, I mean, not all of us; we get this. Is that an investment is not a guaranteed rate of return. And the problem is a lot of investors think that they invest, they sit there and the money rolls in. So that is another educational standpoint.

    MS. YAMANAKA: So the question to me occurs, are we here -- and are we really just trying to protect a certain layer of investor? Or what about the balance on the other side, too, to encourage business? I really --

    MR. HEWITT: I think it's a balancing act.

    MS. HANKS: Is it Annemarie or Laura who is --

    MS. YAMANAKA: It is both. That's what I'm saying.

    MR. HEWITT: Right, right.

    MS. YAMANAKA: So I think that when we're talking about -- and I could be wrong, Martin, totally wrong. I want to protect the investor to the extent that the investor should be protected.

    MR. HEWITT: I don't disagree with that.

    MS. YAMANAKA: A part of me says that -- you made the comment -- and I really don't mean to sound adversarial about this. But, hey, if someone is taking their whole investment portfolio --

    MR. HEWITT: Shame on them.

    MS. YAMANAKA: -- and they're buying stock in the secondary market, we've got a bigger issue. Right?

    So really, the realistic, where we're trying to target our efforts here is to that middle layer of investor that has funds, okay, that is knowledgeable and can actually flow a lot of capital into that to grow companies.

    MR. HEWITT: Well, that's not growing the company on the secondary market.

    MS. HANKS: I'll let Jenny get a word here.

    MS. KASSAN: I just thought of an idea. So I just thought, you know, we've created a regime where there's this new type of platform, under Title III of the JOBS Act. What if there was a platform for secondary trading of Reg A
securities that, if things were traded, you know, in the same way with the, you know, the platform for Title III, there is preemption. But the platforms have to meet certain requirements, they have to do certain kinds of investor education. Could that be a potential solution?

MR. ALVAREZ: Yeah. But on the crowd funding side, there are very, very discrete and particular requirements on who can operate a portal. You know, that's -- and I think that that --

MS. KASSAN: It's not that hard to become a portal, believe me.

MR. ALVAREZ: Okay.

MS. KASSAN: You should see some of the portals out there. Sorry, no offense.

MR. ALVAREZ: I don't know. I -- I guess I'm biased. I view crowd funding a little differently than I view standard securities offerings. And in the context of Reg A Plus and Reg A Plus, Tier 2 specifically, as I -- as I commented earlier, I think the expectation is that this new regulatory scheme will promote a national type of a securities market. And it should look more like what we are accustomed to seeing, exchange listed, reporting company securities, rather than what is currently in place for crowd funding which is, in -- at least for me, a blue sky lawyer, a

totally different animal.

MR. HEWITT: And I think crowd funding for a lot of blue sky attorneys is -- yes, thank you -- it's a scary area because there's so much potential for chicanery there, as opposed to Reg A Plus. But that doesn't mean that there are not issues to address there as well. But I think the crowd funding platform is not necessarily -- although it's a good idea, I don't know how it would actually work because, again, it's apples and oranges in terms of the caliber of what is being offered.

MS. KASSAN: Right, I'm making the analogy of a platform that has to be qualified by the SEC and, in exchange for meeting a bunch of requirements, there's preemption of state level filings.

MR. ALVAREZ: Right. But Sara mentioned, there are a boatload as ATSSs out there that could serve as that platform.

MS. TIERNEY: They're already registered broker-dealers.

MR. ALVAREZ: They're registered broker-dealers, right. And then the question becomes, if you're looking to use that as a vehicle to preempt state law, under Section 18, there are particular criteria that have to be met for these ATSSs and these exchanges to be able to have securities listed on them be deemed covered securities.

MS. HANKS: Jonathan, you had a question?

MR. NELSON: I also think a great way to lose a lot of money in a private market investment is to make like two investments or one. And the proper way to do it is to actually build a portfolio of 20 to 25 companies, so you have things like angel groups and that sort of stuff that actively encourage a lot more of this type of investment.

And so I think that the current regulatory scheme, not only does it not foment capital formation, but with the very, very, very low, almost nonexistent volume of secondary transactions, investors are actually really hurt because they can't build portfolios. And one of the frequent comments that I hear from angel investors who are actively building these portfolios is liquidity.

And so we're essentially dependent on a very active merger and acquisition market, which ends up consolidating companies, which ends up decreasing the number of jobs, because the merger and acquisition process is about consolidation, making large companies much more profitable.

And so the current way that we have is investors aren't making money. When they can make these sorts of investments, they're at very high risk to actually lose the money. We're not having capital be formed for small businesses. And we're having a lot of these really large, massive corporations be formed and we're having less and less
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<td>MR. ALVAREZ: Sara --</td>
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<td>MR. PIECIAK: Before the recommendation, could I just make one statement? Which is that, you know, I mentioned this in my earlier statements. But the SEC and the states have had a really collaborative, productive relationship, I think for a long time. Go ahead, Sebastian.</td>
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<td>MR. GOMEZ: I second all that. (Laughter.)</td>
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<td>MR. PIECIAK: And particularly as of late. And we very much enjoy working with Betsy and Sebastian and when Keith was here. And, you know, so when you are considering the recommendation, you know, looking for ways for the states and the SEC to collaborate on this issue together I hope will be part of the consideration? MR. ALVAREZ: Sara, if I could just make one other editorial comment? Recall that the original Regulation A died on the vine principally because of concerns relating to burdensome state requirements. Okay? No one used that form and it went away. So this latest iteration should be given a chance to grow. And to Mike's point, I mean, as I suggested in my comment about perhaps a solution being the establishment of a national manual, the states certainly have a role to play in that. They need to have a seat at the table, because they</td>
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<td>are the policemen. Those are the folks who are going to be enforcing the fraud actions when these investors lose their money. And, you know, if it involves a recommendation to preempt Tier 2 securities in secondary market transactions, well the states should be involved in that discussion as well. MR. HEWITT: So we are in complete agreement now. MS. HANKS: Duly noted, regarding the state/SEC dynamic we want to encourage. But can we just go around the table and hear what people have to say, especially the people we haven't heard much from this morning? MR. AGUILAR: Sure, I'm all for having a centralized information portal, I guess, for lack of a better word, that would allow these secondary transactions to happen. I think definitely the states should be involved in that, in what the standard is. But there needs to be some sort of regulation on it. And if we're -- if we're taking the states out of that decision and then having them regulate it, that's not a very good solution. So I guess my answer is, yes, I'm all for having a central information repository. MR. HAHN: I don't think we're going to get anywhere without state involvement. I do like the preemption for the Reg A Plus, Tier 2. But I do think, you know, anything is going to have to have state involvement with that. You know, coming from a small company like that, worrying about trying to -- trying to raise money in different states, it is a big concern from our standpoint. And it would be very, very difficult to have to go state to state to go through this. But again, it's going to have to be a joint effort here.</td>
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<td>MS. HANKS: Jenny, preemption, not preemption? MS. KASSAN: I don't know, I think -- I think there is room for a lot of creativity here. I like the idea of some kind of a pilot program, maybe just within a single state. I think Jonathan and I would volunteer to help out with that in our state, California. And look at -- you know, because California is a huge economy. If we limited secondary trading to just California, we might learn a lot from that without having to do preemption and then maybe go from there. MS. MOTT: Sara, I'm in favor of the preemption. One of the things I think about, again coming from, you know, investors' point of view, is I look at the impact on the economy, what happens when we get a liquidity event. And we put that money into play, into other companies, other startup companies. Or we put it into play buying a piece of real estate. Or we put it into play to buy other things. So what you get is the multiplier effect on the economy.</td>
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<td>And when you can't -- when you don't have liquidity, you impact the economy. And we don't know what that impact is. So I'd be very much in favor of something that's capital efficient. It's a balance. It includes the states. And it's another opportunity for us to have a very vibrant economy. MS. HANKS: Thank you. Jonathan. MR. NELSON: I think the best way to create a market is to make it as big as possible and have as many buyers at the table and as many sellers at the table as possible. The last time I talked to someone about doing a California state exemption, the California state regulators said that they were ready to do dozens of these approvals every single year. That just doesn't feel like a very large volume. And it's not saying that they're not doing an amazing job and that it's not a very hard job, and it's a thankless job, because if there's fraud you get spanked and if there's capital formation, no one cares that you did your job. But I think that these markets need to be as big as possible and they need to be as liquid as possible, otherwise the investors get spanked. MR. REARDON: Michael, I don't know who first said that a genius is somebody who sees a trend coming and runs to</td>
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run and embrace it.

MS. SHIMKAT: I'm not quite as eloquent as Patrick, but I think throughout the entire discussion though, and being from Iowa, or the typical flyover Midwest, I want to make sure that as we move forward with the recommendation that we take into consideration that a lot of these regulations and items that we've been discussing, many were based upon a reactionary -- or a fear of fraud and protecting. So we need to make sure that, you know, is it protection or is it elimination?

So we need to make sure that as we take that next step, that we are looking at everything. And so I don't mean to sound like on the fence or Switzerland or anything like that, but I do have to agree with Catherine and that would be where I stand.

MS. TIERNEY: I think it's really important for the committee to remember that Reg A Plus has three options, right? You have Tier 1, where there's no information being disseminated after the offering takes place. There's Tier 2, where there is no information voluntarily disseminated after the offering takes place. In both of those situations, I would love to see the states come up with some kind of common approach to information requirements that allows for secondary transactions to occur in all 50 states, a hundred percent. With respect to Tier 2, voluntary reporting, going to Robert's point, the centralized information portal is

to EDGAR. Those companies are filing public information with the Securities and Exchange Commission that is available on the SEC's website. So that information is out there. As long as those companies are voluntarily reporting, I don't see how the states interest to require information dissemination through a manual is more efficient or effective than dissemination through the SEC's EDGAR website with SEC oversight, enforcement and everything else to create fraud prevention and investor protection.

So my vote would be preemption for Tier 2 securities that are voluntarily reporting on an ongoing basis. Once that voluntary reporting stops, then they fall into the other buckets and they have to satisfy the state requirements. But again, I want to reiterate my point about the fact that broker-dealers cannot create secondary markets in these securities and also that the manual exemption is not available in every jurisdiction, so it could definitely be detrimental to capital formation for small companies in states where they cannot actually legally provide secondary transactions, even under Tier 1 or Tier 2 nonreporting.

MS. HANKS: I just want to point out that with respect to the word "voluntarily." I mean, there is an obligation, in most circumstances, to keep going.

MR. GOMEZ: Actually, as Sara said, it's not just
our perspective and what we need to do from an overall basis, unfortunately, because I hate to put down regulation on top of regulation -- market that is controlled, that protects the investors, while encourages investment, you know, at that next level.

Because that's the gap we're missing. You know, when we see -- you know, Jonathan gave a great example of how it's supposed to work. And unfortunately, I think we have a little bit of a gap here, because use of capital -- number of companies that are forming are down, the number of people who are going -- organizations that are going IPO is down, the number of large entities actually is down through consolidation. The actual numbers look really good, but it's not just a matter of dollars, right? Sometimes it is a matter of law, large numbers. So -- preemption.

MS. HANKS: Thanks, Laura.

Mike, I'm not going to ask you whether you approve, but is there anything that you and Michele, too, would like to add before we move on?

MR. PIECIAK: Well, I do want to thank Richard and Martin. They did a nice job presenting the points and counterpoints. The only other -- the only other thing I wanted to mention which I didn't get to bring up was the relative newness of this general concept of allowing investors to invest in smaller what would previously be privately held, potentially, or private offerings or private companies. And I think we see it on the primary market side and I assume it's the same thing on the secondary market side, that from an investor demand perspective, these exemptions are so new that, you know, investors are saying, wait a minute, I didn't think I could invest in something like that, or I've always been told this is the case. Or they don't know what a Reg A offering is, they, you know, don't know what a crowd funding offering is. So I think there's some element of investor education and further sort of maturity in these arenas that need to happen as well. And in terms of secondary liquidity ever happening, regardless of what the regulatory framework is around it. So I just want to put that out as an additional point.

MS. HANKS: Thanks. Michele, anything you'd like to add there?

MS. SCHIMPP: Thank you very much. Really fascinating to walk into this, and I feel like it's part of an ongoing dialogue and trying to catch up on this.

Completely persuaded on the side that this would be filling an important gap area in our economy. We see that area where access to capital is most needed is in that area of like one million and below EBITDA. And so, despite all of our efforts on SBA's side to encourage investors to get more early stage, more local, we're still not meeting the market. So I'm very much persuaded by a uniform platform of information in order to try to put more vibrancy and predictability into this segment of the market.

In terms of preemption, I really would like to defer to all of you. My gut instinct is that there is something very inefficient about all 54 units trying to get to this uniformity, but hesitant to move in the preemption direction prematurely.

MS. HANKS: Thank you.

Okay, all right. So with that I think I'm going to put some thoughts together and we'll discuss this afternoon whether we move on with a recommendation. I'll try and pull all of these things together and see whether you agree with the way that I've summarized it.

We're going to move on to the discussion of the broker-dealer status of finders. And so thank you to Richard and Martin. Really appreciate it.

So moving on to the broker-dealer issue, we've talked many times about the finders issue, urging the Commission to take steps to clarify the current ambiguity in broker-dealer regulation for people who act as intermediaries in private placements or find potential investors. And one of the reasons we care so much about this is the fact that, to the extent a small company uses someone to help find capital and that person should have been registered as a broker-dealer and wasn't, then that deal is, by its nature, rescindable, which is a terrible source of uncertainty for small companies have to live with. But they do it and they do it all the time, and we've talked about this, just because they are so desperately in need of capital.

So the prior iteration of this committee made a recommendation to the Commission along those lines just before the committee was renewed in September 2015. I think you've all got a copy of that at your desks. Shout if you don't have it.

Some of us were members during the development of that recommendation and others have joined since then.

I would also note that the American Bar Association Task Force on Private Placement Brokers has existed for some like 17 years now. It has also urged clarity in this area, with some progress. The M&A broker no-action position, which was very much appreciated. But there are still areas of significant uncertainty.

Knowing the importance of this issue to so many of us, we wanted to do a sort of bring-down, to see whether we wanted to reissue this recommendation, since we have a new chairman and senior leadership coming in to the SEC, new Congress in session. It seems that if we're not satisfied with the status quo -- and I think I hope I'm not jumping the gun in saying that many of us are not satisfied -- that we
want to make sure that this issue is not overlooked.
So with that, does anybody want to reiterate some of the points they've made? And I don't know if we have representatives here from Trading and Markets. Do you guys want to say anything?

MS. RUTHKOWSKY: It's Joanne Ruthkowsky from Division of Trading and Markets. I know Steve Luparello, our former director, spoke to you last fall and he just pointed out that we totally hear you but there are also two competing regulatory concerns. One is capital formation and the other is the protection of investors, particularly retail investors.
And so I think the one thing we would ask you as you go forward is to sort of address, if you could, the protections for the retail investors.
And with that, I mean, we're here to answer questions if we can.

MS. HANKS: Thank you.

MR. REARDON: I'll be happy to speak. Jenny -- I'll defer to you.

MS. HANKS: I think Jenny and then you, if that's okay.

MS. KASSAN: I just had a quick question on the fourth point before the recommendation. It says, deal only with accredited investors. But I don't think the recommendation actually says that. So I personally would be very concerned about limiting this to people that deal only with accredited investors. So I just wanted to see if we could get some clarity on that, because it looks like it's in the preamble but not in the recommendation itself.

MS. HANKS: I think the thinking there was to the extent an exemption were to be developed, then it would be appropriate to take the investor's status into account. But I'm interested to hear -- and again, to answer Joanne's request, I mean, to the extent we were to encourage a broker-dealer -- a limited broker-dealer exemption and it were not to have -- be depending on the investor's status as accredited or sophisticated, how would you protect the investor?

MS. KASSAN: This kind of goes back to our discussion about accredited and, you know, whether the definition of accredited is actually protecting investors. But I just think it's something we should think about.
I think limiting -- you know, most of my clients, I work with small businesses to raise money. And most of my clients raise money from both accredited and unaccredited investors, usually under Rule 504 and state-level exemptions. And I think if this recommendation only applies to companies raising money from accredited investors, I think it really limits the applicability to companies that, you know, want to talk to more than just accredited investors.

MR. REARDON: Commissioner Stein, I want to direct this to you particularly, because I think this is -- at the Commission level is where this belongs.
We had, as far as I'm concerned, a very unsatisfactory conversation with Mr. Luparello at our last meeting and, as I told him, I think this is the worst case of bureaucratic waiting for Godot I've ever seen. They've been sitting on this for 16 years, 16 or 17 -- I count 19. I don't know. But it's a long time. And it's obviously they're dissembling and wasting taxpayer time and they have no intention of ever moving on this. That is, the Division of Trading and Markets. I don't know if that comes from the Commission or not.
But I do know this, that a tremendous amount of taxpayer time has been wasted on this and if they could have just said, we're never going to act on this and we're just playing you, stringing you along, it would have been very, very helpful and we could have done something else, or gone and licked our wounds and forgotten about the idea. But instead we've had this constant teasing and even today we're hearing more from the Division about what do you want to talk about and we understand your concerns. I don't think they are about our concerns over there, frankly, ma'am. I think that you've got your own agenda and the public and the taxpayer be damned.
And I -- I have no -- as far as my recommendation for the Division -- I'm not speaking to the commissioners but to the Division -- I'm trying to think of a recommendation that's not obscene. I mean, I am -- I am so frustrated with this. I -- I don't think anybody over there really cares. They're pretending to be listening. And I'm convinced that if anything is going to be done on this, it will come from Capitol Hill.

MS. HANKS: Patrick, if we could -- I'm glad we skipped the bit about the -- the obscene bits, so thank you for that.
But to address this, I mean, I think there are some legitimate concerns. I mean, we see, and we have raised this every time, we're concerned about the small companies who are absolutely desperate. And there's the guy at the golf club who knows some folks and can introduce them.
Do you have an answer to that, though? What if the guy at the golf club is like, well, I know some folks and they're all part of my -- my Elks Club or whatever, and I know they're pretty rich. What about investor protection?
Are we saying that we don't need it there? Or is there an alternative way that we can loop into this recommendation?

MR. REARDON: Oh, we've got the recommendations by the American Bar Association that were promulgated 10 years,
roughly 10 years ago. David Burton over at Heritage

Foundation has recommendations.

I mean, as far as I'm concerned, we don't need to
till that soil again. There are recommendations and you can
go and get any number of them. If you'd like for me to bring
them to the next meeting --

MS. HANKS: I think we actually have them. And --

MR. REARDON: I mean, I don't see why we need to
put the mental horsepower into making recommendations that
will be ignored once again.

I mean, I just -- you know, I've been banging my
head against the wall for 16 years. I might decide it's time
to stop. I mean, I haven't been working on this for 16
years, but people have. And I'm not -- I'm not willing,
frankly, to do any more head banging. I'm -- I've given up.

I'm completely dissatisfied that any regulatory
action will ever be taken on this; 16 years is enough.

MS. HANKS: I will note that a couple of the
members of the ABA task force have celebrated the eightieth
birthdays while they were waiting for --

MR. REARDON: Yes, and I know two of those lovely
ladies and --

MS. HANKS: All right. So nothing other than
what's already in the record with respect to --

MR. REARDON: What's already in the record. As I

said too in that meeting, this topic has been studied as much
as anything but the Bible and the Torah, so it's time for
action or just say we're not going to do anything.

MS. HANKS: And saying we're not going to do
anything, I think part of the problem, one of the reasons
that we do keep circling back to this is that there is a
certain amount of uncertainty. And there's at least one no-
action letter out there, and we know that no-action letters
only apply to the specific pop star that they apply to. But
to the extent there are still people out there relying on
that and saying that statement is still out there, that no-
action letter has not been withdrawn, and there are people
doing these deals and doing the golf club deals, one of the
things that I've said is we're at a point where I don't think
it matters so much what the answer is but just that there is
an answer.

And to make a point that I've made before as well,

it's not fair on the guys who are playing by the rules.

There are some, and from my own industry, the online capital
formation industry, there are electronic platforms who are
not playing by the rules. And then I've got clients saying,
well, they get away with it and nobody has arrested them.
And to the extent -- and I'm always explaining, well, the SEC
doesn't have handcuffs, because they are a civil agency, they
don't have the right to do that.

But so long as they keep saying, nobody has been
arrested for doing that, you're going to have this dichotomy
where you've got the guys who are playing by the rules and
paying for it, and the guys who are kind of getting away with
it and everyone is saying there's nothing out there. So

MS. KASSAN: I have a quick question going back to
the whole question of blue sky law. Even if there was
certainty, even if it's had certainty, to a certain extent,
is helpful. But that's just my own opinion.

I would be interested to know who else in the room
would like even bad certainty.

MS. HANKS: You're absolutely right. I mean, to
the extent -- to go back to an earlier discussion, to the
extent there's no preemption, and I don't see that. One of
the things that we've seen again in the online community is
people saying, well, those platforms have their no-action
letters. But we, state regulators, that's just their silly

MS. KASSAN: Yeah, that happened with a company
called ProFounder in California. I remember that.

MS. HANKS: It was California and not the feds who

took them down.

MS. KASSAN: Yeah, exactly.

MS. MOTT: When I think about this, you know, how
we're defining the difference is between someone who provides
names versus someone who sells the transaction, right? A
broker-dealer sells the transaction, a finder simply
introduces --

MS. HANKS: It depends which side of the
interpretation you fall on. I mean, there are some folks who
would say anybody who brings together buyers and sellers of
securities and takes money for doing that is going to be a
broker-dealer, even if the compensation is not derived --
calculated on the amount of securities sold. There are some
people who say so long as it's not a transaction-based
compensation, then per se it's not a broker-dealer issue.
But I don't think anyone has ever agreed that. So you get a
wide range of interpretations at both the federal and state
level.

MS. MOTT: But how much is the issuer responsible
for ensuring that the information is, you know, is provided
and that, you know, they're accredited, that kind of thing.

I mean, that really comes down on the issuer at that point,
after that point, right?

MS. HANKS: The issuer has got a whole bunch of

things to worry about, including if I raise money by using a
non-registered broker-dealer who should have been registered, that transaction could be rescinded. And so you've got a put hanging over your head forever.

MR. REARDON: -- in securities law -- Division's position also is that if a lawyer participates with an unregistered broker, the lawyer is violating securities laws, too. So the effect is they're separating the businessperson from his or her lawyer.

MS. HANKS: So anyone in favor of more certainty, even if it's wrong? Or -- because we keep making the recommendations and it would be nice if we could sort of move this ahead in some way.

MS. MOTT: So here I'm struggling with this, and not because I don't think we should move ahead with it. I'm struggling with this because I think about the situations in which someone gets introduced or hears about the opportunity to invest in something and, I mean, it's going to happen, and, you know, it's -- when I think about the private investor market, there's a good deal of it that is, how can I say, formalized? But there's still a lot of unformalized capital out there. So I think we should put -- I think this puts some structure around that unformalized capital. That's why I like it.

MS. HANKS: Anyone else want to weigh in on this?

MS. SHIMKAT: It's really hard sitting next to you and on the heels of what you said. I've been thinking about that, because I think in securities law, you have to say, well, we've got to make a decision about whether or not to register. And then we've got to decide what we're going to do about the people who are going to be doing business, and how they're going to achieve that capital and get business done? And I think that kind of leads us into our debate later this afternoon.

But I want to see -- there needs to be movement somewhere.

MS. HANKS: Which direction would you like the movement to be?

MS. SHIMKAT: So that it works better for our companies.

(Laughter.)

MS. HANKS: A vote in favor of workability.

Annemarie, since you've got a background in the broker industry,

MS. TIERNEY: I don't know that I'm qualified to comment on what my esteemed colleague said, but I probably agree with her.

(Laughter.)

MS. HANKS: One of the questions is whether we would -- whether and to what extent we want to reissue the comments that we made in September, with respect to getting some -- some movement, reducing ambiguity in broker-dealer regulation.

I think the one thing we can all get behind is reducing ambiguity. But the question then is, in what direction does the reduction in ambiguity go? One of the things that I've said is even having the wrong answer, at least it's an answer and it gives us some certainty. What are your feelings on that?

MS. TIERNEY: Well, we've talked about this as a committee. Patrick is very passionate about this subject.

MS. HANKS: He reiterated his passion.

(Laughter.)

MS. TIERNEY: It's very worthwhile listening to. I think the fact is that I was -- and you were talking about Mr. Luparello as I left the room.

I was disappointed in his answer to the committee, if we're talking about that. I think that we know that there's bad practices in the market, we know that there are people who don't understand the rules, we know there are platforms out there that are not registered and following the rules in a way that makes sense to me. So I think I would definitely like to see the SEC take more specific action in the context of finders and platforms involved in primary and secondary transactions that may not be registered broker-dealers.

You know, you've got some no-action letters out there from Trading and Markets to certain platforms that are

Patrick sometimes.

MR. REARDON: I noticed they moved me closer to the door.

(Laughter.)

MS. SHIMKAT: But overall, and I think -- I feel like we have opened Pandora's box, and we have had some really animated debates regarding a lot of the issues that have come out. And even when I am going back to the Midwest and talking to people, it's like, well, you have to do this,

this is what the rules are. Actually, I shouldn't have said the Midwest.

But we need to make sure that there's something, that something moves forward, that we move that needle off zero. We have to take an action and it needs to be thorough and collaborative. You can't have a mom versus dad. Well, here's how I'm going to interpret this, because this works better for us. Here's how I'm going to interpret this.

Versus, well, what's the worst that could happen? It only hurts if you get caught.

We need to make sure that, you know, are we pulling the protectionism in too far and making so much of it not being able to work together to achieve our goal? And at the same time, I think we've really shifted on what is our actual goal. Is it fully regulatory and here's what we want to do so that things fit into our funnel? Or are we looking at
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helpful but potentially not being followed by the rest of the market. So maybe, you know, more obvious disclosure efforts -- sorry, more obvious enforcement efforts, to the extent, you know, necessary.

I know Patrick feels like there's not enough enforcement, obvious enforcement in this space. I really do worry about companies hiring people to help them find capital and then not having that done in a way that's consistent with the securities laws. That's not good for the investors, not good for the companies and it's not good for the market.

MS. YAMANAKA: I agree with you, Sara, that having nothing sends the message that if you have no enforcement, to Patrick's perspective, or looking the other way, it sends the message that it's really not an important regulation and it's really not relevant. So I am of the point that if we have something out there, we probably should -- should be -- you can't selectively apply, right? You can't selectively enforce. Because if you do, that takes us down a whole other rabbit hole. So let's get off the bucket.

MS. HANKS: And any thoughts on what -- what this initiative would look like? Do we still -- do you still agree with some of the things set out in the 2015 letter?

MS. YAMANAKA: Well, personally, no, there are things in it. But I'm willing to say let's -- let's just do something. I think we all don't agree with everything all the time. And so it's just -- I don't really understand why this is happening, to be honest. And so I just want to register out there the fact that if we don't do something, that sends a message out there to people to take the risk and to take the risk. And so therefore by, again, nonaction, we are creating an environment -- we are creating the environment. And if we are okay with that -- I know we're not happy about that, but if we are -- if we accept the consequences of nonaction, then we need to be prepared down the line for when we do have to pull it back and what that's going to look like --

MS. HANKS: So if I -- it's kind of difficult to summarize, because it's clear that not everybody agrees with the exact specifications in the 2015. But if we were to say that we would like greater certainty, and that certainty could take a number of different shapes, including compliance and disclosure type initiatives, answers to Q&As. I think, not to put words into the mouths of the T&K guys, but I think there's always been this -- well, there's a slippery slope here and if we let this happen, then what happens next?

But Q&A type interpretations of who is a broker and who isn't might be tremendously helpful, even if it doesn't go as far as a no-action letter. That seems like a very innocent sort of thing to encourage. And also to encourage that the Staff also talk to the states.

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Because one of the things that we are seeing, and we see this in the Reg A field, we see, for example, Texas, Florida, Arizona, North Dakota have completely different interpretations of the issuer-dealer requirements. And so some kind of coordination at that level as well would be tremendously helpful.

MR. NELSON: It sounds like we're kind of talking about a speed limit issue, aren't we? Like what's the speed limit in your city? Or on a highway in your state?

MS. HANKS: I have no idea.

MR. NELSON: Like 65? Do they give you five miles an hour, do they give you 10 miles an hour or 15?

MS. TIERNEY: My cousin is a state trooper.

MR. NELSON: Um-humm.

MS. TIERNEY: So I get a little bit extra. (Laughter.)

MS. HANKS: The rules do not apply to Annemarie.

MS. TIERNEY: I think it's six, because just for the margin of error.

MR. NELSON: And so what is the actual rule and what is the actual speed limit and what actually gets enforced? And sometimes these things are sometimes diverse and sometimes I actually think you're getting your answer, Patrick.

I love you, but I think what I'm hearing is that the SEC is saying, well, this is the speed limit, but we might give you five, we might give you 10 over, but at the same point in time don't be a jerk about it, otherwise we might, you know, come down and pull you over and give you a ticket.

MS. HANKS: I'm not sure we actually do have a speed limit, even with the Annemarie rider. And I think that's the problem.

MR. REARDON: And that doesn't apply in private litigation.

MS. HANKS: And I think that is a really good point. In private litigation, this is what's hanging over the heads of small companies, you do a deal, it was put together by the dude at the golf club who knows some guys, and then it turns out that that was a really bad investment. And so what happens is a plaintiff's lawyer gets hold of it and goes, okay, we are going to get your money back because that was a broker-dealer and he wasn't registered. And that's what hangs over the heads of small companies all the time.

MS. MOTT: Sara, I mean, what I was looking at is the document that Greg sent in e-mail, because he couldn't be here.

MS. HANKS: That's the ABA one?

MS. MOTT: Yeah. So, I mean, what we're doing is we're classifying people to be intermediaries by making an
introduction. And if they disclose a form that they're
acting as an intermediary, that they are not selling, and
that the issuer says, you know, I understand this, that this
person is not selling and that these people that I'm being
introduced to are accredited investors, I will not take
anyone but accredited investors, what's the problem? Because
they're not selling.

They're acting as -- and if we define an
intermediary as someone who does not sell, does not provide
the PPM, does not provide -- you know, then that person, all
they're doing is an introduction.

MS. HANKS: Well, which is what -- but we can't
define the law. And the guys who do interpret the
regulations are the guys we need the guidance from. I mean,
that's one of the things that we were encouraging, was this
sort of limited purpose introductory --

MS. MOTT: I mean, that's what I'm thinking is just
what we've done here, to me, works fine. Because we're just
-- we're just putting structure -- so let's define it. Let's
have a form. Let's just --

MS. HANKS: Anybody against a recommendation that
that be one of the courses that we would like to see from
Trading and Markets?

MR. REARDON: I intend to abstain from any further
action from a regulatory standpoint on this.

MR. REARDON: Sixteen years of good action.

MS. HANKS: Anyone else want to weigh in on the
form that Catherine -- that's the one that was circulated,
forwarded from Greg Yadley. That would, at least, be
something.

MR. AGUILAR: I would like to get the SEC's opinion
on what that -- that letter -- what they would do if a case
came in front of them and somebody had the exemption letter
that was referred to in the document?

MS. RUTKOWSKY: I'm sorry, I'm not sure we've seen
that. But I think that there is a vehicle for requesting no
action or an exemptive order. If you wanted some regulatory
certainty, some clarity. So there are established processes,
if this is something you'd like to pursue.

MS. HANKS: This is the -- I think it's from the
ABA recommendations that you're looking at there. But it's,
right at the moment, I mean, I think the answer is this is --
that's just a privately produced piece of paper and then if
you took that to the SEC and said, if we did this, would it
be okay, then I think the appropriate action would be to
request a no-action position. Which are issued on a case-by-

Anyone else on the brokers?

effect.

MS. KASSAN: Right, similar to the, you know, crowd
funding portals.

MS. HANKS: And you would, of course, need
regulations to create that, both at the SEC and FINRA. And
also you'd need -- I mean, one of the things we should point
out is some of those Title III crowd funding platforms -- at
least one has bitten the dust for regulatory reasons already.

So there is a regulatory burden on keeping an eye
on those folks.

MR. AGUILAR: Yeah, I'm not one to create more
regulation, but I think that I agree with Jenny that I think
that would be a good solution. But there is also the -- the
idea of when somebody doesn't do it, I mean, are they being
-- are there consequences for that? It sounds like there's
quite a few transactions that are considered securities
transactions that are not being monitored and regulation
isn't imposed on those.

MS. HANKS: Does anyone else have any other
questions or comments on the issue?

I just want to say thank you guys for coming by and
I know this is the typical Washington parlor game of lining
people up and yelling at them. And we want to say thank you
very much for coming back and hearing us and hopefully we
don't take it personally, but we do appreciate what you're
AFTERNOON SESSION

MS. HANKS: Thanks and welcome back, everybody.

Sorry for the delay to those of you on the webinar; we had a
bit of a technical problem.

So we are now going to talk about why more companies are staying private, or try and answer that question.

There was an interesting article in the January 6 Wall Street Journal focused on the lower number of U.S. IPOs over the last decade, and calling the -- referring to a gusher of private capital.

We all know plenty of small companies that would love to benefit from this gusher of small capital and who are not seeing it probably. But it's absolutely true that the decrease in the number of companies going public is no news to any of us.

The article talked about several possible theories as to why the private markets have proven more attractive in recent years for companies that traditionally would have been candidates for an IPO. I'm pretty sure everybody here has got their own thoughts on the topic and we'll be discussing those. But it's definitely a topic we want to discuss in depth and further and see what the trends are that are influencing companies' decisions to stay private.

We're going to hear from three separate presenters, each of whom has extremely relevant experience in this area. I don't know if this is the order we're going in, but it's the order I've got. So first is James Hutchinson or Jamie, a partner in the private equity group of the law firm Goodwin Procter, as well as a member of Goodwin's technology and emerging companies, FinTech and impact and responsible investing practice. Jamie has extensive experience advising funds and their portfolio companies in a wide variety of transactions. He's been a key contributor to his firm's online resources for startups, emerging companies and the entrepreneurial community.

Next, we have Glen Giovannetti of the global life sciences leader at accounting firm Ernst and Young. He has close to 30 years' experience with Ernst and Young, the majority serving clients in the biotech and medical device industries. He has extensive experience -- sorry. He published a blog in response to the Wall Street Journal article I mentioned earlier, which we all have, so look forward to hearing his thoughts on the topic.

And finally, we welcome Yanev Suissa, founder of SineWave Ventures. Yanev was formerly with the large VC firm New Enterprise Associates, where he focused on early stage investments in tech and energy companies. He also helped form the Department of Energy's loan guarantee program, where he was engaged in the underwriting of billions of dollars of debt for issuance to companies within the energy technology industry.

And please take it from here. Jamie, are you first?

MR. HUTCHINSON: Glen is going to lead off for us.

MS. HANKS: All right. Glen, thank you.

MR. GIOVANNETTI: Well, thank you. And thanks to the entire committee for the invitation. It's great to be here. We're hopeful we can at least catalyze some good discussion. We were talking earlier, I mean, I'm not sure there is a definitive answer on this, but we will put forth some ideas. And thank you for promoting the blog.

That was a bit of a coincidence. You know, I read that same article heading out to the JP Morgan Health Care Conference every year in San Francisco, kind of kicks off the year for life science companies. And sat there and said, you know, really, 30 percent fewer public companies? That can't be the case in biotech.

And I think what we'll explore here today is that, you know, biotech is obviously only one small part of the entire economy and it may be the exception that proves the rule for certain -- you know, certain unique attributes of that particular sector. And in fact, what I was pointing out in the blog was that the number of publicly listed biotech companies is up 40 percent over the same period of time. So, you know, the trend is actually reversed. But we'll explore the broader issues and then if there's some relevance around biotech, I'll introduce that.

I thought what I'd do is start just with some bigger picture context setting and run through just a number of data charts to hopefully help inform and put some structure around it and then we'll dive into some of the real specific issues around the -- around this question of, you know, why are more staying private. And we've had a chance to talk a little bit ahead of this session. So a little bit where I leave off, hopefully Jamie will pick up. And, of course, stop us at any point. We don't need to make this presentation; we're happy to entertain questions.

So what's here, and may be a little bit hard to see at a distance, there were a couple academic studies that spurred some of this media coverage. This particular one, I think, was actually quoted in a Bloomberg story about six months before the Wall Street Journal picked up the story there in early January. And, you know, commenting on the
fact that we've seen this significant decrease in the number
of publicly traded companies and looking at why. So what
we've done here is just summarized some of the data from that
study itself just in 10-year blocks. So their data went
through 2012. So it's a little bit dated.

But you can kind of see some of the trend here of,
you know, the rise in public companies up until 1995 and then
a decrease since then. And just pictorially, the green bars
here are the number of IPOs, the gray bars are the number of
M&A transactions where companies effectively delisted via,
you know a transaction. And the red are delistings for
cause, right, which you see were pretty significant, you
know, leading up to -- in the late 90s, leading up to, you
know, sort of the dot com frenzy of, you know, quite a few
IPOs, and even in the decade after. And they've diminished a
bit. So, you know, we can argue whether it's positive or
negative, but I think the number of companies going public
today are less likely to be delisted. They're a little bit
more substantial, they've been private a little longer, they
probably have a little more capital. Right? So, you know, I
think it's fair to say maybe they're more sustainable than
say the average company that was listing in the late -- late
90s.

The next slide is just to make the point -- I've
got a couple of slides on this, but quickly we want to look
at this from the standpoint of, you know, is this a U.S.
phenomenon, a global phenomenon. You know, what's happening
here where we have a delisting or not a delisting, I'm sorry,
but a, you know, a decrease in the number of listed
companies.

You know, this slide is not very interesting
because the data doesn't change very much. But basically
what it says is 90 percent plus, in fact 94 percent last
year, of IPOs happen on domestic exchanges; only 6 percent
are cross-border. And then if you say, well, does the U.S.
have a particular problem? Because certainly listings are
growing at quite a rapid rate in many exchanges around the
world, does the U.S. have a problem? Well, when companies
choose to list cross-border, they come here, is what the
takeaway here is. The yellow bar is the number of, you know,
foreign private issuers coming to the U.S. And you can see
the other markets, how they compare. So it suggests that we
don't have some unique problem where our companies are
finding their way to go public in other places, and that's
sort of capped off on this slide, which shows that in 2016,
only two U.S. companies chose to list exclusively overseas.

So there may have -- there may be others -- there's
quite a few others that probably went to dual list. But they
also listed -- had a primary listing here in the U.S. And,
you know, a handful a year say, there's another market for

me, you know, I'm not going to choose to list here in the
U.S.

So then turning more to what's going on with
private companies, this is data from VentureSource. And I
direct you to the yellow, the yellow line there, and the gray
line towards the bottom. Those represent seed and first
round. So by translation, I guess, company formations over
the last many years. And the numbers you can't read there on
the right are, you know, running around the last several
years 1,500 to 1,800 venture-backed companies created. So
that's sort of the inflow of likely IPO candidates. It's not
exclusively what would go public because, you know, family-
owned businesses, non-venture backed companies can make their
way to the public market. But this is a pretty big
indication of the funnel.

And we see since, you know, we kind of cratered
after the dot com frenzy back at the beginning of the 2000s,
with a little hiccup there around the financial crisis,
there's been a relatively steady climb up. So it's not
necessarily that the funnel is not there for companies that,
you know, would otherwise choose to seek an IPO.

The IPOs haven't increased at the same pace. And
that's a large part of the reason we're having this
conversation, and we will get into the larger -- some of the
larger dynamics of why that is. But you can see IPOs prior
to 2000 were running at 400 or 500 a year. Since the
financial crisis, you know, we're in the 200 to 300,
depending on -- I'm sorry, since sort of the dot com highs
and the recovery there, you know, in the 200 to 300 IPOs a
year. Last year was quite a bit lower than that. And so
there's been a different bar set relative to the number of
IPOs. And what we're experiencing is companies are staying
private longer.

Now the company that gets through, is represented
by these numbers and gets public, probably is a little bit
more substantial in terms of its time to grow as a public
company, perhaps a little better financed. And hence we see
fewer of the delistings.

This is the same data. I won't go over it, other
than it excludes the foreign private issuers. This is just
purely U.S. companies going public on U.S. exchanges.
And then, you know, the other way companies
disappear is they get bought, of course. And this data is
from Deal Logic, and it's acquisitions of all private
companies, venture backed, not venture backed, by strategic
investors, by PE or financial investors. It's kind of an
all-in number. So it may be not right on point relative to
the population of companies that may go public. But it gives
you an indication that, you know, we're in a robust M&A
environment and have been for, you know, quite some time. As
industries are consolidating, and we see that at the top end
with, you know, the Fortune 500 in terms of the amount of
revenue and assets in the economy they control. There's also
a trend of greater externalization for larger companies
looking for innovation and being willing to buy it.

So there's an awful lot of deal activity that, you
know, these are companies that otherwise may have
matriculated to the public market that are acquired while
private.

Another cut at the data, much smaller numbers.
These are the same -- same data set but deals over $100
million. So this is the group of companies that, you know,
might have been IPO ready, if you want to think about it that
way relative to their market cap. You know, whether that's
100 or up to $300-, $400 million takeout price. So, you
know, if you're looking at a couple hundred in a year on the
IPO side, there's double that number of private companies
that otherwise may have considered an IPO that are -- that
are selling in M&A transactions.

This is just for your information, the number of
publicly traded companies that are coming out. This isn't
really germane to the private company story. This is
existing public companies that are being acquired. You can
see that, while pretty steady, it's actually quite a bit
lower. More of that acquisition activity happened much
earlier in the decade and even into the late 1990s.

So that kind of leads us to the question today of,
you know, why are companies staying more private or staying
private longer. And, you know, not to be flip, but the kind
of short answer we've come up with is because we can, and
we'll talk about what's behind all of that.

But if you look on the left-hand side, you know,
why would I go public, you know, that list there is the
common reasons, you know, that companies would pursue a
public offering. And number one, that their business model
really requires it, right? That they have a highly capital
intensive business model and they need to access capital to
grow their business. And public markets, typically,
historically, have provided a lower cost of capital. We can
argue whether that's still the case with all the private
money out there. They need public currency to do
acquisitions, they're looking for liquidity for their
founders, for their investors.

Importantly, when we talk about tech and biotech
companies, for their employees. Although Jamie will have
some stuff to say about that, because he's been part of
creating alternatives for private companies in that respect.
And they -- and/or they just want brand identity, you know,
that comes from being a public company.

I would say there's one here in particular that's
more biotech focused. When we get over on the right side,
you know, many companies are staying private because there's
this gusher of private capital, to use Sara's comment from
the article. There is an unprecedented amount of private
capital out there. It's not finding its way everywhere.

The kinds of private capital that is going into
some of the large technology companies in, you know,
multibillion dollar rounds, if we go back to the biotech
example for a minute, very few if any investors are going to
write that kind of a check for a biotech company and wait
five years and turn over a card and see if they get a drug or
not, right? It just doesn't fit -- the financing model
doesn't fit the business model. And that's one of the
reasons we see biotech companies go public. They not only
need the capital, they need a wider shareholder base, right?
And that's what a publicly traded stock provides them.

So on the why stay private, you know, the biggest
issue is because they can. There's lots of capital out
there, right? And if you can avail yourself to that capital
and it's at a reasonable valuation that's not such a large
haircut from what a public market might give you, you can
still grow your business, it's not as dilutive as it may have
been at one point in time. And certainly with, you know, the
new pools of capital, the amount of capital, the pools it's
coming from and the valuations, I think we've seen that to a
large degree. And then it sort of insulates you from what's
the rest of the list there, right?

So obviously as a public company, a lot more
infrastructure needed for disclosure and regulatory
compliance. Some perception, and this was brought up in the
Wall Street Journal article about, you know, disclosure
leading to loss of competitive advantage, especially for
technology companies trying to build something new. Just the
general lack of operating flexibility or lower operating
flexibility when you're public and you have investors that
are much more focused on short-term quarterly profits and
your business model might be one of, you know, long-term
growth and world domination in a particular category. Right?
Just that -- that dichotomy.

And then a variety of other -- you know, just the
risks of being a public company. Subject to activists and
short sellers and shareholder lawsuits and the like.

So, you know, we really have, you know, factors for
and against. But the answer that we will set up here, and I
will pass the baton here to Jamie, is because they can.

MR. HUTCHINSON: So again, I'm Jamie Hutchinson.
I'm a partner in Goodwin's private equity and tech practice
units. We do a lot of work representing emerging stage
companies and the folks that invest in them. And we've
actually kind of had a front row seat over about the past
decade to what we kind of call the large cap growth equity. So a lot of the very big rounds into the high-profile tech companies, sort of the unicorn set. And a lot of those transactions come with some interesting dynamics, including secondary pieces. And so the press has written a little bit about private IPOs, which I think is -- is not a good -- you know, it's probably a misnomer. But there's certainly a different type of transaction, much larger, that has secondary liquidity. And we've sort of had a front row seat to that. So I think we should be able to give some ideas of why this is happening.

So and certainly during this presentation, we're going to jump in, and if anybody has questions and want to jump in and drill down on stuff, you should do that. Could make it more interesting than hearing me.

MS. TIERNEY: You should know we're not shy.

MR. HUTCHINSON: Yeah, I've seen that over the years, Annemarie.

MS. TIERNEY: We're not shy.

MR. HUTCHINSON: So, you know, here's a summary of some of the reasons. There's large amounts of private capital and it's really on a global level. It's not, you know, just the U.S. anymore. Employees don't demand a company go public. There are alternatives to liquidity now that there weren't in the past. Early investors don't need an IPO or maybe even want an IPO. The idea of a clean exit is something that can be particularly appealing to closed-end funds that have a life, a life span. Certain securities laws have become more flexible, especially the 500 shareholder rule moving to 2,000 shareholders of record.

There is a new generation of entrepreneurs that have a different set of priorities. And, you know, this is perhaps the case now maybe in a different way than historically. We've had direct interaction with a lot of these folks and they think of the world differently. And maybe it's a millennial thing. But they're -- I think we're all seeing in the market, particularly the companies that are going public, the focus is on things like control maybe than immediate sort of wealth creation, changing the world, winning the space, things like that.

There's negative -- there's this negative press phenomenon that can occur with public companies. And we will drill down onto that as a little bit.

So cash as the new acquisition currency. It's shocking, but debt is cheap and a lot of companies, both public and private, are able to tap very deep pools of debt financing to do M&A where, in the past, it might have been best done with a public company security. M&A equals innovation, strategic acquirers and they do that to continue to innovate, and they are affected by not only the cash they have on their balance sheet but their ability to tap into cheap debt.

The high costs of being a public company are perhaps keeping folks from moving towards an IPO. And then there's sort of another set of pitfalls that we'll touch on.

So, you know, first the large amounts of private capital. So the capital is coming from different places than maybe was historically the case. VC funds themselves, many have gotten bigger and their investment mandates have expanded. Where, you know, maybe in the '80s and '90s, even the early 2000s, VC's were really doing early stage sort of startup type investing. Now their mandates are really across the spectrum, from early stage to late stage.

The traditional private equity funds, you know, buyout funds, the Carlyles, the KKR's, they did not historically focus on minority deals, deals that they didn't have control. And that has changed substantially. Firms like Silver Lake investing in Zynga and Alibaba, taking minority positions, TPG. And these are all, you know, publicly available. TPG in Airbnb and Uber. KKR just announced a growth equity fund. So these are -- these are really traditional buyout shops that are moving into growth equity and have deep pools of capital. Corporate venture capital, Google Ventures, Dell Ventures, they are out there and investing heavily. That's sort of a new and different source of capital over the past decade.

Hedge funds. Some people refer to them as crossover funds. Historically, hedge funds would invest in public securities. They were open-ended funds and they were structured in a way that having the liquidity of public securities kind of meshed with their structures. But that is no longer the case. A lot of the big hedge funds, Tiger Global, for example, have been extraordinarily successful and extraordinarily active investing all over the world into private companies.

The sovereign wealth funds. They have over the past sort of a five to 10 years -- well, historically, they would invest as LPs in the big venture and private equity funds. And they sort of have come around, based on their expertise maybe doing that to build their own infrastructure. They build their own investment teams and they're able to make direct investments. GIC, Temasek, the Saudi fund that recently invested in Uber, the Abu Dhabi fund that's invested in Spotify, you know, there's a long list of the sovereign wealth funds no longer being passive investors in private equity and venture but investing directly. And they have very deep pools and they are super patient investors, so it's added things to the market.

Mutual fund complexes. So one of the things in the
Wall Street Journal article, it mentioned how the average investor doesn't sort of get access to these -- these fast-growing sort of unicorn companies. And, you know, as I was reading that, I was thinking, well, that's actually not true. I suspect, you know, a lot of people in this room have 401(k)s in mutual funds and through the public filings, and you've seen it in the press, the big mutual fund complexes are one of the most active investors in private companies these days. And they, too, are very large pools of capital and they're very patient. It's a different model. They don't have an end to their fund life. And we'll talk a bit more about that, because that's been a really dramatic shift that's sort of changed things, particularly with shareholder liquidity. And then family offices. Just like the sovereign wealth funds, they've built infrastructure to direct invest. Gates, the Omidyar Network, the founder of eBay, folks like that are now out there making direct investments.

MR. SUISSA: Could I -- since you've gone through this, I might jump in. I would also note that these are not all smart investors in the venture space. And what I mean by that is not that they're not smart people, but these business models that they have historically been in are not the same business model as venture. Right? We are not typical finance. I don't do ratios on a daily basis. Right? We're not making money right now, and everyone is asking us, like.

building teams, building strategies, building technologies, innovating, often being a personal counselor, quite frankly, and a recruiter.

And you have all these guys moving in and they all have different motivations. So for the big banks and funds and the more financial folks, you have a phenomenon since the recession, where people -- whether it's true or not, people believe that the public markets are not a place to make money or not a place to make money safely. And you do have this phenomenon of it's hard to get in, so there must be something special about this that this small group of people have access to these set of special deals that you need to be in.

And there is that definite like you-need-to-be-in-it mentality, right? If you're not in Facebook, you're not a relevant investor in the technology space, regardless of whether you think Facebook is a good company or not. Right? And so similar for every other -- a lot other of the big tech companies. So that's where the banks come from.

For the sovereign wealth funds, we've seen a phenomenon where technology and innovation, as you guys know, has been promoted much more in the press as a way to -- and venture, for that matter -- as a way to grow jobs, right, and learn new skills and build businesses and build economies. And a lot of the sovereign wealth funds are doing this not just to make money but because they believe that having access to the understanding of these tech companies will then give them the ability to bring that technology to their country. This is particularly relevant among the Middle East sovereign funds, where they say, we're going to invest in this because we want you to build an office here and train our people to do this.

So I think -- and then families are similar.

There's also this phenomenon of I don't want to pay managers fees; I just want to go at it directly, because I think I'm just as smart. Right? So I'm going to go at all these things that I really know nothing about and keep going. And I do think that's a dangerous phenomenon more generally, maybe not relevant to the going public point that we're talking about today. But you are seeing this change, I think. So all the really smart ones came in early, they realized, because they're smart, that they didn't know what they're doing, and they've pulled back significantly. And then you have the second tier of just as smart, maybe not as smart people, coming in and it will continue to kind of move that direction until people realize it really is a different game and unless they're really focused on it and understand it, they're really just playing with fire.

So I think that's part of this dynamic. It's not -- it's a reaction to, hey, we as financial institutions are not making money right now, and everyone is asking us, like.

why aren't you making money? Why aren't you in this? So we need to do something.

MR. HUTCHINSON: And to your point on sort of the not wanting to pay fees, we see these things that we call rifle shot funds. So it's like a managed account almost where big investors will aggregate money, it might be led by a brand name VC, but they'll set up a side -- it looks just like a venture fund, feels like a venture funds, it's got a GP, it's got LPs, but invests in a single asset, a rifle shot into one company. And, you know, Goldman kind of kicked that off in some respects when it did a big common round into Facebook and brought in a bunch of their investors in a special purpose vehicle. So we're seeing that phenomenon, too, with some of this new money that doesn't want to pay fees but wants to co-invest alongside of some of the more traditional investors.

MR. SUISSA: And in that case wants dibs on the IPO.

MR. HUTCHINSON: Right.

MR. GIOVANNETTE: Just one maybe question or comment to add to what Yaney was saying, because I agree with. One thing to keep in mind is where do we think we are largely in this wave of private capital? So if we're on the second wave and, you know, many of these unicorns will make it out and the value will go up, but some won't, right? So
where does that sort of ebb and flow occur? And if you go back to the one slide I showed about venture-backed company formations, there's a bolus of companies that are now three to four years into their venture stage development. And so one of the dynamics on the pure IPO count could be, hey, we see a little bit less of this gusher of private money and we've got a whole load of IPO-ready companies.

So, you know, these things bend, right? They ebb and flow with capital availability.

MR. NELSON: So can you guys talk -- you guys keep on talking about this gusher of private capital into small businesses or this gusher of private capital into emerging businesses. What's the average check size that Tiger Global writes to a company?

MR. HUTCHINSON: I suspect it's not less than 100 million.

MR. NELSON: What would be the small check size that a mutual fund would write to a company?

MR. HUTCHINSON: I suspect it's not less than 100 -- maybe 50 million.

MR. NELSON: I would just caution putting all of those companies in the same bag and saying that all of this money just is going into -- the market is awash with capital.

Because there's well over 100,000 small businesses in this country and you're talking about dozens if not hundreds of deals. So the amount -- the check size in terms of growth stage private equity -- so the check size is huge, the number of deal size is smaller.

I mean, we were just talking in the earlier session -- you weren't here. But, you know, venture is about $50 billion a year right now, angel is about $25 billion a year right now, and so that's $75 billion a year right now. The lottery is a $65 billion a year business. So I would -- I just I guess take issue with that. Because I speak with thousands of entrepreneurs who are capital starved.

MR. SUISSA: Well, can I make two quick comments to that? So I will tell you there are VCs competing with certain one of these names -- names that you would have no idea were doing seed deals. And that is -- and when an entrepreneur has to choose between a VC who knows how to get their ownership and someone who doesn't because they're just taking dibs on something or just spreading money or just trying to please investors who think they should be in the private markets, it's a different game, right?

And I will also say there are -- so I think a phenomenon that happened with the recession, and I don't know which companies you know and this is going to sound horribly arrogant. But there are a lot of companies that shouldn't be companies out there. Like so when the recession happened, you saw a huge surge in the word entrepreneurship, let alone people who wanted to be entrepreneurs because they got fired. My friends got fired from their jobs in the law firms and the banks and the consulting firms. And okay, great, we're young and risky and there's all this stuff, we'll start a company and it's exciting and it's cool and we'll do that. And unfortunately, that phenomenon has been permitted to continue because of this larger phenomenon we're talking about where this money is pouring into companies that wouldn't.

I think if you -- and this maybe comes from my background or where I invest from, but if you really look at -- if you had to go through -- and everyone has their own opinion. If you had to go through and say which one of these companies that are getting funding, period, actually should be, the answer is probably very high that they shouldn't be.

And so I do think there's that phenomenon going on as well.

MR. NELSON: What would you decide a company that should get funding?

MR. SUISSA: Well, so when you invest in a company, right, you're looking for a particular return --

MR. NELSON: What would your return be as a VC?

When you invest in a company, what return multiple are you thinking of in your head? I'm thinking it's about a 2 to 3X.

MR. SUISSA: So VCs, I mean, it's everyone has their own model. It depends if you're angel, whatever. But I would say most VCs when they answer this question, because they have to have an answer even if it's not true, often say, you know, we won't invest in anything if we can't feel that we're almost guaranteed a 3X and yet have the potential for like a 50X or more.

MR. NELSON: And so how many startups would you actually talk to before you actually come across one of those deals?

MR. SUISSA: I think most -- you know, it depends on the firm and where you're looking but most of the big VCs will probably look at at least 200 companies and maybe invest in one of those.

MR. NELSON: So it's 0.5 percent of the companies that you look at actually get funding that you think you have a reasonable chance of getting a 50X return on?

MR. SUISSA: Okay.

MR. NELSON: So for every 200 companies, for every 200 CEOs or entrepreneurs that are out there that are actually interested in capitalizing their company, about 0.5 percent of them actually do.

MR. SUISSA: Right, but when I say the one out of the 200, I mean the 199 shouldn't have the capital, or they should form a different form of capital.

So, you know, I'm coming at this from venture money. There's other money out there that might be looking for a different kind of motive, right, or return profile.
MS. MOTT: May I shift gears here for a minute since you jumped in?

MR. NELSON: Sorry.

MS. MOTT: So when you think about the rate of innovation, when you look at the rate of innovation maybe 10- or 20-year segments, you know, how much of the capital that's pouring in is more a reflection of the opportunity because of the greater rate of innovation? Is that a -- is that something to be considered or am I off base?

MR. GIOVANNETTI: More investable opportunities, more investable opportunities, is what you're --

MS. MOTT: Because of the rate of innovation.

MR. GIOVANNETTI: Yeah.

MS. MOTT: You know, it's not -- I keep thinking, you know, I started my firm 15 years ago and I think about, you know, the companies we had to invest in, quality companies we had to invest in, here in the United States but I'm seeing it all over the world now. It's very different.

I mean, I went to the Netherlands and I walked away looking at some companies I thought were very, you know, great opportunities. Well, Spotify is a good example of that, too. You know, so it's not just -- so I'm not talking about -- the rate of innovation that I've seen in the past 15 years is much more robust than I think it was 15, 20 years ago. Other than the dot com.

MR. GIOVANNETTI: One last comment and we'll turn it back over. Different in my space, where it's a lot of capital intensity. A lot of the innovative companies have a really asset light kind of model with -- especially you're in software and you can avail yourself to cloud and, you know, computing power that's so cheap, your demand for capital is, you know, a small percentage of what it was, you know, 10, 15 years ago.

MR. GIOVANNETTI: Great point.

MR. HUTCHINSON: Yeah. And that's what's allowing some of these most successful tech companies to push out an IPO where, before, these huge pools of capital just weren't there and so, you know, the Googles and Microsoft, you know, was, I don't know, four or five years old and its market cap was $400- or $500 million when it went public.

Where, you know, let's go to this slide, which is actually pretty interesting. It's a little hard to see -- super hard to see. But the --

MR. SUISSA: Just believe what we tell you.

(Laughter.)

MR. HUTCHINSON: The blue is how long they're private. The little orange dot is when they go public. And the black dot is when they hit 10 billion. And what you're seeing is, just looking at it, they are hitting 10 billion before they're going public. It goes from 1980 to 2015.

But it's interesting. So all those companies up top were private for a shorter period of time, went public when they were smaller, and they rode the public markets up to a much bigger valuation.

MR. NELSON: So it's wealth concentration.

MR. SUSSA: Just believe what we tell you.

And so what we're seeing now is just the opposite.

Companies are staying private a lot longer. They're actually hitting these big valuations even before they go public. And one of the -- I think one of the primary reasons that's happening is really the mutual fund investors. And they too have backed off recently. But for a while there, that's how they made their money. They invested in all those orange dots when they went public. They didn't used to invest in private companies the same way, but they still got the same value creation, because they were in at that inflection point and then the company went public and they got to rise that value.

Now, they have to get in when it's private or they miss out. And that's their whole business model, is to sort of, you know, ride the growth. So we've seen what otherwise would have been an IPO in terms of the size of the round and in terms of the liquidity being offered to the employees happening when it's a private company driven by mutual funds, sovereign wealth funds and the like.

MR. SUSSA: And along with that point, and maybe this ties to what Jonathan and Catherine were mentioning earlier, valuations -- because there is a lot of money for these companies we are talking about, valuations get pushed up very high before they should be. In almost every case, before they should be. And it's because there is competition
and you can take money from whoever you want.

There is one company that's likely to go public this year that in the past two rounds said, we're raising money in two days and you have no access to any information, period. Put your money down. And they raised several hundreds of millions of dollars in two days. So it's just the dynamic that's happening.

MR. HUTCHINSON: Yeah, I mean, T. Rowe Price in Twitter, an $800 million round shortly before they went public, Fidelity in Facebook, Morgan Stanley Funds in Airbnb.

MR. SUISSA: Uber.

MR. HUTCHINSON: Yeah, Uber. I mean, these are the type of companies getting these big -- doing these big rounds.

And then what's happening with them is sort of a secondary component, which is kind of a traditional IPO thing, right? You have selling shareholders, the employees then are able then to exercise options and get liquidity.

And what we've seen, and these are just some snippets, you know, Yelp did a pretty small primary round and then did a $100 million buyback from employees. Alibaba, before it went public, probably did the largest private tender offer that -- ever, and certainly that we're aware of, to you know, thousands of employees, led by Silver Lake and DST Global, you know, well north of a billion dollars.

And Mark Zuckerberg and Facebook were really innovators in many respects, because they were losing the talent war. They were four or five years old. People were working for less than market rates in terms of salary. They saw their friends, engineers at Google and Apple, able after a couple years to exercise options and make money. And, you know, Zuckerberg and that management team said, we've got to fix this. We're not going to be able to attract the best talent. How do we do it? And so back in 2009, when everybody thought it was, you know, crazy, some investors put in a lot of money in a primary at a really high valuation, and put in a lot of money in a private tender offer to the employee base that allowed for the exercise of options and for employees to get a little bit of liquidity. You know, a little bit. A million bucks, right? Which is a lot of money to a 25-year-old engineer. But just a small fraction of what their value they had on paper.

And you see the -- so then we saw -- it went from kind of the wild west of secondary trading that people kind of read about with Facebook, employees selling shares to their dentist and things like that, not a lot of control, to very controlled private liquidity programs that were done purposefully and methodically to allow employees to get the type of liquidity they might otherwise -- and early investors, the type of liquidity they might have otherwise gotten in an IPO.

So founder liquidity is no longer taboo. We're seeing it as early as Series B rounds these days. And new technologies, outfits like NASDAQ Private Markets, are able to allow these transactions to happen the way that -- you know, better, faster, cheaper. And so that they have become sort of routine. They are periodic private liquidity programs for these big tech unicorns that allow them to act like a public company in terms of giving their employees that equity incentive that actually can turn into money.

MR. SUISSA: And I will also say that applies to the investors, too. So with VCs, we now have other opportunities for getting out in the private markets at these high valuations. And there are some of these companies where the early VCs are already completely out. Right? I mean, people don't realize that, but we are able to get out without it being a signaling mechanism, which matters.

And because remember, even with these new big growth rounds, they're not joining the board or advising the CEO. It's still the early VCs who are doing that. And so unless we feel the compulsion, it's hard to have the entrepreneur feel the same compulsion.

MR. HUTCHINSON: So, you know, it's an excellent point. We're seeing early stage VCs sell to the growth equity investors, sell to the mutual funds and the sovereign wealth funds. Where, you know, 10, 15 years ago, it would have been really a bad signal for an early stage investor to get liquidity before the company was sold or went public.

And now it's just sort of become a little more routine. And there are pockets of capital that will -- the institutional investors will be able to get liquidity from one another.

And, Julie, move us along if we're --

MR. REARDON: Can I ask a question? In 1980, I worked on an initial public offering for a contract drilling company in Houston. I don't mind telling you the name, it was Drillers, Inc. -- I don't even know exactly what iteration they're in. It was a $20 million IPO. And now that's -- that's worth -- I just calculated here, roughly $58 million would be the equivalent of doing an IPO.

Now, is that size IPO -- because frankly, I don't think our charge here is for the company that does an IPO at a billion dollar valuation. We're much smaller than that. We're worried about the guy with two dry cleaners. You know, is the $58 million IPO just currently off the table? You would never do that now?

MR. HUTCHINSON: I think my answer is it absolutely wouldn't happen.

MR. REARDON: Wouldn't happen?

MR. HUTCHINSON: Would not happen.

MR. NELSON: Why?
MR. HUTCHINSON: Because the market has changed. Historically, there were investment banks that would do that sort of deal and then cover it, have coverage on the back side so that company would actually build and get market attention. So those were sort of like the Alex Browns of the world. They're gone. Hambrecht and Quist, they're gone. Robertson Stephens, they're gone. It was the four horsemen, they called them, and they were these sort of super-regional investment banks that would take a company like that, also a company like Microsoft, you know, which was kind of a smaller business, public. And that doesn't really exist anymore. I don't know if you're seeing it --

MR. SUISSA: No, it doesn't. Not going to happen, I agree.

MR. NELSON: Why don't those investment banks exist anymore? I'm just wondering.

MR. GIOVANNETTI: They got bought up around the late '90s, going into -- so JP Morgan bought Hambrecht and Quist. They all got bought.

MR. HUTCHINSON: Deutsche Bank bought Alex Brown.

MR. GIOVANNETTI: To try to get into this, you know, innovative high-growth space.

But, you know, other things changed, too. So there is, you know, the profitability of the whole analyst market in banks, so that's one of the reasons analyst coverage is hard to get and build your -- and we know that, I'm sure you're all aware, there is this -- going on around decimalization. Right? So it's a lower -- lower cap, less liquid stock, it's harder for a bank to make a trading profit. So does that deal look as interesting anymore?

Even if H&Q still existed, that would be a problem. You know, that deal probably isn't as profitable anymore. Even investment banking fees, there is good competition in investment banking. The IPO is a 7 percent fee. But you see a lot of follow-on offerings that get squeezed down to, you know, 3 or 4 percent, because there's enough competition. Now, that's really happening with the ones everyone wants into. But generally, that whole banking model is less profitable. So that is a challenge.

And then you have investors who have a lot of capital to put to work. And so it's a 25 or now if it's 50 with inflation, you know, and you're going to get a 10 percent allocation of that, you know, do you want to write a $5 million check? Some may. But, you know, a lot of the mutual funds are like, I need to put 40- to 50 million to work at a time, because I just have so much capital. If I'm going to spend all that time to listen to the banker pitch, understand the company, get excited about it, I can't just put $4- or $5 million to work, I've got to put more to work.

MR. SUISSA: It's an interesting problem. And this goes to Jonathan's point. You know, partially me coming from the tech world, I think of things. And everything that is happening in my world is in California. Right? But there are lots of companies growing in other parts of the country that a VC wouldn't step foot in and this money is not going to go to, no matter how well they're doing, right? And so -- and that probably goes to your broader point.

MR. NELSON: No, I mean, I'm in California and I have a 55-company portfolio and in aggregate they're worth about 600 million bucks. They've raised about $100 million. But 40 percent of my portfolio have women founders. And 4 percent of venture-funded startups have women executives. And half of my portfolio is Hispanic founders, which is less than 1 percent; 10 percent of my portfolio have black founders, which is less than 1 percent.

And so --

MR. SUISSA: And those percentages are probably 50 percent of the percent of the other VCs, quite frankly.

MR. NELSON: Yeah, no. I mean, I've worked with the White House on, you know, diversity sort of stuff. And we have a blind selection process. So we just remove people's names and pictures and that sort of stuff. And I speak Spanish and so that's part of the Hispanic thing.

But I just -- it's hard for me -- what I see is there is a broad bottom. You know, people can get to accelerators. They might be able to get to $1- or $2 million. And there's this huge scrunch. And then if I need a $100 million check, that's actually a lot easier to come by.

MR. SUISSA: Correct. That's right.

MR. HUTCHINSON: Seven to 10 million is tough money.

MR. NELSON: And so, you know, which is why we're talking about secondary liquidity options, why that's an issue, and which is why Catherine was talking about angel investor fatigue, because there's no liquidity for these investors. And it just -- it feels broken for those small, sub-$100 million businesses.

MS. YAMANAKA: I think you're right, Jonathan. And I'm not worried about you guys. You're going to make it out. The top always makes out. You keep doing what you're doing, and do it some more.

Unfortunately or fortunately, I think what we're here for is to figure out, you know, the 99.9995 percent that don't fit into this model. So I think your information actually is very interesting. It helps me understand why that perception. And, you know, the gushers of capital. And when we saw it, we're like, where are these gushers? Other than, you know, up there in the Silicon Valley.

MS. HANKS: Only gushing in the valley.
MS. YAMANAKA: Yeah, very narrow part, right?

Within one day's drive, all those stats, whatever.

So I think our challenge is to identify what you guys are doing really well, why you're doing it, and how can actually we roll it out to where a greater portion -- in fact, greater numbers, maybe not in dollars, but the greater numbers of people are going to participate in this, grow jobs, grow businesses, grow capital. It's going to help out, maybe not to the extent that your, you know, demographics work out. But is there something that we could take, apply and learn, or is this just like going to the moon versus going to the grocery store? Does it not apply at all.

MR. HUTCHINSON: I think it's a little off topic from this, but certainly when there is a tremendous amount of competition for very few deals, venture capitalists at their heart are entrepreneurs themselves, and very smart, and they'll seek opportunities that not everyone else is chasing because it's too hard or too expensive. So Steve Case in Revolution talking about looking into jurisdictions that aren't Silicon Valley.

And I think just anecdotally, we're seeing more of that. Things like companies in New Orleans, in Louisiana, that you know, I've never done a deal there. And all of a sudden in the past couple months, we're starting to see things. You know, North Carolina has historically had a solid base, and we're seeing more activity there.

So I think, because of this phenomenon and the hyper competition for the best deals, you could see smart money saying, I don't want to overpay. There are smart people in other places in this country, let's go see if we can find -- unearth some of that. But you might have a different perspective.

MR. SUISSA: No, I agree with that. And so our fund, SineWave, because I came from some of the bigger funds like NEA, we only invest with those funds, actually, for financing risk, which is at the heart of what a lot of you are talking about. And I will say that the really top tier funds are not -- they'll pretend they are and the press will say that and they would deny it to the nth degree, but they are not doing a lot of deals right now, at all. And I know that, because I'm looking to invest with them. I invest alongside them. I monitor and I work with them as partners. And they're just not doing a lot of deals right now. But we're more than happy to watch all the others bump up our existing deals. Right?

So that is an important phenomenon, and you see some firms who used to be investing all the time taking on different industries. All of a sudden, VC's like insurance.

Like no one ever paid attention to insurance before. All of a sudden, they like --
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<td>number one reason if you ask me why should a company go</td>
<td>wanted to get it to be a $250 million company and they don't</td>
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<td>public, I don't think any of the ones -- we dismissed a lot</td>
<td>have any molecular chemists working for them or anything like</td>
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<td>of the ones as not being relevant anymore. The only one that</td>
<td>that. It's something that's, you know, it's one of those</td>
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<td>I still think resonates is the legitimacy point. Right?</td>
<td>ugly businesses that just makes money, okay? So what do I do</td>
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<td>Being able to be, I am a public company, I am real.</td>
<td>to finance it to get it to -- maybe it has the potential to</td>
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<td>Everything else can be done elsewhere.</td>
<td>go to a quarter of a billion in assets. I mean, venture</td>
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<td>But when that marketing thing turns against you,</td>
<td>capital comes to mind, angels come to mind.</td>
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<td>right, like when companies go public and they're already</td>
<td>I mean, angels are local. Venture capital, you</td>
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<td>criticized in the first quarter for not producing -- the</td>
<td>know, we do have some financing sources in Texas. Are those</td>
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<td>number one thing when our companies go public is they're not</td>
<td>the choices? I mean, industry partners. I assume that you</td>
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<td>profitable. It's because they're throwing all their money</td>
<td>can do joint ventures or something like that, even if the</td>
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<td>into growth, right? That's what they're supposed to do.</td>
<td>company doesn't want to buy you, they may do a JV or</td>
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<td>Like we don't look for them to break even, we look for them</td>
<td>something like that. Are those the options that are</td>
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<td>to grow and grow and grow. And it ends up killing them.</td>
<td>available if we can't do a public offering?</td>
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<td>Like, or you have a model -- and I'm not arguing</td>
<td>I'm just trying to figure out. And I realize I'm</td>
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<td>about any particular company's value, but you have a model</td>
<td>outside of your fairway. I'm a little smaller. But help me</td>
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<td>like Groupon who says, look, the way we do our business is</td>
<td>here understand what the financing options are, if I'm not in</td>
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<td>different than the way you think about things, so we're going</td>
<td>a whiz-bang, sizzling business but it's just one of those</td>
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<td>to approach this a little bit differently, right? And that</td>
<td>ugly old --</td>
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<td>may be good or bad or legal or not legal, or whatever the</td>
<td>MR. GIOVANNETTI: Debt is not an option?</td>
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<td>drama was. But that was a problem for them, right? And they</td>
<td>MR. REARDON: Well, I mean, you can only take debt</td>
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<td>pulled -- it really hurt them, in a big way.</td>
<td>so far. I mean, at some point, somebody is going to wise up</td>
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<td>Similarly, with these companies, right, the ones</td>
<td>and say, I'm not going to get my money back.</td>
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<td>that you're talking about, Patrick, it's a marketing thing.</td>
<td>MR. GIOVANNETTI: Well, it depends on how much cash</td>
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<td>Right, if I view you as this little company in the middle of</td>
<td>flow is coming into a business, and stabilizes, right?</td>
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<td>-- why is so much in the valley? Right? It's in the valley</td>
<td>MR. REARDON: Right. But suppose it's all going</td>
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<td>and people think you need to come to the valley because you</td>
<td>back into growth. I mean, maybe if you're building</td>
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<td>need that stamp in order to attract capital and you need that</td>
<td>smokestack, there's collateral being created there that the</td>
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<td>stamp in order to attract talent. And everybody thinks they</td>
<td>bank gets excited about. But, you know, we know about banks</td>
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<td>need to go there in order to work at a great tech firm. So</td>
<td>and we have banks.</td>
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<td>everything starts to congeal in one place, right?</td>
<td>MR. HUTCHINSON: I mean, I think the quickest way</td>
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<td>And if you market -- and so people are really</td>
<td>to 250 million, and we see it all the time, is through a --</td>
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<td>interested in growth, and that's why venture is really hot.</td>
<td>sell control to a private equity fund and they invest in you,</td>
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<td>But I'll tell you, people are pulling back from that right</td>
<td>so you sell 60, 75 percent of it to, you know, middle market</td>
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<td>now, right? People are interested in stable returns right</td>
<td>buyout fund in Boston or Chicago and they will then invest</td>
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<td>now.</td>
<td>into that company to do more acquisitions, to consolidate</td>
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<td>And so there is an opportunity in some of these</td>
<td>smaller players. And that's sort of the path of least</td>
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<td>other places, where there are stable businesses in</td>
<td>resistance.</td>
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<td>traditionally stable industries that have stable returns and</td>
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<td>give you an alternative to -- just give you an opportunity.</td>
<td>control.</td>
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<td>A lot of them don't even think there are alternatives.</td>
<td>MR. REARDON: Right.</td>
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<td>And I don't know what that means. Right? But I do</td>
<td>MR. HUTCHINSON: But they've gotten some liquidity</td>
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<td>think it's about how you spin it, how you market it and how</td>
<td>once. And we've seen it work really well for founders and</td>
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<td>the people who need to hear that marketing hear it. Right?</td>
<td>families to give up that control, turn over, you know, that</td>
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<td>So how do you publicize that to the folks who aren't in</td>
<td>control to institutional investors, professional boards, go</td>
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<td>Dallas or aren't in New Orleans, like Jamie mentioned.</td>
<td>out and do a couple of acquisitions, and the next thing you</td>
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<td>MR. REARDON: Okay, now, let's say I've got this</td>
<td>know you have increased the value to 250 million. And that</td>
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<td>company that I did the public offering for in 1980. And</td>
<td>second bite at the apple for that rollover piece can be</td>
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<td>let's use $60 million as a round number. This company is a</td>
<td>meaningful.</td>
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<td>private company, it's got a $60 million value on it. If I</td>
<td>MR. REARDON: Right.</td>
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MR. HUTCHINSON: That's the path of least resistance. But, you know, there are joint ventures and taking debt and trying to find a family office.

We've seen sort of a real expansion of what we call fundless sponsors. You know, individuals that are out of the big private equity shops that don't have committed pools of capital but know how to do deals. They will find a company like that and say, look, I will bring in some private equity partners and help you build the business.

We're seeing a lot of transactions and those are particularly -- a $50 million tee shirt company in Atlanta, you know, a health care services company in Cleveland. I mean, those are the sort of things where you're seeing private -- middle market private equity really play a role.

MR. REARDON: I'm sorry, I'll pass on my next question. I'll let Jonathan speak.

MR. NELSON: If you guys were going to design a system -- okay, we have a magic wand and we're going to design a system for investors to be able to raise $10-, $20-, $50 million, or for companies to be able to raise from $1- to, I don't know, $100 million and then achieve liquidity on the back end, what would that do or what would you tweak about the current system?

MR. HUTCHINSON: That's a hard one.

MR. SUISSA: Depends who you are. Right? So as a VC, I have different incentives than an entrepreneur, who has different incentives, et cetera, et cetera. So I'll be against my interests and talk as an entrepreneur, right?

And so you already see things developing of this nature, right? Like Kickstarter is a very basic example of an alternative way to raise money that takes us out of the equation. Sometimes, I think it's a dumb choice to go on Kickstarter and sometimes it's a smart choice. Right? And similarly, Angel List is another great example of that.

You also have several of these kind of family office networks or middle tier institutional networks, probably ones that are relevant to what Patrick's doing, actually, creating these kinds of groups that deals can post on the platform, when anyone sees it, people can comment. Kind of like an Angel List, but for all stages of things, including for funds, right?

And I do think that it's about the information. Right? So it's about if entrepreneurs -- there's a lot of people to finance these things and a lot of people looking for the money. So it's about making the connection between the two. Right? And so I do see the proliferations allowing that.

So the answer is, the more information, the better you can connect the parties, the better.

For me -- the reason I say it's different for a VC is because, you know, the less options you have, the more you've got to go with me, the better it is for me. Right?

So that's, you know, a caveat.

MR. NELSON: So is that basically more efficient markets?

MR. SUISSA: To a degree. It's also why you see the development of -- so my firm is a great example of this, as is kind of the phenomenon that Andreessen Horowitz has set the VC world to which is, you know, the value-added investor. Right? Which was kind of a fake term, you know, a decade ago and is now a real term. If you have a choice, then the model needs to change, right? We need to find other ways to help our companies and add value or you can't get in. And so I think that's a similar element, too. So the more information, the more opportunity, the more I have to do more, which by the way is in all the incentives of what you guys are trying to accomplish, right?

MS. MOTT: So I would like to switch back, please, to liquidity. One of the things we have been discussing is we want to try to understand the impact on the fact that investors invest and hold things longer. Therefore, there is less money coming back into the market. So I see that as, okay, so typically there would be a liquidity event and that money, the profits, would be plowed right back into the --

So we're trying to work through this other piece that we've talked about is I think there's -- and I'm anxious to hear from the SEC how the tick pilot is going. So, you know, at one time there was a lower tier public market. It doesn't exist anymore. And does that seem like it's something like we should be exploring or considering so that again we can create this -- I'm calling it velocity of money, but that's probably an incorrect term. That's a Treasury term and I'm probably using it wrong.

So what are your thoughts about, you know, liquidity, how that impacts IRR, how it impacts, you know, the flow of money into the economy long term, even though there's a like -- to me, I look at it and I say, supply, demand. Supply is pretty big right now, so that's impacting what we're seeing, is supply.

So what are your thoughts on liquidity options? So I'm sort of throwing a whole bunch of questions --
MR. SUISSA: I'll just say one thing and then let these guys chime in, because I think they know more about it. I don't think there's a lack of liquidity at all. I just think it's in different places than you think it is. So -- and that's kind of the point of the conversation. Right? There's other ways to get out, there's other ways to move money, there's other ways to exit at all different stages. And that's actually why less companies are going public, in my opinion, because it is not the only option for liquidity.

MR. HUTCHINSON: There is more liquidity now than ever.

MR. SUISSA: Yeah, I agree.

MR. HUTCHINSON: And, you know, things like 4(a)(7) to make it a little clearer that, yes, there's a way to do it. But, you know, in 2000 and before the 2007, you would really never see founders and employees getting liquidity until the venture investors got liquidity. And now we see --

MS. MOTT: Sooner.

MR. HUTCHINSON: Sooner. Like in a Series B round is sort of the first place we see it, which is pretty early. You know, the company still has a long ways to go but we're seeing founders and some early employees being able to get liquidity. And then seeing programmatic, frequent, you know, once a quarter or twice a year type of liquidity for the larger private companies. That didn't exist. And, you know, things -- technologies that allow that to occur easier, you know, are sort of all contributing to this additional liquidity that we have now.

And those people are buying houses. And, you know, I think the real estate prices in Silicon Valley reflect a lot more liquidity.

MR. SUISSA: It is not without conflict, either. People are concerned about it still because, you know, it incentives, right? So the reason it's happening is because of the talent crunch, right? People need to be able to keep their talent. But then it's also when you're giving talent a way out of being locked into the incentive structure, it creates a problem. So people are still trying to figure it out. I don't think any of the companies have figured it out, you know, to a tee yet.

MR. GIOVANNETTI: They could have gone public.

MS. MOTT: I was going to say that also for life science biotechs? I mean, my sense of what they're doing with their capital really has to be in clinical development.

MR. GIOVANNETTI: A hundred percent.

MS. MOTT: I mean, clinical trials. So that would be different, would you agree?

MR. GIOVANNETTI: Yeah, and they still adopt much more of a traditional model. I mean, it might not be founding, three years to an IPO, it might be five, eight, depending on, you know, where the market is. Because they don't really have a choice because, you know, even to this point you have to get your employees liquidity, you only have to get them there because there's masses sources of private capital that can keep you private and you get to keep control and there's a benefit for that, right? If that didn't exist, you would do an IPO because you still need capital.

MR. SUISSA: That's a good point.

MR. GIOVANNETTI: All of these phenomena are about the larger market forces that are at work. To the extent that many of those don't apply in biotech, we see more of a traditional model. And so we don't see founders getting out until after the lockups on an IPO, much the way tech was 15 years ago. It really hasn't changed, you know.

I do think, just to the -- you brought up the tick size. That is interesting to watch and we will see what the results are of that as well. Whether that will create float for some of these smaller cap stocks and keep banks and analysts in the game so you don't -- you know, you might have a different calculus in going public. It's not going to change the calculus of I've got private capital, I don't need to go public. But, you know, if you're a company that otherwise is or that market dries up, I still don't think it's going to overcome -- anything like that is going to overcome the fact that a lot of public investors even want to put big chunks of capital to work and it's got to have enough of a float to make that work for them, right? That's just where a lot of the capital -- the pools that it's invested from, you know, that's a phenomenon that's going to be difficult to overcome. But, you know, this could be helpful.

MS. HANKS: Can I raise a question that's going to tie into something that we talked about this morning, which was liquidity in the Regulation A space? When you talk about companies as early as the Series B round, what size of company are we talking about there? Because I have a feeling that the companies we were talking about this morning are very much smaller than the guys who are now getting liquidity as early as Series B.

MR. HUTCHINSON: So maybe, you know, a $12- to $15 million premoney value, maybe up to 20 million. And they're raising, you know, sort of $5- to $10 million.

MR. SUISSA: Is that for Series B?

MR. HUTCHINSON: Yeah, on the small side.

MR. SUISSA: Oh, okay. I mean, that's what the A is now, because the valuations have gone up.

Typical -- I mean, traditionally a Series B company was a company, you know, had maybe 5 million in revenue, 5 to 10 in revenue kind of thing, like early revenue. Around the
like, you know, 30s, 40s, 50s in valuation. You know, 10X
would be high, right, of that revenue multiple.

Now, like a typical -- an A can get that high.
More like the 20s, 30s. But things have just been pushed up.
But traditionally, Jamie is correct, that's the
right size.

MR. HUTCHINSON: Fenwick does a really nice study
every quarter, showing sort of where the value from the A and
the B is. And I was actually just looking at theirs. So I
think things -- it definitely is creeping higher for every
round.

MR. SUISSA: And size wise, too. Bs used to be
like $15 million infusion and now they can be up to like 40
million, 50 million.

MR. GIOVANNETTI: I know biotech is nitchy, but the
other thing that really has changed is I can't remember the
last time I helped an entrepreneur with a business plan and
pitched it to a VC. VCs create their own companies, they
figure out where the science is, they go find the management
team, they license it, and it's very much a build your own.
So they're not looking at 200 deals, like the way it is in
tech, where you can start something with low capital; you're
going to need a lot of capital to begin with.
And in the '90s, when it was Hambrecht and Quist
and Robertson Stephens, you know, I did a lot of IPOs where
the funds raised were 20 million, 25 million, 15 -- I can
remember a 15 million.

We won't even really look seriously about getting
involved with a company in Series A in life sciences if it
hasn't raised 20 or 25, because it's a couple of years of
burn. You know, if they've only raised five, it's like, by
the time we get involved, they may not be here, right. So
the scale is completely different. But it also comes from
the fact that investors have learned, saying it's too risky,
in a way, to go to the entrepreneur, so to speak. They want
to -- they're already walking the halls in the labs to figure
out who the potential entrepreneur is and recruiting them
out. So it's a very different dynamic.

MR. NELSON: Can you talk a little bit more about
what it was like when you had those smaller investment banks
raising smaller rounds for more companies? Like what were
their economics like? What were their economics like?

MR. GIOVANNETTI: They were doing 7 percent, you
know, on the IPO, same. They were -- they were probably
making a little -- and I'm not a banking expert. They were
probably making a little more on the trades after. And at
least in life sciences and a lot in tech, you would count on
two or three pretty fast follow-ons at that same 7, 8
percent. So you could see -- you know, even though it was a
small dollar to begin with, maybe it was 15, your secondary
was 25 and then you did a 30 down the road, you know, that's
not a bad income stream, right, for a smaller bank. And you
got some trading out of it. And you might get an M&A deal
out of one of them. So, you know, it's not -- they got
pretty good multiples at the time when tech was first really
taking off.

MR. SUISSA: This might be a switch a little bit,
but I've been thinking about, Jonathan, about your firm and
the numbers and how to -- and also the question of how do we
fix some of these things. A mentor of mine, Steve Koltai,
who writes a lot on entrepreneurship has this whole list of
things that are required for a successful entrepreneurship
ecosystem. And one of the ones I always remember is
celebrating the wins. And I think that's key. Right?
So when you go invest in the middle of the country
-- it happened with New York. So when New York became a big
venture ecosystem, people threw tons of money in and tons of
money in, and then it all stopped. Because everyone is like,
where are the IPOs? Where are the exits? It's like a nice
idea for a few years and we'll all jump on the band wagon,
because by nature human beings are lemmings, including
investors. And we'll all do it and we'll all go after it.
But until you see the wins, no one is going to do it. And
when you do see the wins, if no one knows about it, that
might be good for you as an investor because you have dibs on
those great opportunities, but it doesn't encourage more
money to come in.

So there is something about, you know, identifying
the wins, identifying the success stories, and being able to
make them more clear. So in your business, with the
different minorities and women and gender and running things,
you know, show the wins.

We had that at NEA with Care.com, when Sheila took
her company public. So the more you -- the more you
publicize, the more people see that it actually works and,
you know, affects their bottom line, the more they're
interested.

MS. HANKS: We've only got a few minutes left. I
just wanted to make sure, is there anything from the
panelists that you think we've missed? Any insights or
slides?
I'm pleased that the conversation has gone exactly
the way that we need it to go, but are we missing anything
from your point of view?

MR. HUTCHINSON: I think maybe just, you know, one
of the points about why companies aren't going public is
there is a lot of M&A still, and you're seeing it in the big
strategics. And could you see more of it if the repatriation
cash under the new administration is allowed in a tax
efficient way? You can't underestimate the effect that that
has on a lot of companies. Just they get big enough and then
Google or Oracle or Cisco comes in and makes a compelling
offer and they sell before they would even get the chance to
go public.

And just recently we're seeing, you know, these
dual track -- where a company will file to go public and
right before they go, a big strategic will snap them up.
Cisco did that with AppDynamics, Stone Canyon did it with
Mauser. And those are just in the past couple months.
So I think that is -- we touched on it, but that's
an important issue why companies are staying private longer
or just not even ever getting the chance to go public,
because there are deep pools of capital. The big strategics
have a lot of equity cash. Debt is cheap and they're able to
pay, you know, top dollar to take these companies sort of out
of play.

MR. GIOVANNETTI: And you're showing the big guys
in tech, but this is happening in other sectors. You know,
talk about banking and insurance, they're monitoring the
FinTech startups. We started keeping a database of like
5,000 FinTech companies because the banks want to know,
should we buy them, are they innovators, are they
competition, who's-going-to-eat-our-lunch kind of thing.
It's happening in consumer products.
A lot of companies have set up their own internal
innovation arms, realized that it's hard to create an
innovative culture yourself, and so they're much more looking
externally, saying do I partner it or do I buy it in.
And, you know, it's not always tech but it's often
got a tech feel to it. But the acquirer is not always a tech
company. So there are many that I would put in that serial
acquirer category.

MR. HUTCHINSON: And it's not even a public
company. I mean, we're just starting maybe to see the tip of
the iceberg as, you know, Uber and DD and Airbnb, for
example, have recently announced acquisitions, have been able
to borrow a bunch of money. You know, could we see that sort
of strategic expand outside of the historically large public
companies that did that sort of M&A.
And the last issue, it's still expensive to be
public. And, you know, to Jonathan's point, maybe around why
we're not seeing some of these smaller public companies is,
you know, the compliance makes it -- makes it expensive.
It's real money. I mean, it's millions of dollars to go
public and it's millions of dollars to stay public. And it
has to sort of be economically -- make economic sense to do
that and make that investment. Those are probably the
biggest ones we didn't touch on.

MR. SUISSA: I had a subjective one that I think is
really important. So, you know, entrepreneurs, Jamie
mentioned this early, they believe in their company, they
want to grow it, they're long term, they don't care about
this stuff and they don't want to hear you telling them that
they're not -- you know, that their, you know, passion is not
real or not working because you don't understand it. Right?
And so I think that's what kind of pulls them away.
But the VCs are really important, too. So VCs,
when they invest in something or they have a bad experience,
they wear their scars forever. They just don't forget. It's
amazing. We'll have a meeting. Well, do you remember 15
years ago when we did this thing? It's like, there were no
phones, or whatever, Apple didn't exist or whatever, right?

(Laughter.)
MR. SUISSA: And they don't forget. And when they
do take the leap back in, which they ultimately do, often, if
they get hurt again, it almost kills the opportunity set.
And I would say VCs have been significantly -- I would say
they feel scars, whether they will admit it or not, from the
most recent IPOs or the past IPOs. Some recent examples, we
already gave examples of. And all of them have had it with
something, because we're all in different deals but all in a
lot of the same deals, too.
This year is a very crucial year, because there are
a lot of tech companies going public this year, or that are
expected to. And the good news for the bigger point is,
there does get a point in which we say, all right, this is
ridiculous, you need to go public. Like there is a point at
which everyone is like, this just needs to happen.
I don't have any insider knowledge, but I would bet
Uber is feeling that, I would bet Airbnb is feeling that.
Right? So there are these -- there is a point at which it
has to happen.
But if it doesn't go well, it will, especially
given all the new opportunities and options and alternative
routes, it will kill it. So, fingers crossed. And if there
is a way to mediate that, that would be a great thing.

MS. HANKS: All right, thank you. Any follow-up
questions, wind-up questions from our panelists?
MR. NELSON: Just my personal stuff is on my
sleeve, of course. But I'm actively looking at taking
companies, like doing a Reg A offering and then seeing if the
compliance is actually about the same as taking a company
public on the London AIM exchange. For them, $5 million a
year, growing 30 percent year over year is actually a nice
IPO. Or even looking at the Australian Stock Exchange and,
you know, being public but actively traded on a foreign
exchange.

MS. TIERNEY: I think just one thing, to go back to
some of the themes that you guys have touched on, there was a
market for small IPOs that does not exist anymore. These
corporations do not belong in the public markets at, you know,
even like sub-billion dollar market cap companies, they
struggle. You're not going to get research written about
your company, you're not going to have a bank getting you to
your next deal. The cost of being public, it says 2.5 up
there. I've talked about being the general counsel of a
public company, Brian has as well. Those are real costs.
So, you know, it's great to say we want companies
to go public, and we do. There are definitely wonderful
reasons and valid reasons for a company to go public. But
despite that, until we've sorted out some of the things like tick size
instead of decimalization, right, that does provide more
spread for research and other sort of things that came with,
you know, penny increment trading before that change.
But there are enough market forces right now that I
think our goal should also be to do what we talked about
earlier today, to try to find a way to help create off-
public-exchange liquidity for these companies that are very
successful, they're just not, you know, tech unicorns. So I
think that has to be part of what we focus on, because those
corporations are private, they're getting funding, they can get
debt, whatever. They're not the ones we're seeing in the
news. But they probably also shouldn't be in a highly
illiquid public market listing.

MS. HANKS: Anybody else? Well, thank you very much indeed. That was really
useful. Thank you.

MR. SUISSA: Thanks for having us.

(Applause.)

MS. HANKS: Julie, can we get the slides sent
round?

MS. DAVIS: They're on the web, but I'll --

MS. HANKS: Thank you.

Okay, guys. We're going to move on to the final
piece of today's program, which is board diversity.

We've now had a couple of discussions on the
recommendations, spent a good portion of our time on October
5, as well as the conference call on December 7.
As you will recall, currently Regulation SK and
Item 407(c)(2)(vi) requires companies to disclose in their
proxy statements whether a nominating committee considers
diversity in identifying nominees for the company's board of
directors. The rule also requires that if the company has a
policy with respect to the consideration of diversity in
identifying director nominees, how that policy is implemented
and how its effectiveness is assessed.
As we have discussed, the disclosure requirement is
soft, diversity is not defined, which means the regulation
hasn't been as helpful in generating useful information as it
could be.

Based on our prior discussions, we have come up
with a draft recommendations. You should all have both --
have received soft and now you've got hard copies of the
recommendation. And so I think you have also seen the
suggestions that Greg Yadley sent around to make changes to
that wording. And the changes that Greg had suggested were
to change the recommendation. The recommendation is at the
bottom of the page.

And his -- of course now I've lost his statement.

He says instead of saying while generally the
definition of diversity should be up to each issuer, issuers
should include disclosure regarding race, gender and
ethnicity of each member/nominee as self-identified by the
individual. That's in our current draft.

The alternative language being suggested is, while
generally the definition of diversity should be up to each
issuer, issuers should include disclosure whether race,
gender and ethnicity of each member/nominee, as self-
identified by the individual, are considered.

Anybody got any opinions as to -- yeah.

So we're looking at the sentence that begins, while
generally. And it -- the alternative that Greg is suggesting
is, while generally the definition of diversity should be up
to each issuer, issuers should include disclosure whether
race, gender and ethnicity of each member/nominee, as self-
identified by the individual, are considered.

There's a slightly different spin on the -- no, the
race, gender and ethnicity of each member would be still
self-identified. That is still included.

MS. MOTT: He just changed the word -- he just
changed the word "regarding" to "whether."

MS. HANKS: "Are considered." Yeah.

MS. YAMANAKA: So it kind of changes --

MS. HANKS: It's did you think about this, did you
consider it. That's the big change between the two.

MS. SCHIMPP: From my standpoint, it just strikes
me as less useful information. The answer is, yes/no, and it
doesn't give you any granularity on gender, racial, ethnic,
you know, representation. Which is really what the value add
of this kind of report could be.

MS. HANKS: The original is more what have you got
on your board.

MS. SCHIMPP: Right.

MS. HANKS: And then the new one was, did you think
about who you've got on your board. And apologies to Greg if
he's listening in; I'm totally misphrasing that.

MS. MOTT: Yeah, but we discussed that. And --

MS. HANKS: We have discussed these words a lot.

MS. MOTT: I know. I mean, okay, so we did discuss
it and my preference was for the detail. I like the original language that we have.

MS. HANKS: Any opposing? All right.

So I think the sense of the panel is that we would leave the language as it is currently drafted. Okay.

And what about the last sentence? Greg is asking -- this is the sentence. While disclosure should be the default, issuers should have the option to opt out. Do we keep that sentence?

MR. NELSON: Yes.

MS. YAMANAKA: The way I'm reading it is that we're saying if you don't want to answer, you don't have to. Right? Whereas, if you leave it aside if you put it in or leave it out, they're going to be obligated to answer.

MS. HANKS: I'm not sure if you're going to be obligating -- I suppose you would, yeah. Yes, you're right.

MS. YAMANAKA: If that's the case --

MS. HANKS: You want -- if you want them to disclose --

MS. YAMANAKA: To Michele's point, if we think the information is relevant, then -- because my opinion is the people who don't want to answer are going to be the ones who opt out. Right? So why do we want to put compliance in for people who -- but that's just --

MS. HANKS: Any objections to that? And so what the proposal is right now is that we keep the language as disclosed -- as set out in this draft. We need to take a vote on that now?

MS. KASSAN: I thought we were saying that we wanted to remove the last sentence? I thought --

MS. HANKS: The suggestion was to remove it. But I think --

MS. KASSAN: I thought Laura was agreeing with that. And I think I do, too, actually.

MS. HANKS: You agree to remove it?

MS. YAMANAKA: The way I read it -- okay, let me go back again -- is if we leave it in, they can opt out of it. So do we want them to be able to opt out or not report? And if the answer is yes, then we leave it in. If we really want this information --

MS. HANKS: You want to force the information --

MS. YAMANAKA: You want to force the information, I would remove the sentence.

MS. SCHIMPP: It's not quite relevant here, but on a program at SBA where we run where we have an opt out portion, we're finding that a lot of women-owned businesses opt out because they don't want to be -- they feel like they'll be disadvantaged by being identified.

MS. HANKS: Interesting.

MS. SCHIMPP: The opt out can be used in ways that one doesn't intend. And if the information is useful, eliminating the opt out, I would endorse eliminating it.

MS. HANKS: Lisa?

MS. SHIMKAT: We had a lot of discussion surrounding that. And I am more in favor of leaving it there. And that's why we put the language in, for the default to be to answer and put this out there. Because the default, issuers should have the option to opt out. Do we take that sentence out.

So my -- my preference is to leave it in as is.

MS. HANKS: Any other thoughts?

MS. KASSAN: I mean, it does provide the option for them to define diversity however they want. So that kind of allows some flexibility there, if they really don't want to talk about ethnicity, gender and race. So I think I feel comfortable taking it out.

MR. AGUILAR: Yeah, I think if we look back at the fifth sentence, whether it will fail to generate the information that's useful, if we leave that sentence in, I think the same result -- we're going to get the same result as we're currently getting. So I would -- I would agree that we should take that sentence out.

MS. HANKS: Can we have a proposal to take this

PARTICIPANT: So moved.

Okay, and a second?

MR. AGUILAR: Second.

MS. HANKS: All in favor?

I don't want to force a premature vote.

MR. NELSON: I'd like it to be kept in.

MS. HANKS: And Catherine?

MS. MOTT: I just don't know. I'm sorry, I'm not sure. Because I'm trying to think through the implications of leaving it in or taking it out, based on the wording that already exists there. So maybe our attorney can help us.

I mean --

MR. REARDON: They are members of the bar.

MS. MOTT: I'm sorry to hold things up.

MS. HANKS: The first part does read "require issuers to describe." MR. REARDON: Catherine, I mean, I don't know what the -- I don't know what the right solution is here. I'm trying to defer to you all, and I've talked enough on other things.

But I mean, it's a sticky wicket however you do it. I mean, it's -- I mean, I think just go with your gut because it is -- I mean, I think -- the only thought I had was is our system or the SEC's system, it's not mine, is one of
I don't think we mandate, unless there is a special statutory admonition about diversity and disclosure of it, is there -- I mean, we're not mandating you to have a board that's diverse; we're just saying you disclose it. And so, I mean, I think it seems to me to be within the powers of the SEC to say you need to disclose that.

And so then it becomes a matter of policy and what we all think is in the best interests. Corporate America knows that diversity is a hot button and rightly so, I think some people would say. And I agree with that to an extent.

And Jonathan and I talked about it at the last meeting, that, you know, there are any number of views on this. And I'm trying to be sensitive and not step on any toes.

So I think it doesn't matter. At the end of the day, the Commission is going to give it a lot more thought and they'll come to probably a more considered decision than I'm capable of doing.

MR. HANKS: This is, of course, only a recommendation and it's not the actual wording of whatever we think the Commission should adopt.

Would it change anybody's mind if the final sentence said something along the lines of, while disclosure should be the default, issuers should have the option to opt out if they explain why? Make any difference?

MR. REARDON: Then you get into the what is an adequate explanation. I mean, this is such -- I have -- this young lawyer -- you heard me mention the young lawyer who went to Washington and Lee and I've known since he was a freshman in college. Well, I talked to him recently and he said, well -- and it was about this very issue. And I said, Chad, you know, I mean -- and we were talking about it. And I think I mentioned on one of the calls that I knew a woman who was -- had European ancestry but she had grown up in Zimbabwe and moved to Fort Worth and I met her and she said, well, I'm African American. Yet she's the color I am. I mean, this whole thing is rather imprecise. And my friend Chad, whose parents are -- his father is African American, his mother is white. He says, I check both boxes.

So there's no precision here. And, I mean, you do the best you can and we go from there. We have the similar situation with our former President who -- his father was not African American, he was African. His mother was white. He self-identifies as African American. I mean, it's too complicated for me.

MS. HANKS: So we will leave the box checking for the people who write the rules.

Lisa?

MS. SHIMKAT: Yes. What is our overall intent with the disclosure? Is it data that we're going to utilize? Is it data for decisionmaking? What did we determine from that originally?

MS. KASSAN: It's for potential investors.

MS. HANKS: I mean, I think the summary of the discussions in the two previous discussions are like after considering that, I mean, those are I think our objectives and the aim at which the recommendation looks to underscore.

MS. SHIMKAT: And I will support whichever way we go. And since there is full self-disclosure and we're not going through and redefining each of the categories, you know, the data could be skewed either way. That's why I was more in favor of the opt out side of it. Because you are going to do other due diligence, you are going to do other items that are going to be important, as well. This is really, really important. I'm just worried that we won't have as consistent data as we think we would have.

MS. HANKS: I don't think you're always going to get a lot of data from this. Not that you can put into charts, I think.

MS. YAMANAKA: And I think that's the case. I think that we're always going to have -- my own children, right, they go, mom, which box should I check? And frankly, I hope we get to the point where, you know, the box is always checked at the bottom or whatever it is. But for today, for now, we've had multiple discussions about this and I think we've all identified and come to the conclusion statistically from studies, et cetera, that it is a business benefit to include diversity. And which is why maybe investors would like to know, in regards to disclosure that Patrick is speaking about, this is just another piece of information to disclose.

Is it going to be perfect? No, absolutely not.

But it's going to give an essence of perhaps a picture, other people do all their other due diligence. And so it gives them a first place to start, you know, or end, as the case may be, depending on where they're at.

So that's why I really think it's important that we, instead of letting people, organizations, whatever, maintain the status quo, because that's what we're talking about, that we take out that -- that option.

MS. KASSAN: I think it's also really useful for fund managers and wealth advisers who are investing in public equities, because their clients are asking for, you know, I want to invest in companies that have diverse boards, and then I want to invest in companies that have women in leadership, for example. So I just can't imagine any down side.

If a company really doesn't want to talk about race and gender, they can say we have people from the following 10 states, or we have people from the following three age groups. You know, it's totally up to them to define diversity. I just don't see any problem with it.
MR. NELSON: I'll say take it out. Does anyone have any objections to any of the rest of the language? Are we okay?

MS. TIERNEY: So I have the same concern that I had when we discussed this last time which is it says, you know, provide information regarding each member nominee as self-identified by the individual. But what happens if an individual chooses not to self-identify? Right? So I don't love the idea of opt out. If we're going to think that this is important, I think we should make it important. Opt out means they'll opt out and nobody will understand why some companies have it and some companies don't have it.

But I do think we need to have some mechanism for a company to, you know, acknowledge that some of their members were not willing to self-identify. Otherwise, you'll have 10 board members with information on five and no information on the other five, because those people chose not to self-identify. But it's going to raise an SEC comment, I would think.

MS. HANKS: Presumably, the rule when written would say, in the event the individual declines to provide that information, put N/A in the box.

MS. TIERNEY: Okay. That's just my concern.

MS. HANKS: I'm just going to punt that and say...

I'll bet the guys at the SEC who are good at writing these rules will manage to work that one out.

N/A. Box one, box two, N/A, all good alternatives. So can we move to the -- the proposal is the language as drafted without the last sentence. So again, you repropose?

MS. TIERNEY: I repropose.

MR. NELSON: I'll save it for the -- the proposal is the language as drafted without the last sentence. So again, you repropose?

MS. TIERNEY: I repropose.

MS. HANKS: You re-second? Okay.

And then all in favor?

(A chorus of ayes.)

MS. HANKS: Anyone against?

We're good. We have language. Thank you.

MR. REARDON: I gave out a comparison that we don't need to talk about. But if you have any comments -- I mean, it's maybe not helpful after the discussion today. But if anybody wants to send me any comments to it, it's just something I did. In dealing with businesspeople, I found that tabular presentations side by side are useful and help people grasp the issues. So I did that just because I felt like it helped me, just drafting it helped me crystallize some of the thoughts.

But anyway, we'll all see the typo on the first page, and I'll correct that. But Julie, if you're interested in posting it on the website, I will get you the digital file.

MS. HANKS: And thanks for doing that. It's a useful resource.

Before we completely wind up, I will work with the Staff to put together the recommendations from the discussions this morning. Interestingly, I thought the overall view was -- if I had had to predict anything, I would have said, preempt everything. But there's a much more subtle and reasoned and nuanced opinion that wants to take the states' thoughts into account in both of the proposals that we discussed, and we will be reflecting that and we will be getting drafts out on those. So thank you very much for those discussions.

And just one thing before we leave. Any thoughts on what goes onto the agenda for next time? I know Catherine had --

MS. MOTT: I'm very curious. I know I brought this up last time, too. But whenever the tick pilot is completed, really I'd like to see the data and hear the remarks from the SEC on that.

MR. NELSON: I would love to hear aggregate data on what goes south.

MS. TIERNEY: Okay. That's just my concern.

Patrick, you're talking about the ones that I see, that need to talk about being able to raise capital. Because it's so complicated, they hear about these laws and they hear, oh, I can only talk to wealthy people and I don't know any wealthy people. So even if we were to get data on how many companies are trying to raise capital unsuccessfully, that would leave out a huge number that just don't even think that it's possible for them.
MS. YAMANAKA: If we could just get the tip of the iceberg. But I don't know -- I know that's really hard.

MS. HANKS: I'm not sure where we would look for that iceberg. Any thoughts on where the iceberg might be, gratefully received.

MR. NELSON: Quickbooks. Intuit.

MS. HANKS: Interesting.

MR. GOMEZ: Also keep in mind that in some exemptions, you can't use general solicitation. To the extent that you have companies self-identifying themselves as publicly looking to raise capital, query whether that puts them already in a category of an exemption that would need to permit general solicitation. So I think part of the challenge is how do you get data on the aggregate without actually going to the particulars of a specific company such that a particular company doesn't have to publicly indicate to the world that they are looking for capital.

MS. HANKS: That would be kind of ironic. Hey, companies, who would like to self-identify as violating Section 5?

(Laughter.)

MS. HANKS: We maybe shouldn't do that bit.

MR. NELSON: I also think there is a census -- there is a census committee, they do like an annual census of businesses, and this is where they get the jobs numbers from and this is where they get that sort of stuff. If we could, in that census, while the census is actually going out and getting them that data, just say, hey, zero to 10, how much would you like to have more money to grow your business, or something along those lines.

MS. YAMANAKA: I do know there are surveys that are out there, because I fill them out, because I get them all the time. And I don't think we're going to get a precision in data. It's not like we're going to get a census or whatever. But just something to -- so that when, you know, people like Jonathan and Patrick, when they're throwing out numbers, there's something that -- and I don't have to say "gabillion," right? We have more precision in the amount of numbers. Because again, intuitively, through anecdotal, qualitative experience and people in my world, they fall into more of the industries, the number of businesses that Patrick is. So if we could just get a -- or spoke about.

If we could just get kind of a data field, it would be really great, just to put something on the ground.

MS. HANKS: Continuing quest.

MS. SCHIMPP: We use Pepperdine capital markets survey, find it useful for at least the lower, middle market comparisons.

MS. HANKS: That would be good, if we could.

All right, anything else? Am I missing anything before we wind up?

All right, thank you very much.

Thank you everybody in Internet Land. Thanks.

(Whereupon, at 3:44 p.m., the above-entitled matter was concluded.)

* * * * *

PROOFREADER'S CERTIFICATE

In the Matter of: EQUITY MARKET STRUCTURE ADVISORY COMMITTEE MEETING, SMALL AND EMERGING COMPANIES

File Number: OS-0215

Date: Wednesday, February 15, 2017

Location: Washington, D.C.

This is to certify that I, Christine Boyce, (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, which has been compared with the reporting or recording accomplished at the hearing.

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