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SEC ADVISORY COMMITTEE ON
SMALL AND EMERGING COMPANIES

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A P P E A R A N C E S

SEC COMMISSIONERS PRESENT:
MARY JO WHITE, Chair
LUIS AGUILAR, Commissioner

ADVISORY COMMITTEE MEMBERS PRESENT:
JACOBS, CHRISTINE (Co-Chair)
GRAHAM, STEPHEN (Co-Chair)
ABSHURE, HEATH
BORER, JOHN
CHANG, MILTON
DENNIS, LEROY
GREENE, SHANNON
JENNY, KARA
SUNDLING, CHARLIE
WALSH, TIM
YADLEY, GREG
SEC STAFF PRESENT:
BURNS, JIM
LAPORTE, GERALD
LOSERT, JOHANNA
NALLENGARA, LONA
YU, TED

A G E N D A

P R O C E E D I N G S

OPENING REMARKS

MR. GRAHAM: Let's see if we can get started. Of course, we want to welcome all the Committee members. Thank you again for coming. We also want to thank the SEC staff for all of their help. We certainly couldn't do all the things we do without their assistance.

As you know, we have made a number of significant recommendations the last time we got together. You might be wondering where we stand with certain of those recommendations. That is something we will turn to at the end of the day. For now, we have a pretty full agenda.

We are very fortunate to have just a tremendous group of folks to come and talk to us today about some of the issues we're trying to address.

We will first hear from Duncan Niederauer, who is as you know the CEO of NYSE Euronext. We will hear some of his ideas about smaller companies and NYSE. Then we will hear from Bill Hambrecht, who will discuss issues relating to capital formation by smaller companies.

That will take us through the morning. After lunch, we should see some of the Commissioners. We expect to see Chair White. Let me mention now we will

break as usual until 2:00. Chair White will be down here for a little meet and greet if you would like to get back early. She should be here around 1:45. We should see a few of the other Commissioners in the afternoon as well. They are unable to join us this morning because there is an open session of the SEC going on this morning.

After we hear from Chair White this afternoon, we will hear from Bob Greifeld, who is the CEO of NASDAQ.

After Bob, we will talk about prior recommendations, where we stand, where we stand with certain rulemaking that is important to this Committee, and talk about next steps.

Before I go any further, I would like to ask my Co-Chair if she has any remarks she would like to make.

MS. JACOBS: I just want to reiterate my thanks to the staff but maybe address the Committee and thank you all. Whether we realize it or not, we're now into our second year. Since the beginning, this Committee has efficiently dispatched any and all directives that we were given by then Chairman Schapiro.

Since inception, we have contributed to the JOBS Act. We have provided context and suggestions for capital formation while taking investor protection into consideration. We have provided in-depth suggestions for relief of small public companies, and to note, we have

0006

deliberated openly. We thoroughly discussed issues and disagreed, as we should, on some of them. We put out an impressive array of work product.

We have been near unanimous on most of our recommendations, and we did so without divisive commentary, special committees or dissent.

We wanted to take this moment to just step back and say hey, do you all realize what we have accomplished to date, and to thank you for your commitment, your energy, and your time around these topics. Thanks.

MR. GRAHAM: Thank you, Chris. I guess I should have asked this before, Gerry, do we have a quorum?

MR. LAPORTE: According to my math, we do. Yes, we do, Mr. Chairman.

MR. GRAHAM: We are officially convened. Next we will hear from Lona Nallengara, who as you all know is the Acting Director of the Division of Corporation Finance. Lona will introduce the rest of the SEC staff and say a few words.

MR. NALLENGARA: Thanks, Steve. I'll save our broader discussion about the previous recommendations and things we are doing here at the Commission related to rulemaking and many of the topics we have talked about for the afternoon so we can get into the program.

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Let me take a moment to introduce who we have here. Most of the faces are familiar to you. Starting at the end next to Chris is Gerry Laporte. Gerry is the Chief of our Office of Small Business. Joining us today is the Deputy Director in the Division of Trading and Markets, Jim Burns. Beside me is Ted Yu, a senior special counsel in the Division of Corporation Finance, who I get to work with on a day to day basis, and Johanna Losert, who works with Gerry. She's his special counsel in the Office of Small Business Policy.

That is the team we have for the morning.

MR. GRAHAM: Okay. Thank you, Lona. Again, thank you and the rest of the folks for all they do for not only this Committee but quite frankly the country. Thank you.

We are pleased to have Duncan with us today. He is the Chief Executive Officer and a Director of NYSE Euronext.

Prior to his current position, Duncan was President and Co-Chief Operating Officer of NYSE Euronext with responsibility for U.S. cash equities. Before joining NYSE, Duncan had a 22 year career at Goldman Sachs, where he was Managing Director and Co-Head of the Equities Division, Executive Services.

We thank Duncan very much for taking time to be

with us today. Duncan, the mike is yours, assuming it works.

PRESENTATION AND DISCUSSION WITH DUNCAN NIEDERAUER, CHIEF EXECUTIVE OFFICER AND A DIRECTOR, NYSE EURONEXT

MR. NIEDERAUER: It sounds pretty good. Thank you, Steve, and thank you, Chris. Thanks to the Committee for having us in. What I would like to do in the time we have together is just go through a deck we will have up on the screen that all of you should have gotten in your packets this morning.

I want to start by reminding us how important all the stuff we are talking about at this Committee is because it's much bigger than just access to the capital markets for companies who we think can get there. I actually think it's also a lot about issues facing small companies throughout the country.

The first few slides we have in the deck are really going to just talk about why I think the work you're doing is so critically important, and I want to start a little bit on Main Street and then work our way to the capital markets.

I realize the Committee might not think that Main Street is necessarily within your purview, but as I just said to Lona before we started, you are a group that seems to be prepared to take action, not just hold

meetings, and if you're prepared to take action, I think there are other areas where you should at least be aware, and I'm sure you share our view that as people who care about public policy and care about the health of the economy, there are actually some things I think we should all be aware of about what Main Street is really wrestling with today.

The first few slides are really talking about the broader economy and Main Street. Just a few statistics for you. If you think about all the registered and incorporated businesses in the United States, what we would call "small companies" are 99.7 percent of those companies that actually employ people. Those small businesses employ more than half of the country's workforce in the private sector, and I think what is particularly important to all of us is that's where a lot of the innovation happens.

Small businesses create 13 times more patents per employee than larger companies.

We read a lot about all the great work the big companies are doing. They get a lot more publicity for it. That's critically important as well, but let's not lose sight of the fact of what we have across Main Street and throughout the country.

What we have spent more time than you would

probably expect focused on in our role at the NYSE is on these Main Street businesses, the overwhelming majority of which will never go public. Our work in this area is not about nurturing them so they can find their way to the NYSE some day, quite the contrary.

Nearly six million of these businesses have less than 500 employees. I would venture to say almost none of them will get to the capital markets. Their issue is not access to the capital markets, it's access to affordably priced capital.

You would think with the monetary policy that's been in place the last few years in the country that should have been readily available to them, given that interest rates are at historic lows no matter how you want to measure it. Yet in some surveys we've done recently and that the National Small Business Association did recently, you would find quite the contrary would be the case.

Of those businesses I mentioned a minute ago that have fewer than 500 employees, 43 percent of them are unable to find sources of capital. Typically, they would go to their local bank. They would get a loan or line of credit from that bank. Really small mom and pop businesses may try to get credit from their vendors or suppliers. They may put it on their credit card. They

may borrow money from friends and family.

The point is in the world we have been in in the last two or three years, even the bank loans are difficult to come by. I think if you look closely, it's not hard to find examples where small businesses that have had actually quite a good history are struggling to find affordably priced capital in spite of the low interest rate environment.

What's happening? The group that we count on to actually be the consistent job creators in good times and bad is actually in many cases reducing their number of employees or finding ways to reduce benefits. We are in exactly the opposite cycle that we would want to be in on Main Street.

What we have tried to do, taking our job pretty seriously, is not just the owner and manager and overseer of a large public capital market, we also try to do things under our corporate responsibility umbrella, like the NYSE big start-up, that we think is trying to pragmatically target some of the issues we find on Main Street.

What we try to do is we think of it simply as a matchmaking service. We call one of the things we do "Corporate Connections." We reach out to some of our already listed companies and have a discussion that

0012

ranges from everything to talking about their supplier network, which is often stocked full of relatively small companies, to gauging their willingness to go into the communities in which they operate their businesses and talk to small businesses, to teach them things about how to scale their business.

A UPS or a FedEx can talk to a small company about how easy it is in the 21st Century to have clients really around the world if you are in a services business or a product business.

We go on the road with Yelp, and Yelp will talk to small businesses about what to do if there is a bad review of your business in the social networking world, in the blogosphere, how do you handle that, how do you respond to that as a small business.

We will have legal and accounting companies talk to companies about how to optimize themselves from a corporate structure from a tax point of view.

What we try to do is connect big companies with small innovative companies. Sometimes they can then acquire products from the small innovative companies or they can teach them the ways to scale.

We have also tried to put our money where our mouth is. We have done a lot of work trying to evaluate the various microfinance networks in the U.S. and around

0013

the world. We have provided some grants, and we are actually thinking about going beyond just granting money, but actually helping fund some of those microfinance networks, not to get into the microfinance business ourselves, but to kind of put our money where our mouth is and say if these Main Street businesses are having trouble finding affordably priced capital, let's be willing to experiment with other alternatives.

My message on these first few slides was it may not seem like the purview of the Committee, but if we're a group of people who care about public policy and we care about small businesses, let's not forget Main Street when we're talking about small businesses.

I personally believe we should be spending a lot of time trying to think about how to make micro finance more transparent, how to help scale it, and I also think there is room to re-think how we separate the really large integrated global banks from the community banks. If you think about the community banking business model, how to regulate that, maybe how to calibrate the regulation in the financial services sector, I think there is a lot of opportunity for those banks to get back in the business of providing affordably priced capital to Main Street in a way that regrettably they are not able to do today in the size we need them to.

As I alluded to a minute ago, our fear is if we do neither -- one of the byproducts we are hoping to get from the monetary policy that's been in place and appears to continue to be in place for the next year and a half or so at least, the impact you would have hoped it would have had on Main Street in a positive way, the impact that would have had secondarily on job growth, it's not going to materialize if we don't think about some of these things.

Now let's shift gears a little bit to the capital markets work of the Committee. For the rest of the universe of small companies, which is actually a relatively small fraction of that 99.7 percent that I talked about a few minutes ago, I think the public markets are where we should be trying to get these small companies to because I do think they get benefits getting to the public market, whatever public market it might be.

They get permanent access to capital so they can more readily manage their finances. It's growth capital that has a more permanent flavor to it. They get visibility. These small companies can gain recognition, build their brand, get more credibility. They can attract higher quality talent because they can offer equity as part of the compensation package.

It allows the broader public to basically

participate in owning small companies that are the job creation engine, that are the innovation engine, and this is an opportunity that if we think about it, is not going to really be afforded to a lot of the mom and pop businesses that we spent the first few slides talking about.

Why do we think it's important? We get accused all the time of simply having self-interest because if we can help 50 or 100 more companies get to the public capital markets every year, that's obviously more companies listed on the NYSE or NASDAQ, that's good for our businesses.

I don't think that's what it is about. We are set up to be the capital formation place. We are set up to be the place where small businesses are supposed to find their way to the public markets so they can get all these benefits we talked about.

Why should we all care about it? Because the statistics are pretty clear, that 92 percent of job creation and job growth comes after the company goes public. What happens? A company finds their way to the public markets, they do an IPO, they take that growth capital and they invest that in growing their business, scaling their business, and obviously more often than not, if not every time, they do that by creating jobs.

0016

Our statistics tell us that happens in good times and bad times. You would sit here and say well, I'll bet that didn't happen in 2008 and 2009. What we will see in the next two slides is IPO issuance certainly contracted in the financial crisis, but companies like Rackspace that went public in 2008, a year later, they had twice the number of employees they had when they went public.

Companies like Rosetta Stone, that many of you have probably heard of, they went public in 2009, literally at the bottom of the market. A year later, they had 50 percent more employees than they had when they went public. LinkedIn, which I'm sure many of you are on or familiar with, went public in 2011. Less than a year later, they had twice the number of employees they had before they went public.

It works. It is a job creation engine because they get the growth capital. They put the growth capital to work. They go into new markets. They build new products. They scale their business. To do that, they hire people.

I think that's why what we are doing here today among other things is really important. A lot of you would probably also say well, you know, the IPO market doesn't work. The IPO market hasn't worked, it hasn't

0017

worked since 1999 and 2000. I'm not sure we want it to work the way it was working in 1999. A lot of companies that probably never should have seen the light of day. The engine was working almost too well then, right?

We have to be circumspect about that. We have to take a step back and say you know, what's the right answer, we don't want the markets to be too feverish, we don't want to create bubbles.

If you look on this chart, 2004 to 2007, we were having roughly 300 IPOs a year. As you would expect, in 2008 and 2009, that kind of dropped off a cliff. It sort of found its way back to not quite 200 a year in 2010, 2011 and 2012. If the early returns in 2013 are any indication, we have had about 50 IPOs in the United States in the first quarter of 2013. The calendar looks pretty good.

Obviously, it depends on a lot of things. Does the economy hang in there, does the market hang in there, et cetera. We would be on pace right now to have 2013 look a lot like 2011 and 2012. So far, so good.

If we want to put our nationalist hat on or American hat on for a minute, I thought this was a really interesting chart. You go back about ten years ago. The U.S. was responsible for not quite half the global issuance in the world. You can see how much that

contracted in 2008, 2009 and 2010. You could argue pretty successfully, I think, without a lot of difficulty, that the demographics in the world right now are sort of working against us. I don't want to put too much stock in this chart.

If you think of the challenges that the emerging part of the world has, particularly China, and you think about the jobs China has to create just to maintain the economic growth at the level it's at, they have to create jobs that are of a number that the people around this table, we probably can't even imagine.

They understand the connection between getting private companies to the public market, what that does for the job creation engine. They understand small companies are the job creation engines. They understand it's not going to be the SOEs. They understand it's not going to be the kind of government overseeing companies, it's going to be entrepreneurial companies.

It didn't surprise me in 2009 and 2010 when you saw a ton of issuance coming out of places like Hong Kong, like China, like the emerging markets in South America, places like that.

That shouldn't surprise us. However, look at what's happened in 2012 and 2013. As our markets here have stabilized, the U.S. is back to where it is almost

half the global issuance. A lot of the companies that IPO in the U.S. are actually non-U.S. companies. They find the U.S. capital markets to be by far the best, the deepest, and certainly the most institutional. A lot of the emerging growth markets are getting there, but even including big markets like China, are still predominately retail dominated.

I just thought that was an interesting chart to show kind of how things are going.

This is a chart that shows -- if you go back two slides ago, I talked about all the IPOs in the U.S., how many of them were for companies when they went public had a market cap of under $250 million. You can see again if you go back about ten years, that number was more like 40 percent. It dipped all the way down to about 25 percent. We are now hovering at around 30 percent.

If I put this slide up through Q-1-13, which I'm not saying is indicative, 2013 so far seems to be the year of the private equity backed IPO, and 2011 and 2012 were a little more about venture capital backed IPOs. If I had this year to date in 2013, in my head, I would say the number is slightly lower because there have been bigger companies that have gone public, an IntelSat, a Sea World, companies like that. These have market caps

0020

considerably higher than $250 million.

I think that is a bit of a disturbing trend and the point is there should be a lot more small companies that are finding their way to the public markets if we were all doing our jobs properly.

You have probably had this debate at this table. Some of you have very informed opinions on why small companies would be struggling to find their way to the public markets. We have talked, I think, ad nauseam, about the impact of Sarbanes-Oxley and the cost and regulatory burden that put on a company.

I must confess it's been hard for me to assess in the time I've had this job how much of that is real and how much of that is imagined. I don't mean to suggest that people don't understand it. It got this reputation. I heard a lot of people say to me oh, it's impossible. It's really expensive.

When you dug a little deeper, they weren't actually sure how much it cost, but they had heard horror stories from companies already public or they had heard war stories from bankers or venture capitalists who were saying, you know, somewhat anecdotally in some cases, oh, yeah, the cost of that kind of stuff, we're just going to bury you if you try to go public.

I have a feeling reality is somewhere in the

0021

middle, but the point is it still needs to be addressed, and we do know that we applied a one size fits all approach as regulation often does in the wake of a crisis. I'm not sure that was the most sensible approach, but it was the approach that was taken at the time.

We have taken efforts to see if there are ways to re-calibrate that standard so that different companies -- it's more modeled to the complexity of the company, the size of the company, the maturity of the company.

To be very clear, we have had no success doing that to date. None. That doesn't mean we haven't tried. We have talked about it a lot. We have had zero success doing that, until we got to the JOBS Act. The JOBS Act doesn't re-calibrate Sarbanes-Oxley. It just tries to come at the solution in what I thought was a pretty pragmatic but different way.

What's also happened in the last ten years is the ecosystem around supporting these small companies after they go public has changed dramatically. I'm sure you have talked about that at the Committee.

You will hear that from Bill Hambrecht for sure. Bill is a world class expert on this stuff. He's watched how it has evolved out on the West Coast in particular, where a lot of the banks that were taking

these companies public, that were willing to provide research afterwards, that were willing to be the market makers afterwards, that has gone away with consolidation in the industry.

I think decimalization had a lot to do with that because it dramatically changed the economics, and the economics at the end of the day are what the banks are basing a decision on as to what stocks to cover, what stocks to trade, et cetera.

Unfortunately, that's put us in a challenging downward spin where the ecosystem gets the companies out but then the ecosystem on T+1 isn't quite as viable as it was for these companies, so if you have heard the term that a lot of these companies feel "orphaned" after they get to the marketplace, I think that's a legitimate sentiment on their part because the ecosystem isn't there.

That has led to a lack of market making, has led to a lack of liquidity. You could argue that's led to a lack of analyst coverage. I have a view that you have to solve the liquidity problem and then you will get more coverage in the sector. I'm sure other people would just as convincingly say you have to incent people to cover the stocks and that will bring liquidity.

I don't know which is which. As someone who

grew up in the capital markets, I actually think it's easier to solve the liquidity problem, and if you solve the liquidity problem, I do believe more people will cover the stock because it will be more interesting.

Without getting on my market structure horse too much, what has also happened in the last five or ten years is the markets have gotten considerably darker. If you contrast what we spent the last four years talking about with Dodd-Frank, about taking all these products where we learned opacity was dangerous and we are now trying to bring them into the light, I'm sad to report that while we have been doing that, the U.S. equity market has gotten darker and darker and darker with each passing year.

Fifteen percent of the business was done away from the Exchange three or four years ago. It is now 36 percent.

There are big loop holes that the banks are exploiting. We have talked to Jim and his staff about some of that and we have talked to some of the Commissioners about it.

We think a review is warranted, but I think that is also part of the problem, particularly for some of these small stocks, more than half of the volume never makes it to the Exchange, so there isn't real price

0024

discovery the way we think about it going on, and most of the price discovery is happening in the dark. We think that's dangerous. The back drop is we have obviously had some macroeconomic concerns the last few years.

There are some bright spots. We were instrumental, as you were, in getting the JOBS Act put through. We spent a lot of time working on that. We are very proud of our contribution to that. We are particularly proud that it is one of those pieces of legislation that seems to have had an impact.

You have had a lot of companies since the JOBS Act was out there elect to file under the status of an emerging growth company. The majority of those companies are domiciled in the U.S. It is particularly rewarding for us when a company comes to the NYSE and part of the remarks as we are taking them to have their first day of trading is they feel they were able to do this because of the JOBS Act.

Many of them said I'm not sure I could have done this if I didn't get the flexibility that the JOBS Act affords me, and I think that gives us a window into how we should be thinking about how to address companies that are already listed in the public markets. It is time to start thinking about a way to level that playing field, too, if that's possible.

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What has probably been the most popular aspect of the JOBS Act, and I was hopeful that it would be, and it has been, is that nearly two-thirds of the companies are using the confidential filing ability with the SEC as they go through the drafting process with their registration statements.

Why did we think that was important? We weren't trying to play hide and seek with anybody. We weren't trying to encourage companies to say hey, do as much of this confidentially as you can.

If we're really thoughtful about it, what was happening to a lot of these companies is they were small, they are trying to go through what is a pretty cumbersome registration process that in many instances was beyond their level of sophistication. That didn't mean they didn't have a good company, that didn't mean they didn't have a good business model. It is a very complicated process.

What would happen? These companies would file. The comments back were in the public domain and it was becoming a stigma for a lot of these companies. Potential investors would look at all the comments these guys are getting. Our view is it should be fully disclosed when it's appropriate, a clean filing. Investors have plenty of time to review it. Let's not

0026

get in the business where we are reviewing every filing and the media is kind of poking fun at people who get a lot of comments. That didn't strike us as terribly sensible.

What we have been trying to do with the JOBS Act, what you have been doing and what we have been doing, is just simply a pragmatic approach to say build an on-ramp where it's all very clear to the investor what these companies comply with, what they don't comply with, what they disclose relative to Sarbanes-Oxley, what they don't, what's expected of them to scale into as they go along the on-ramp and their business grows and gets more complex, and let's not make it prohibitively expensive for them to test the water to see if they can go public, and then let's not complicate it further and make it more expensive once they get there.

There are some market issues that I think we should talk about, and then there's some issues about how to re-calibrate what we can ask of companies that are already out.

Like we try to do on a lot of things, we are also trying to step up and put our money where our mouth is here, too. We don't just come to meetings like this and talk about it and then go home and say well, we don't really care about this because most of the companies that

0027

are at the NYSE are all the big companies. In fact, quite the contrary.

If you look at the pie chart on this slide, we certainly have a lot of large cap companies. We have a heck of a lot of microcap, smallcap and midcap companies, too.

This notion that the NYSE is just home for these multi hundred billion dollar companies is simply a falsehood. In fact, we take companies as small as $40 million in market value, their public float, and on the NYSE market model, which some of you may know is the old American Stock Exchange, you can list with us with a much smaller MVPF.

This notion that you have to be big and already established to get out into the public markets is simply nonsense. I think you will hear a lot from Mr. Greifeld, because the majority of their companies are companies with market caps below $250 million.

Both of us should care deeply about this because it's an important constituency for us, and we should care about it as people who care about public policy and running the capital markets fluidly.

We also try to do things that I would say are more policy driven or more awareness-raising driven. We will host global entrepreneurship week. We have done a lot of work with the NVCA. We collaborated with NVCA and Start Up America on the JOBS Act. We have tried to talk about SOX reform. We have tried to talk about tax policy. I'm not afraid to stand up and be heard from on this topic.

I want to give you another fun fact that to me drives the point home of why these small companies are indeed the job creation engine.

We have 500 companies on the NYSE that I would put in the small cap group that have an average market cap of $250 million. If you think about that, that is roughly $125 billion of total market cap. $125 billion company listed on our Exchange, the average company of that size would employ about 100,000 people. Those 500 companies collectively, with the same market cap total, employ 500,000 people.

If we can get more of those companies out, there is a force multiplier here, where it really is the job creation engine.

We think there is a lot that could be done. We are realistic, right? We're not a market maker. We can create what we think is the best capital market in the world. We can't make people come. We can work with Jim and his staff and we can try to have the market structure be the best it can be. That's not going to be enough.

Other people in the ecosystem are going to have to step up and I think we are going to have to be willing to experiment as an industry, whether it's the Exchanges, the banks, the brokers, the regulators, committees like this, we are going to have to be willing to try some things. There is no question if you look at the results so far, there are things we can do to improve it.

Two thousand stocks have less than $1 million in daily trading volume. That is really almost no trading. Companies under $300 million in market cap now have an average of less than 1.5 analysts covering them. That means they have basically one or two. Years ago, they had several. A few years ago, they at least had two or three. Now a lot of them basically have zero, one or two.

We talked about the off-Exchange trading growth. I won't belabor that point.

There are things we can do. We could get the rest of the JOBS Act that hasn't been implemented, and what I will talk about in the next few slides is what can we think about with regard to tick size reform, what can we talk about with regard to market maker incentives, and how do we think about market quality and price discovery. Let's be willing to try some new things.

We are never going to be able to prove to ourselves ahead of time that it's definitely better. We're not going to know, guys. We're not going to know. I think we are obliged to try if we know what's happening now isn't good. It's hard for me to imagine that collectively we wouldn't be willing to try to make it better.

I know the Committee has talked about things like tick size. I don't think tick size is the silver bullet, but I think it's time to try a pilot that is a meaningful pilot, not for 15 minutes, not for three to six months, not for a handful of stocks. I think you really have to try -- our view would be you take a few hundred stocks, you re-think what the tick size should be, you probably commit to doing it for a couple of years. You need to gather data.

You need to ask people to commit to changing their behavior in the ecosystem so that you really have a chance to collect a meaningful amount of data. I do think you have support for this, not only from the issuer community, but from the trading and exchange community.

It's one of those issues where I think the parties that the regulator would normally want to get together to see if we all agree, I think you would find most people would agree. You might sit there and say oh,

investors aren't going to agree with this because they like it when it's a penny. The investors I talked to think it's more about liquidity and being able to discover the price in these less liquid securities. The spread being a penny is kind of artificial. It's never for big sized and meaningful size anyway.

I think if we did it, it should change the economics from the bank's point of view, and I would like to think that would encourage them to quote more, display more liquidity.

If you get more depth, you get more liquidity, ideally that would move more of the business back to the displayed market, which has always been the SEC's objective, we want displayed liquidity, not hidden liquidity.

It should reduce volatility. It should increase interest from institutional investors. I hope that the cart that comes behind the horse is you would have a couple more analysts covering each of these stocks.

I think hoping we are going to get back to our eight or ten analysts covering all these stocks, that's probably not realistic in the medium term, but having zero, one or two, we should aspire to do a lot more.

If you get more analyst coverage, you get more

following in the stocks, you get more buy-side institutions willing to do their own research on these stocks. I think that is a very positive outcome for the market.

I would try to pick 300 to 500 stocks. I would do a pilot for a couple of years, and to be very clear, I wouldn't let the issuers pick any tick size they wanted. I think we have to be reasonable. We can say it can be a nickel, it can be a dime. I don't think we should have 75 different tick sizes.

I think we should say to the issuer would you like to leave it at a penny or would you like to participate in this pilot, and what would you like it to be? Would you like three cents, five cents, ten cents? We are very open minded to take advice from others on what people think that should be.

We have also been working with the SEC, as have the other Exchanges, very closely to try to develop a pilot program for market making incentives in the ETF arena, where this really came home to roost even before we recognized what was going on with the small companies here.

What has happened in the last five/six/seven years? A proliferation of ETFs. Just to be very clear so you don't view me as an expert on this topic, I have

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predicted exactly the opposite for five years in a row. I've said we have way too many ETFs already. I'm wrong. I've been consistently wrong, but at least I've been consistent.

The ETFs continue to grow. There continues to be a market for people who want to get exposure to various sectors, various commodities. We even had some fixed income ones come recently. Innovation continues.

If we are realistic, a lot of those ETFs really never garner meaningful assets, but the sponsor is reluctant to pull them off the board. We have a ton of ETFs that are really, really illiquid that are out there, so we have been working with the SEC staff here for a few years now as has BATS and NASDAQ, and I think BATS and NASDAQ both have had programs approved, and ours is close to being approved.

That would basically allow us to give incentives to market makers, those financial incentives -- I want to be very clear. That may sound like a conflict or it may sound inappropriate to some of you. If you want someone to have an obligation that no one else in the marketplace has, they are only going to accept that obligation if you give them a financial incentive to offset them having that obligation.

This has been a long debate we have had with

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the SEC. It's at the core of our model at the NYSE. We are the only ones that have a market maker who is responsible for making a quote in good times and bad. In fact, we have seen recent quotes from the SEC staff that encourage us that they would concur that we have seen enough in the marketplace to say we need market makers with obligations as part of market structure. You need to give them financial incentives to have that obligation. The question becomes who provides that incentive to the market maker.

What we have talked about in the ETF space is it is in the ETF sponsor's interest that these products become more liquid, so we would pay the incentive effectively to the market maker and then pass it through to the ETF sponsor.

You could certainly adopt a similar mechanism, and in fact, many small companies have approached us and said look, we would be happy to pay an incentive to market makers if it would make someone in addition to the designated market maker on the NYSE step up.

This is particularly relevant in NASDAQ where there is no designated market maker, and I'm sure we will hear some ideas from Mr. Greifeld on that later.

Last but not least, before we throw it open to questions, I do think we have to have a market quality

discussion as well. We are in discussions with the SEC and others now. We are doing this as an Exchange group, so Mr. Greifeld, Mr. Adam and I are doing a lot of these meetings together.

We believe we have presented data that would suggest the more opaque the markets get, the wider the spread gets. For very liquid stocks, that seems to be more than just a correlation.

We think it's particularly an issue for these more thinly-traded stocks. I'm even willing to put things on the table that if you as a Committee said to us why don't we completely re-think how small stocks are traded, do they really need to trade continuously, as someone who has been in the capital markets for 25 years, I'm not sure they do.

I realize if I stood up and said let's go back to three or four call auctions a day, like people would bring out words like "prehistoric" again, it's about getting to the right answer and being willing to try any and all alternatives.

I could easily be convinced that what is better for a lot of small companies is have a good solid opening, have a cross in the middle of the day, and have a good solid closing, and don't worry about it the rest of the day.

People may say sorry, that's not good, we're all used to having continuous markets. I'm just telling you that we are very open minded about this. We want to do what we think works for the issuers. We want to hear from issuers. We want to hear from investors. That is who our constituents are. We are happy to listen.

Lastly, you are probably going to hear some talk today about this continuum from when a company is private to when it is a successful well-built company in the public market. We are happy to listen to any and all suggestions along that continuum, but I think you will find us to be generally opposed to this idea of creating private, pretty opaque markets where an insider trades with an outsider, and it's only accredited investors -- I don't think that's the right answer.

If people think we need to use the JOBS Act on-ramp concept and think about starting that on-ramp earlier or constructing a different kind of on-ramp, I would say there is plenty of Exchange models already out there that are probably much closer to that target than you all would think. It's our job over time to explain to you what those are, after we understand from you what you really want.

Then I think we can work backwards to that solution. If you think about it, that's kind of what we

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did with the JOBS Act. We said Sarbanes-Oxley reform isn't going to work. Let's come at it from another direction. Let's work with the accounting industry to figure out what that on-ramp should look like.

If what your work has concluded is on-ramp needs to start with smaller even less developed companies, I think there are some things we could do to make that whole process more transparent, where you could do auctions for private companies, too, in a much more transparent way than they are being done right now.

We would certainly volunteer to be a part of that if people would like us to be, too.

Lona, and Stephen and Chris, I will stop there. You guys can take the discussion anywhere you would like to. Thanks for listening.

MR. GRAHAM: Thank you very much, Duncan. Your comments were very insightful. I would like to think this might be just the beginning of a dialogue. There are certainly some things that I think we would like to follow-up on. There probably is not enough time today to follow-up on them in the depth necessary.

Certainly one of those for me is what you last mentioned, and that is this whole notion of a continuum. In our last set of recommendations as a Committee, we talked about the idea of coming up with kind of a

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separate intra-market, if you will, trying to address the fact that often times companies that might otherwise go public are afraid to do so because of the costs involved, the costs of going public initially.

You are not necessarily flushed with capital to begin with, and just the whole process of getting ready to go public is terribly expensive. Once you have spent that, there is no guarantee that at the time when you are finally ready, the window will still be there.

Obviously, once you go out there, the ongoing compliance costs.

If there was a way where companies could go public, lite, if you will, I guess it all kind of goes back to how you define the on-ramp, because this really is just kind of a variation of that theme, if there is kind of an interim step as you were kind of moving up to what you described as a fully built public company, that to us would be a good thing.

The whole notion of coming up with an entirely new market and an entirely new Exchange, you have suggested the framework is already out there with existing Exchanges, so I think the more ideas that you have in that regard will be useful.

So much about the on-ramp, there are things that need to be rationalized, if you will. Clearly, when

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you talk about adjusting the disclosure regime, for example, why necessarily should that be time-based? You look at the nature of the company and you make that determination.

If you are dealing with a market where you are just dealing with accredited investors, for example, if that is where you ended up, then I think it will be easier to come up with a rational way to cut back on the disclosure framework.

I do not know if you have any response to that.

MR. NIEDERAUER: I think that's what we should all be trying to talk about. If the broader ecosystem we are talking about is the whole capital formation process, many of us around the table have probably invested in very small companies. Maybe you were an angel investor. Maybe just friends and family of someone who started their company. If you think about the life cycle, somebody comes up with an idea. They go get that seed or that angel money. Then if they succeed, they might get some venture capital money. They are still very much a private company and will be for a while.

They have given equity to a lot of their employees. They have no intention of going public for a while. Their employees are often pressuring the company to say we have had some success, I need to monetize some

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of the paper you've given me, I know we're not going to go public for a while, what's the mechanism for me to do that. The CFO is concerned because they start to lose control over who actually owns their stock.

I think there is a place. That company is still very private. What are the mechanisms we can put in place that would just more transparently achieve some of the things you are talking about.

If someone came to us and said that's an auction every two weeks in that stock, that's an auction every month, where the company could go to their employees. It's more fully vetted. I do have some concerns there might not be enough information about those companies out there, but I think that's addressable over time.

The next stage is probably what Stephen was really just talking about, which is kind of almost like public-ite, semi-public, I don't know what euphemism you want to use, where they are now ready to go but it's really expensive to test the market, is there a JOBS Act-lite or a version of the JOBS Act where you sort of work your way backwards, and now you are filling in that hole in the continuum.

I'm kind of with you. Whenever we come up with legislation or regulation in this country, time is just

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an easier metric. It may be a harder metric but I think your point is it should be tied to complexity not time. Time doesn't mean anything other than time has passed. In theory, we are more mature as the company gets older and more established. It doesn't necessarily mean it is more complex and requires any more disclosure than they had before.

That's a harder thing to measure. Time becomes the easier metric, but I think that bears some revisiting as well. I'm with you.

The point you really make is there are lots of stops along the way, how do we help these companies from Main Street all the way to when they are a living, breathing organism in the public market.

Open to suggestions on all that, and happy to be a partner in any of that.

MR. GRAHAM: Great; thanks. Greg?

MR. YADLEY: Just had a question. Thank you very much for the presentation. It was very informative. With a lot of smaller companies who don't have a product that ramps up quickly and provides a reason why investors would be interested in a stock, thereby getting more volume and liquidity for investors, but a company would have a slower growth cycle, what are some of the incentives you all have talked about for the market

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professionals beyond tick sizes that would get them to take more of a position?

MR. NIEDERAUER: Unfortunately, not very many. I think we are thinking tick size changes the economic calculus so that people would be a little more interested in making markets, but the only other thing we have really come up with so far -- I'll go back to what I said, if you want people to have these obligations to encourage them to transact more, certainly you can get their attention with some kind of financial incentives.

To be clear, again, I know these kind of have a bad reputation, I'll give you an example with what we do with the designated market maker at our Exchange. We expect them to have a set of obligations, and the compensation they get is directly tied to their performance, which is very, very measurable, just to be clear.

It's not like you and I sit around at the end of the month and say so, Greg, how did you think you did this month. You say I think I had a great month, you know, providing liquidity in that stock. I say well, I'm not so sure, so let's split the difference.

We look at a report together that says here's when you provided liquidity, here's when you stabilized, here's when the market was volatile, here's how you

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performed during that time, and it's very black and white that I can tell how you fulfilled your obligations.

Your incentive is directly correlated and tied to a formula, right. We have said to the market making community, what else would it take besides tick size, and we assume it's financial incentives, but I want to be very clear, it just can't be here's $50,000 a year, go out and do a great job. It could be $100,000 a year, if you do a really great job, but it's going to be zero if you don't.

I think that's what we have talked about. We are happy to take any advice and guidance on other things that you all think we should be talking about with these market participants. I think it's easier to give them an incentive to create that liquidity than to go to someone and say hey, if you pick up the stock, we will give you an annual stipend for doing that.

We don't know if that person is going to do a high quality job of research or a low quality job. It's a little harder for the two of us to measure and evaluate. Whereas, liquidity, the way the markets work, I can know did they take liquidity, did they provide liquidity, how often were they making a market, was that market the NBBO, what percentage of the time was it the NBBO.

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You see my point? It's a lot easier to measure someone for that, and I do believe that's the horse, and then the cart of other people covering the stock will come later.

MR. GRAHAM: Leroy?

MR. DENNIS: Duncan, thank you. I want to go back to your slide when you first started. You said 43 percent of businesses in the U.S. have trouble finding capital and that was traditionally served by banks. Real quick calculations on my part, that is over two million businesses that can't find capital. Assuming ten percent of those are viable, some ridiculously low number, it's still 200,000 companies out there.

Why hasn't there been a market to spring up to serve those kinds of companies? Is there anything we can do, whether it's incentivizing companies from a debt standpoint or an equity standpoint that would help make that market spring up?

MR. NIEDERAUER: Well, it's a great point and it is one we talk about actually more than you would think, because most of those two million companies that are in the survey here, that are the 43 percent, they are Main Street businesses that aren't accessing the debt markets or the equity markets.

They have historically gone to their community

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bank and said Leroy, I'm trying to grow my business, I'm trying to finance my business, can you extend my line of credit, can you give me terms on a new loan so I can maybe expand to another store or open another business or grow my business, et cetera.

What we hear pretty consistently is that the regulation of banks post the crisis sort of swept up all the banks, right? If you and I were running a small community bank and we are now saddled with much more regulation to make $100,000 loan than we were before, anecdotally, the evidence would suggest and the survey would suggest that a lot of those visits to the bank by that small business owner aren't going that well.

It may just be as simple as I'm not going to go through all this paperwork to make a $100,000 loan because there is not much money in it for me, and I have the regulator looking over my shoulder, and I can't make any more mistakes. To me, that's the wrong outcome for a whole host of reasons, right?

We should be smart enough to calibrate and say to a community bank these are the things you are allowed to do. You're not allowed to do any of the other stuff that the big banks get to do. This is your business model. Go outside of that business model, we will take you down. Stay within that business model and get back

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to the basics of what you were supposed to do, which is lending in your communities, to that small business owner.

We think what has sprung up, quite frankly, is that is where a lot of these microfinance networks have come from. We all know people who run businesses in our respective towns. If they are looking to grow their business, they are more likely to get loans from people like us or loans in the microfinance network. They don't have a lot of other places to go, to be perfectly honest.

The Government put out $30 billion for small business through the SBA a few years ago. I may have the number wrong. Almost none of that money ever got in the hands of Main Street businesses.

We keep waiting for there to be innovative alternatives. I think that is why you are seeing a big growth in microfinance and crowdfunding, whatever we want to call it. That is where a lot of those small business owners are going because the banks are saying I'm not really going to do this for you any more.

We are happy to get involved in that discussion, too, but I think it's actually a re-calibration of the regulation, redefining what a "small bank" really is and what it should be doing and what it

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shouldn't be doing, and getting them back in that business.

In the meantime, being willing to be a lot more open minded about microfinance then many of us to date have been prepared to be.

MR. GRAHAM: On that point, just a comment and then a question. In terms of capital formation and Main Street, that is something this Committee is deeply concerned about as well. We spent a lot of time talking about the on-ramp companies that will go public. I would like to think that most of us appreciate the plight that Main Street finds itself in when you have these small companies.

As you point out, there are tremendous drivers in terms of job growth in this country, they just simply cannot get financing.

Again, following up on some of the comments you just made, do you have any views on crowdfunding? We as a Committee, as you might know, we sympathize again about the issue of capital formation among those who are not going to be attracting venture capital, don't have rich friends and family, but we kind of wrestled with the whole notion of how do you structure basically crowd-funding for non-accredited investors, so that you can address some of those concerns.

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Any thoughts?

MR. NIEDERAUER: That sounds like a bit of a loaded question. I'll take it on anyway. Let's start with where you started, Leroy, which is let's say in our dream scenario, we solve the publicly traded SME continuum and 100 more companies go public if we hit a grand slam home run every year. Two million companies can't finance their restaurant, their bagel shop, their gift shop, their local family-owned business.

I think that is really important, so I'm glad to hear all of you are focused on that, too, because that is why I put these slides in. I think it's an issue that we all have to be cognizant of.

Before we say what we are in favor of, what I am in favor of is vetting any and all solutions to the problem, and not writing something off because the easy answer is microfinancing and crowdfunding don't work because we have to protect people from themselves and they won't know any better and they will put $25,000 in, they will lose their money, that won't be a viable business. If that business can't attract venture capital, they are not worth surviving.

I don't know about the towns you guys live in, none of the businesses in our little town are going to ever get venture capital funding. Venture capitalists

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aren't excited about going to the mom and pop bagel shop other than to get a bagel. They are not going to finance them. Most of those businesses don't want to scale to be national franchises, it's their family business, they are simply trying to make a living.

My objective is if that ten person bagel shop feels better about life and can grow their business and can employ 15 people instead of 10, I declare victory and move down to the next business on Main Street.

There are a few solutions out there. I think on microfinancing and crowdfunding, there are ways to do it where you could do it almost like the mutual fund concept where it is more pooled. The money we give is to networks where you are really investing in exposure to their network of loans, you didn't invest in an individual business.

One of the other things we have talked a lot about through the big start up campaign, we have gotten involved in something called the "Receivables Exchange." We could say that factoring is as old as the hills, a third of small businesses, of these 5.7 million businesses, don't have a website, and a much smaller percentage of them have any idea how to manage their receivables.

We don't sit around this table and go oh, factoring is as old as the hills, just manage your day

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sales outstanding, that's how you do that, that's how you manage your capital. A small business owner has no idea what we are talking about in many cases. Going to them and saying look, capital is actually your problem.

To go back to Greg's point, they may have a product where it's chunky, right? They are going to make some big sales but the companies they make the sale to, they are going to pay them in 100 days. The next guy comes in and says hey, Greg, I have another big order for you, and the guy says I can't go get the financing to deliver that order because I'm waiting 100 days, so give them 99 cents on the dollar tomorrow. Give them their working capital.

All I am saying is I don't know if any of these things are the answer, whether it's re-calibrating what a big bank versus a community bank is, or thinking about crowdfunding and microfinance, or thinking about teaching them about receivables, but let's at least have a dialogue and say it's a problem, it needs to be addressed, how can we collectively work to address it in pragmatic ways.

I am in favor of talking about solutions, and I do think there is an opportunity in the whole microfinance structure for it to be a part of the solution to the problem, but not the solution.

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MR. GRAHAM: Thanks. John?

MR. BORER: Thank you. Thanks for the presentation. We discussed in this Committee the tick size reform. I think for myself and probably for a bunch here, had no idea what it was when I got started, but we have had some very high level presentations. Some of it is theory, going back and showing correlation of different things when there were changes in market structure and the way the pricing worked in trading.

The last discussion we had here, we were discussing the problems inherent in establishing something that was a pilot. You referred to this, with respect to market participants actually investing in the capital, new start-ups developing, as things did in the past with the ECMs, et cetera, to provide more efficiency in trading, good or bad, opaque or not.

One of the things I think we have discussed is if you make it of a limited period of time, with a limited number of stocks, those investments will not be made, the market dynamics will not change, and new participants may not come if it's okay, it's sunset after two years.

Some specific questions because you made some specific recommendations. One, why do a pilot? If it is, why limit it to a number of stocks? Third, if you do

0052

limit it to a number of stocks, do you limit it to the ones that are most inefficiently priced or do you have a spread from the most inefficient, less liquid, all the way up through the highest priced and most liquid daily trading volumes?

MR. NIEDERAUER: How much time do you have?

MR. BORER: I do have a question after that.

MR. NIEDERAUER: I'll take that into account with my answer.

MS. JACOBS: I'm going to jump in one second to support John because this was a very big deal. Those of us that are public are suffering with our illiquid stocks. You have a couple say for God's sakes, just do something, even if it's wrong, we can back away from it, but one of the points that was made, and I want to back John up on this, do you know those market cap companies of $250 million, market cap and below, according to Reuters, only make up five percent of the average daily trading volume of NYSE and NASDAQ.

Who is really getting hurt here? Do you know what we're saying?

MR. NIEDERAUER: Yes, I'm with you. Let me try to respond. I want to do a brief history lesson just to give us perspective. We can anticipate the reaction. A lot of issuers feel like Chris does.

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Let's go back to the financial crisis and it's late 2008. The SEC decides, I think correctly at the time, we are going to ban short selling in financial services companies. We all have that in our head. Now let me just describe the next 48 hours that I had in the wake of that announcement, a few conversations with Chris Cox, that was the easy part of it, that was okay.

We spent the next 48 hours largely on the telephone with companies in all different industries trying to convince us they were really a financial services company.

MR. NIEDERAUER: If they had any kind of lending business, even if it was just vendor financing in their supply chain, their hand was up saying count me, too. Don't just do this for the banks. Please call us a financial institution for the next -- I would say to some of them be careful what you wish for -- my guess is the regulation that is going to come out of this, you're not going to be that excited to be a financial institution a year or two from now, but I understand why you want to be today.

Why do I tell you that? Not to be funny or impolite. It gets right at the root of John's question. History here tells us -- Jim, I don't want to speak for

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you guys -- the SEC tends to be more comfortable on a change like this with piloting it. It seems less permanent. It seems like if it's wrong, it's easier to pull it back. You can fix it if it doesn't have the intended outcome that we want.

I would encourage the Committee to talk to the staff about that because we will implement whatever you want. If you were asking us and it was our unilateral decision, we would come up with a set of ground rules and do it for everybody and convey to the market that as far as we are concerned, it's in, it's changing, don't expect it to change back. Otherwise, people aren't going to come. That's your point.

It better be a pretty long time. Our body language all better be to the ecosystem if we want them to change their behavior, that we plan on keeping this in. We are just being a little cautious just in case we get something wrong. It's in and it's here to stay.

We put down 300 to 500 because we're just trying to be pragmatic and get the ball rolling down the hill. Why did I tell you this story about 2008? Because I got 2,000 companies that want to be part of that 500.

If I sit there and say well, we are going to pick 500 and 200 are going to be on the NYSE and 300 are

going to be on NASDAQ, we're going to be on the phone a
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lot because everyone is going to be convincing us why they should be -- I think most issuers would want to be part of this, not part of it, if you follow me.

We may have to be in this scenario. We may have to throw caution to the wind a little bit. I'm not trying to kill this in Committee, but I do think it's going to be hard to just pick some stocks because it gets a little random, right, and then a lot of issuers are going to say what about us, right?

I think we should be prepared for that if we go down this road, but I think the most important thing we have to do is convey with our behavior that we intend this to be as permanent a change as permanent gets, or you're not going to get any change in behavior. I think that's your point, John. Very valid.

MR. BORER: Thank you. I think that is consistent with what we said. If I heard you correctly, you went with the more limited approach because it's easier to get the SEC --

MR. NIEDERAUER: History tells us that's what works down here.

MR. BORER: Okay. My other point, and this is harder to answer but I wanted to bring it up since you touched it on it with respect to some of the provisions
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of the JOBS Act. Before the JOBS Act, after the JOBS Act, we have talked about a number of these things, and the staff has been very helpful in explaining how the process all works.

We spent time talking about things, I'll use general solicitation as an example, that if it can be loosened up to allow greater outreach to a broader base of eligible investors, why limit it. If it's not going to do any harm, why not allow it, as opposed to well, why change it just because we want to change it.

The question is -- I don't know if there are statistics available from Corp Fin down here, because I have never seen them -- the confidential filing for the emerging growth companies. Do you have a view in talking to companies -- some of this is going to be anecdotal -- that more people are actually starting down the path of taking that first step?

I haven't seen yet any increase in the number or flow of IPOs that have come yet from any of the provisions of the JOBS Act. It's like if you have two universes of investors and one is going to make the investment in the new plant because it's good economic policy, return on investment, et cetera, and the other one will, if you provide them a tax credit. If you make that tax credit available, this half is going to take it
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as well.

If you make it so you can file confidentially, from what I've seen from issuers, almost everybody is doing it. To say people are taking advantage of that provision and that's a good thing, I don't know if it's changed anything with respect to the market.

Have you got any signs or sense? You're talking to companies every day that are exploring these opportunities.

MR. NIEDERAUER: I'll answer the second part of the question, and I think Lona is probably better positioned to answer the first part. I don't have any of the data that Corp Fin might have on how do you change the solicitation rules, how do you define an "accredited investor," what is really a private placement, what isn't a private placement. When do you cross that bridge. That is probably subject to a different debate.

The second part of it, it's anecdotal by definition, because we don't have enough data to call it anything else, it's only been in place for a few months. I think you are correct but for a reason that you might not know you are correct for, the one thing that I didn't think should have been part of the ultimate Act that you all know better than I is how things work in this town, the billion dollar number was kind of a crazy number, so I

0058

think it's way too high.

As a result, you are having more people use that because everyone is an emerging growth company, right? Every company that is going to go through the process practically is going to qualify under that standard because that number is so high.

That's why your analogy to the factory with or without a tax credit is a very good one. If that number had landed where it should have landed, I think we would have better data.

I do think what's happening, John, to the front part of the second half of your question, is I do believe based on the companies we are talking to, more companies are willing to try to get the process started because they think the option is less expensive, not in the way you and I would necessarily think about it, the money that Stephen alluded to earlier, the option is less expensive because I'm not going to be stigmatized if the first filing I put in, you know, the comments we get back from the SEC suggest we are way off base.

There is no cost of trying now to get started. I think they feel like they can get out there, they can get started, they can learn how that process works, and it's not the damage that they would have been afraid to do before when it wasn't confidential they are less

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concerned about, so I do think I'm getting clear evidence that is one of the reasons they are using that, and I do think more people are at least starting to go down the road than otherwise would have been if we hadn't done that. Hopefully, that gets to that part of it.

MR. NALLENGARA: The IPO Task Force, the folks who did that, and then how that turned into the JOBS Act, I don't think anyone thought confidential filings on its own was going to change the IPO market.

I think there are a number of reasons why people have identified why the IPO market is down. Confidential filings is probably not in the top ten of the list of things Duncan talked about in terms of tick size, giving market incentives, where the ecosystem has gone.

I think many more commentators in this area would put those at the top of the list. Someone referred to it as straws on a camel's back. Confidential filings is one thing, scaled disclosure 404(b), those are all things that add to what smaller companies may consider a burden of getting to be a public company.

When you look at each one of those things and say can we accomplish a confidential filing where a company can talk to the SEC about their filing without everyone watching, without someone at the Journal writing

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an article about how their draft one changed significantly from draft two, maybe that will encourage someone, along with some other things, to consider an IPO sooner or at all.

I think in terms of confidential filings, we are not going to be able to correlate confidential filings to an increase in IPOs. I think what we will be able to do is at some point, and I think it's too early to tell, as Duncan said, tell whether the JOBS Act, Title I, the IPO on-ramp, has had an impact. I think we will have to wait.

There are a lot of other pieces of that Title I of the JOBS Act relating to research and testing the waters materials. I don't think people have really -- market participants have really thought about and started to implement in the way the drafters of the legislation had thought they would, but that will take time. I think it is really too early to put the score card together on Title I.

MR. GRAHAM: Greg?

MR. YADLEY: I think some of your earlier comments about reasons why small companies haven't gone public and your comment about the costs and burdens may be being exaggerated.

I happen to agree with you, I think this

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Committee has looked at one aspect of why it's true, and that is there are so many regulations, and there are regulations that really, because of the one size fits all, ends up being put in place not necessarily by the

SEC but by conservative lawyers and accountants, for example, who look at the models of big companies.

Another point you made is an advantage of going public is permanent access to capital. I think it's probably too early for you to have statistics on this but I'm interested just in talking with your newly listed companies, which sound like in the last three years is about a little more than 500, a third of them are smaller companies, are they talking about secondary offerings, follow on offerings?

To me, that has always been either an advantage if a newly public company can take advantage of it, or if they don't, that is one of the ways they get orphaned. They have done an IPO. They are now continuously reporting. They are not really accessing the markets for capital.

MR. NIEDERAUER: I will try to get some better stats, but the follow-on market is alive and well. A number of those companies have already come back to the market with a secondary offering, particularly when we have that wave of venture-capital-backed IPOs the last

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couple of years, a lot of those folks have already found their way back to the market. The markets have hung in there.

Many of those businesses are doing quite well. I think you will see more of that trend. If you look at the companies that came out the first quarter of this year that were more private equity backed. Those tend to be a little bit larger. They will certainly go to the secondary market.

Q-1 this year, just to put it in context, $12 billion of IPO issuance on our Exchanges under the NYSE umbrella, almost $50 billion of follow-on's, just in the first quarter alone.

What I don't have for you, Greg, is the demographics of who did that, but we can try to get you those stats and I'll send them to Stephen and Chris.

MR. GRAHAM: Heath?

MR. ABSHURE: In looking at some of your earlier slides, particularly slide three, where you talk about 5.7 million businesses have less than 500 employees, many of these are mom and pop businesses that will never go public. They need access to capital but not necessarily the capital markets.

When you turn over to five, and we mention for other small companies, access to capital markets can be

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powerful, the job growth occurs after the company goes public. I think that is not something we necessarily struggled with but I have noticed in our meetings that when we talk about small companies, we're talking about a whole lot of different sizes of companies.

I'm assuming the companies you mentioned in slide five are those that are perhaps pre-IPO, post-IPO, struggling with Sarbanes-Oxley costs and things of that nature.

I think to facilitate liquidity and the securities of either type of entity, we are going to have to have timely material information regarding both types.

How do you think we facilitate that type of disclosure and facilitate some sort of liquidity mechanism for the companies in the first instance, the ones with less than 500 employees, the Mom and Pops that need capital but not access not to the capital markets?

MR. NIEDERAUER: I'm not sure I understand the question, but I'll try my best. You're right. What we are trying to convey here is they are two very different groups. I think my impression from a distance was when you talk about the recommendations that the Committee put forth, that is really addressing the companies we are talking about on slide five.

Those are the companies that are actually going

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to try to get there. They are going to get venture capital money. They are going to make it along that continuum where they will have a chance to consider accessing the capital markets at some point in their life cycle.

What we were trying to convey on slide three is the overwhelming majority of what we might all define as "small businesses" in the country, that's not even in their range of thinking. They spend no time thinking about accessing the global capital markets for capital. They are simply trying to think I own one business, should I also open up a similar business in the town next to me.

I think what we are trying to figure out there that I was answering Stephen's question earlier, I don't have the answer on that one. We just had some suggestions.

It doesn't lend itself to necessarily a capital market, but I think we should be thinking about things like microfinance, how to re-calibrate the rules and regs for community banks, how to think about helping them manage their working capital better, how to get them introduced to bigger companies who might be able to give them, I would call, like intellectual property, not in the sense we think about it with technology, but just sharing some

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wisdom of hey, it is easier to scale your business than you probably think.

My favorite example is go to a farmer in Vermont who thinks his only market for his maple syrup is locally, and it's pretty easy to show that individual he can have customers all over the world now for that product and scale his business without a huge investment.

Most of those folks don't know how to do that because they don't have a website, they don't know how to do logistics. They don't know how to export, et cetera.

I think all we were trying to say there is that's a big issue that folks like us who seem to be interested in these topics, maybe we can do some good there as well.

MR. ABSHURE: I think later on you mentioned that crowdfunding from the great experiment that it is, it's clearly directed at entities in slide three, more so than anything else.

I guess my concern is given that crowdfunding makes those securities non-restricted securities, and I think it does certain things to facilitate subsequent resales in those securities and the facilitation of the market, I think state securities regulators are just worried about transparency and information for markets in the companies on slide five is going to be there because

price discovery is coming, but we have no idea what the market for the companies on slide three is going to look like, and it gives us much concern.

MR. NIEDERAUER: There may never be a market the way you and I think about markets. It should give us all concern. In fact, what we have been trying to talk about is to say if that's a potential solution, let's just put it on the table and say what would make us feel better about it being a more viable solution.

I'm with you. The way it's grown up, I think it's a great innovation. I think we need to shine a spotlight on it and if anything, we were trying to bring it more into the light. We share some of your concerns on that.

I just don't want to dispense with it. What I was trying to convey earlier is I don't want to dispense with it because it's hard. I think Main Street is really struggling and there are ways -- a lot of these potential solutions we talked about, they are really challenging. They are not trivial solutions.

Let's not give up. I feel like the group here has clearly spent time thinking about small businesses. I thought you were a perfect audience to have the kind of discussion you and I just had.

The innovative ideas are cropping up, solutions

for how to address those innovative ideas are likely to come from groups like the people at this table. Let's be proactive instead of just watching it. That was really my message there.

Thank you, Stephen.

MR. GRAHAM: With that, I will thank you, Duncan. Your remarks were informative and insightful, and once again we appreciate you taking the time to speak with us.

MS. JACOBS: I'm going to add a thank you to the small business folks that are at this table, especially the public ones that may be in the audience, to have an opportunity to hear how much the Exchanges care.

It is a very expensive and labor intensive process to go public. As we have often said at this Committee, then you have a day two to worry about, and that is your ongoing support from Exchanges, and then the burden of the regulations.

Thank you for definitively telling us what you all are working on. It wasn't all evident until today.

MR. GRAHAM: Okay. With that, we will take a 14 minute break.

[Brief recess.]

MR. GRAHAM: We are pleased to have with us

0068

today Bill Hambrecht, who is Chairman and Chief Executive Officer of WR Hambrecht + Co. As most of you know, Bill founded WR Hambrecht in 1998. Before that, co-founded Hambrecht & Quist. As many of us know, an investment banking firm specializing in emerging growth technology companies.

I did a lot of deals with your bank way back when, and I miss not having you around.

Joining Bill is one of his lawyers, Jim Tanenbaum. Jim is a partner with Morrison & Foerster. Jim, you head up Global Markets?

MR. TANENBAUM: Global Capital Markets.

MR. GRAHAM: Global Capital Markets. With that, I think I will just turn it over to Bill.

PRESENTATION BY AND DISCUSSION WITH WILLIAM R. HAMBRECHT, CHAIRMAN AND CHIEF EXECUTIVE OFFICER, WR HAMBRECHT + CO., ACCOMPANIED BY JAMES TANENBAUM, ESQ., MORRISON & FOERSTER

MR. HAMBRECHT: Thank you very much. Thank you for inviting us here. We think the IPO process has broken down and has not responded the way people had hoped. We think the JOBS Act has done some very positive things and has helped us along, but as you can tell from the numbers, there has been very little quantitative proof that the IPO market, particularly for small companies, has recovered.

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If we could go to the first slide. What I would like, if possible, we have prepared a written statement that everyone has, I believe, and if I may, rather than read it into the record, I would like to highlight it this way, and encourage questions as we go along, if that is okay with you.

MR. GRAHAM: Yes.

MR. HAMBRECHT: Great. As you can see, when you look at the last 11 years of the IPO process, there has been, of course, a dramatic fall off after the bubble, the Internet bubble of the late 1990s was broken, and the IPOs have stayed with a little bit of recovery in the mid-2000s, and then of course, as we got into the financial crisis, dropped off sharply again.

I would draw your attention if I may to the size category. As you can see, there has been virtually almost no IPO activity in companies raising zero to $25 million. Very, very little up to $50 million. This was the area we were trying to address when we proposed an expansion of the Regulation A exemption. We feel this market is the market that has been most hurt by the structural changes and market changes, and has the least opportunity to access the public market.

This, of course, ended up in a dramatic decline in publicly reporting companies in the United States

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today. As you can see, it has dropped by really over half. I thought it was interesting that even in the last two years, it has continued to drop.

We have in effect almost eliminated the microcap and smallcap market that used to be so vibrant and was a place for smaller companies to initiate a public offering.

The reason, of course, for the JOBS Act was to somehow or other open this market to these small emerging growth companies. The Venture Capital Association has shown a lot of data about the impact of venture capital on job formation. There are a lot of different ways of parsing the data. One of the things they like to point to, of course, is that the venture capital-backed companies did go through the financial crisis in perhaps better shape than the economy as a whole, and that they continue, particularly in the last ten years, to have provided significant job growth.

There are a lot of ways of parsing this data, by state, by growth rate. I think the interesting thing to me is that the job growth basically takes place after a company goes public. Until a company gets public, it has limited capital, it is typically being funded to develop its product line, and particularly in technology-based companies.

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Once their product is accepted in the marketplace and they have a business opportunity to grow, they don't go out and buy fixed assets and they don't go out and buy plant machinery or anything like that. They basically go out and hire more engineers and more marketing people. They basically go out and sell the product.

You can look at almost any of the major successes in Silicon Valley or elsewhere, and you will find that the significant job growth comes after they have gone public and have stayed independent. I think that is a distinction that should be kept in mind throughout this whole presentation.

Ninety percent of the venture capital companies that have a liquidity event over the past really five years, and it goes back almost ten years, 90 percent of them have exited via trade sale or an M&A transaction. Less than ten percent have actually had a liquidity event that carries some public.

I would argue that a trade sale or merger almost always results in job consolidation, not job growth. Basically, someone is buying them to get the product. There is duplication of marketing, duplication of engineering. Almost in every case that I've ever seen, employment drops off dramatically when a company is

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acquired.

This brings us to the JOBS Act. I think the JOBS Act recognized this effect on job creation. I again want to stress that its principal objective was promoting access to capital formation so innovative emerging companies would have an opportunity to grow, and I would add as independent companies. I think this is the key to jobs growth.

Title I, we think it has been successful, although I will admit there has been very little application of it in the marketplace so far. I think first of all in going out and talking to companies who were thinking about going public, Sarbanes-Oxley was a major psychological barrier.

We did everything we could to argue around it because we had some pretty good examples of companies that had complied with Sarbanes and on a fairly reasonable basis. For example, NetSuite, a company we did bring public through the auction, actually made a decision to comply with Sarbanes even though they didn't have to, and actually wrote a software program to do the documentation and offered to give it to anybody who wanted to use it, because it really did not take that much effort.

There was such a psychological barrier, no one

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would believe us. We just could not get people over that particular barrier for the most part.

I think the phasing in of Sarbanes and in particular allowing relief on the internal audit process, which is really very difficult and expensive to put in, and not really applicable to so many of these smaller companies, I think that was a great step forward.

Secondly, the confidential submissions, I would add to what Duncan said, it helps because people would like to have an opportunity to really test the waters and find out whether you have a shot. I will say this, when you file confidentially, you have turned the switch of expenses. I don't think it really changes that.

I think Jim this morning at breakfast pointed out to me that 75 percent of the first three years of public ownership expense is incurred in the first couple of months preparing to go public.

A company, even if it files confidentially, is committing to a process that is going to be very costly. We can argue the costs. I can show you models where I can tell you that for a small company, it shouldn't cost more than half a million. I will be the first to admit there has been only one of our 23 auctions that has cost less than half a million.

It's a process that does cost money because

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number one, accountants are looking at it as a liability issue, not just time, but liability, and of course, the legal process requires considerable time and attention to detail.

I think confidential submission is helpful but on its own, it is not going to be the reason someone will go ahead. They will have to be very confident of success because they will be turning on the expense switch.

I think the pre-market testing will be most effective before any kind of confidential filing. That way, you can go out and you can talk to investors and you can get an idea of how they are going to respond before you commit to the expense.

I think the most important part of Title I is the allowance for pre-IPO research. I think that is a major step forward in providing investors with relevant information in a format that they are used to seeing to make an investment decision on an underwriting.

I think so far from what I understand, we are the only firm that has used it. I think there is considerable debate as to whether firms who were part of the Spitzer agreement can use it, and I think there will always be legal advice that says if you don't have to, don't.

Probably 25 years ago, Jim's partner, Bruce

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Mann and I, led an effort to get a safe harbor put in for estimates in the prospectus. It was done with the SEC, I believe, about 25 years ago. I got one company over a 25 year period that would ever use it because when you really got in there, the lawyer would finally say to the company, look, you don't have to, and this is the liability issue you are going to have to run with.

This was dramatically brought forward in the Facebook offering, because it was clear that there was an estimate out there, it was changed, it was conveyed to the marketplace through the bookrunner's sales force, and only to a certain select number of companies -- institutions.

MR. TANENBAUM: There are notable examples of when the staff has been ahead of the Street. One thinks about free writings and how permissive they might be and how restrained the Street has been in using them historically, and it took a while.

This is probably going to take a while, too, but that's because of the overarching concerns about litigation risk in this country. You are going to comment on that later, I assume, but there is not much we think is addressable on that subject for this group today.

MR. HAMBRECHT: Before the on-ramp provisions

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were contemplated and in fact it happened several years back, our firm recommended to a congressional hearing that we consider amending existing Regulation A by raising the dollar threshold and modernizing the provisions of the exemption as a means of addressing the drop in small company IPOs.

We chose this because first of all, it was part of the 1934 Securities Act. It was the small company exemption built into the original Act, and we felt if it was in the original Act and had been there, what could we do to make it useful.

What we found, of course, is it hadn't been used in quite a number of years because it had a limit of $5 million, and that was not a high enough offering to get you listed on any of the Exchanges, and once NASDAQ became an Exchange, that meant you had to go back without a Blue Sky exemption, you had to go back and in effect file in all the states where you wanted to sell the security. That was very costly and very burdensome, and just didn't fit in the economics of a $5 million deal.

Regulation A fell into disuse. We focused on it because number one, it is an exemption. When you look at Regulation A, historically Regulation A offerings, the Regulation A offering circular looks a lot like a prospectus, and to a great degree follows the S-1

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process but it was simplified.

I do think the key to small company IPOs is simplifying the process, not lessening the regulatory requirements, but simplifying the process so that these companies don't have to take as much time risk while they are in a registration process, because we live in very volatile markets. When you commit today to go public, if you do everything right, you will probably get it done in six months.

What you have to do is you have to look out six months and say is the market still going to be receptive for my kind of offering.

I think the more you can condense that time and condense that market risk through the preparation process, the more likely it is people will use this option.

I do think the IPO ramp did address some of the other advantages of Reg A. Reg A did always allow pre-marketing. It did allow them to go out and talk to people before they actually filed.

I think the JOBS Act did cure a lot of it, but I do think the process which hopefully could be different for Reg A, different than an S-1, could be done in a way that will simplify and shorten the time span. If it goes through the same process as an S-1, I don't believe it

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will be at all effective because you are just going to be another S-1.

I may be kidding myself, but I honestly do think that there is a large backlog of companies that would take advantage of this, and you will have a processing problem almost under any set of circumstances.

We go into some numbers later, but for example, Silicon Valley Bank, who has been very active in lending to these companies, has 7,000 privately-held companies that they actually are bankers to, 1,000 of them, they actually lent money to.

I've tried to come up with some number out of their database as to who I think would be eligible for an offering, who could basically justify a market capitalization of $50 to $100 million. I think the number is like 2,000 companies.

I do think if the market opens up for small companies, you will have a tremendous burden on your staff if it's basically processed like an S-1.

I guess the last time I was here I used Intel as the example of a small company going public, and it was an $8 million company. This time, I thought the better example would be Adobe. Adobe was a company that was started by two scientists out of Xerox Research Park. It developed some graphics software and basically moved

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into electronic printing.

It was a company that was thought of as a niche company. I remember we invested in it for all the wrong reasons. We thought it would be a niche company. Steve Jobs came along, saw it and said gee, you ought to put this on the Mac, and everybody laughed, he said I'll give you $2 million to do it, so fine. They did put it on the Mac, and it became basically the driving graphics engine for Apple and then became a great company.

My point is I guess we had just started shipping the product and Steve came in and said okay, I want to buy it. I remember him saying I'll give you $40 million for it, and to the investor group, boy, we had started the thing with $1.5 million. We said no, but I knew we wouldn't be able to say no again, and I knew he'd keep coming back.

We went back to the investor group and said we want to say no, we want to stay independent, but we will take you public so you have some marketability to your shares, so we don't have to sell out.

This is a clear example of a company that went public, $5 million public offering. It is now probably a

$20 billion-odd market capitalization company, 10,000 employees.

That would not have happened if it had been

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part of Apple. The technology would have been fine but it would have been owned by the Apple operating system.

To me, that is the kind of company we are trying to find. I think another reason they did it is because it's hard to identify the great companies early. They all have a great story. Some will work and some won't. I do think giving these companies the ability to create marketability for their investors is the key item. That takes the pressure off selling out.

Some of the others, Steve Case, who was so active in the JOBS bill, AOL, he likes to point out AOL was an $8 million IPO. Starbucks, Peet's Coffee, Whole Foods, Panera Bread, Odwalla, Intel, Amazon, Oracle, Cisco, all raised less than $50 million in their offerings.

The pattern that was there through the 1970s, 1980s and into the mid-1990s was most of the companies did come out early when they had a proven product but before they had a big financial record. They came out in modest size. Almost all of these companies didn't need working capital. What they needed was marketability for their investors.

I think the Internet bubble changed all that because what it did was create huge market values for a lot of younger, smaller companies, which attracted the

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major investment banks because suddenly what used to be $10, $15, $20, $25 million deals became $50, $75, $100 million deals, and suddenly, those were attractive to the major investment banks.

The pattern changed, and as you can see from the numbers, it really hasn't changed back. The business is still dominated by deals of over $50 million done primarily by the major banks.

What are the other alternatives? There are reverse mergers, some of these second market prices that are doing things, you can do successive Regulation Ds, maybe even crowdfunding, but none of them get you the secondary market that you need to satisfy the liquidity requirements of your venture investors or your angel investors or your employees or whoever put up the money to get you started.

We think having what we would call hopefully a Reg A+ would provide a process to allow them to get this kind of public market. From an information disclosure requirements' point of view, I think current Regulation A does not require audited statements.

We have recommended it should require an audit. I would argue having the last 12 months audited and certified should be enough. Most of these companies don't have a long history and the history really doesn't

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matter too much in terms of being precise on accounting. Most of it is pretty simple.

If you could have one year of certification, I think you would probably find 99 percent of the companies who would use this would already have that. Two years, probably. When you do have to go back and get certification for two years back, it becomes costly and difficult.

The SEC review, as I said, if there is some way of keeping it as an exemption, which requires the inclusion of certain documents and certain information that the investors should have, I think that would be a great move forward. I do think that the information required for smaller companies is not nearly as complex as the larger multi-division kind of companies that need all the special accounting.

I do think the research, the pre-IPO research allowed now under the JOBS Act should be applicable to a Reg A+, because I think that would be the key to giving the information that an investor needs.

Smaller emerging growth companies are basically judged on their ability to grow, and people want a picture of what the next 12 months' financial picture will look like. There is a need for an estimate, a need for goals. I think the way to discipline them is make

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them transparent and make them available to everybody.

If you don't allow them to put it out, there is a whispered estimate. Then there is no discipline on it. Once you print it and you put it out into the public, the blogs, everybody can pick it up, people can comment on it. I think the market is quite smart and sophisticated at looking at these things now.

I do think the pre-IPO research combined with a required list of documents that must be out there would be more than adequate disclosure to future investors in smaller companies.

MR. TANENBAUM: Bill, of course, maybe it goes without saying, for those companies seeking to go public this way, they will comply immediately with the 1934 Act obligations and our view of what the world might look like.

MR. HAMBRECHT: Yes. I do think the fact that the Reg A+ requirement does not have a deadline on it, and we didn't think it needed it, I guess, because it was already existing statutory, already built in, but I would recommend that it be at least thoroughly aired and out as soon as possible. I do think there is a need for it now, and I think the market would respond to it.

As Jim just said, on the recommendations, there has been a lot of comment about the idea that Regulation

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A might be some kind of vehicle that people would use to in effect avoid some of the market reporting requirements, and I do think if Regulation A+ were available, there really wouldn't be an awful lot of point in using it unless you wanted a public market. Otherwise, you could use Reg D. You could do the regular private placement.

If you went to the trouble of doing a Reg A, I think you would end up as a 1934 Act reporting company.

Jim, do you want to talk about some of the legal parts?

MR. TANENBAUM: I think we could probably take those with Q&A.

MR. HAMBRECHT: Okay. The recommendations, they are spelled out here. I guess the only thing I would add is I think as you know there have been comments from the state regulators, and I think for this to work, for companies who have offerings of say under $15 million and there are a lot of them, 5 to $10 million would be plenty, there ought to be some way of either getting an Exchange listing that would give them the Blue Sky exemption or some uniform way of registering it Blue Sky.

There are some programs out there. There is one that gets you automatically registered in 42 states,

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and it is pretty inexpensive. If you could do that for all of them, that would work.

I do think the real answer is either having an Exchange, either NASDAQ or the New York Stock Exchange, American platform, be willing to go down to as low as a $5 million offering, and I know it's not an easy thing to get specialists to do the smaller less liquid kind of securities, but to me, the best market would be an Exchange based market with competitive electronic trading, if it develops, but we hope we can get an Exchange to be aggressive about allowing these companies to move forward onto their Exchanges.

MR. TANENBAUM: Although it's not clear yet how it will emerge, one thought that should flow from the discussion up to now is that if a very comprehensive approach to Reg A+ offerings would include the ability to offer secondary shares, and Bill can comment on that, but if one were to look at the portfolios of many of the larger venture capital firms, there are any number of companies that are of value but are not necessarily of the size or don't necessarily have the attributes to make them candidates for anything these days other than acquisitions.

Reg A+ could be very helpful in creating an alternative for such companies.

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MR. HAMBRECHT: I do think Jim is correct, allowing selling shareholders, particularly in companies that really don't need much working capital, as I say, most of these companies, the objective will be to get liquidity for their shareholders, and allowing them to participate in the IPO makes it more attractive for them and of course, increases the size of the offering so there is a little more liquidity in the after market.

I'd like to leave Reg A now and just reiterate that we think the reporting requirements as envisioned here would protect the investors much more than they get protected now in a Reg D, and I think it would be more than adequate protection for both retail and institutional investors.

I would like to move onto the IPO market. I think Regulation A will be a big help with smaller companies, but I do think we have to recognize that the IPO market as it exists today has not been responsive to the smaller companies and has only been available to a very small group of specific type companies to really have IPOs, unless you have a very major deal.

The bigger companies, $100, $200, $500 million kind of offerings are getting done, and they are companies that are well established, and the existing structure of investment banks lends itself to that kind

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of an offering, and that is happening.

There is an awful lot of other companies that I think have not had this offering, and I do think there have been some very significant changes in the marketplace over the past 15 years that should be addressed to bring the IPO market back to real health.

I think first of all, the results of the financial crisis has created a consolidation of the major investment banks, where if you look at the assets, they are probably twice what they were before the crisis, and it has created a half a dozen or so, six or eight very large banks that have large asset bases, have large overheads, have large scale, that makes it very difficult for them to approach anything but the largest deals.

The independent firms that used to service this market, the H&Q's, Robertson, Underberg, those firms are all a thing of the past for several reasons. First, when the major firms decided to go into it, they bought everybody, including us. Secondly, the institutional brokerage business, which used to be the income stream that supported these kinds of firms between underwritings has largely disappeared.

Electronic trading has come in and now most of the firms cannot afford the research effort with only

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commission flow. To me, so many of the good analysts now have either moved to the buy-side or have gone into the boutique firms that basically get paid directly by checks.

I think the other changes that are perhaps even more profound, the economics of the large investment banks are largely determined now by the hedge funds, hedge funds have achieved, I don't know, 50 percent of the market. It's huge. Most of them don't report their portfolio transactions. They are dependent on the major banks for stock lending and for credit. They are very important both ways, and it is a strong partnership.

I think whether we like to admit it or not, the marketplace is dominated to a great degree by the combination of the investment banks and the hedge funds. I think what this means is that in the traditional sense, the biggest beneficiaries of short term trading profit would be the hedge funds. They are the major clients of the investment banks who underwrite, therefore, there is even a deeper, stronger incentive for the investment banks to under-price the initial IPOs and to get a hot new issue going and to get a pop. This creates short term profit for their hedge fund clients.

I have always felt this is the problem, this is the thing that basically is the weakness in our IPO

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system. Any time you can create free money, which is what they are doing, creating free trading profit, it will corrupt the system one way or the other. You will get a flow back in some way. Maybe you won't realize it if you are running the firm, but it happens.

I do think it has led to trading patterns in the IPOs that because it has monetized this discount and people expect the discount, it makes it very difficult to understand what the real demand is.

I think the Facebook offering was the best example of this. They claimed they had indications of interest five/ten times the amount of shares they had, and yet a great deal of that interest was there because the buyers were buying it because they thought it would trade up in the after market and that they would trade it out right away.

You can go through the history of it. So many of the mutual funds that used to be the beneficiaries of these big allocations, since the bubble burst, since the 2003 IPO Committee, I think that has moved to the hedge funds from the mutual funds. There is still a tremendous demand that has built up on the basis of a one day trade, and that makes the after market tremendously vulnerable, if you have engaged right, who really wants to own the stock and what stock level you will get real

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long term investor interest.

I think there should be alternatives to the book building basis that the major banks now use.

We are, of course, an auction-based firm. We have done 23 auctions. That works out to 1.2 percent market share. People say, well, it's not a factor in the market. It was interesting, when we took the top ten percent of the offerings as measured by how well the investors did, we have a six to seven percent market share.

I have always thought that the way to determine what is a good underwriting is does it work for the buyer, does the investor come out, is it a good deal for him. We think our process does work for the investor, and it is an improvement.

I don't claim to be the only one. There are a lot of different ways of doing it. If you look around the world, you will find all kinds of different ways, where there will be a subscription basis for retail investors, there will be different ways of doing it.

I do think basically getting some discipline on the pricing would help our own IPO process and specifically what we would recommend is that since these things are basically agency trades, in theory, you have a fixed commitment underwriting, in reality, they commit to

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the underwriting immediately, get an all sold wire, and it is immediately closed, but if they don't have an order book, they don't bring the deal. It is really an agency trade. To me, as an agency trade, it should be subject to best execution rules.

Best execution allows discounts. Sometimes you have to clear a trade. I think if there was some discipline and some accountability on the pricing, along the best execution rule, I think it would go a long way in solving this deep discounting and the hot deal and the aftermath that happens.

The other recommendation I think would help greatly is again subject the IPO process to full disclosure. For some reason, it was exempt from Regulation FD. That is why again in the Facebook offering, when the selective distribution of the estimate was made, the underwriter's response was this is the way we always do it, and that is true, it is the way it was always done, because they are exempt from Regulation FD.

I think the JOBS Act allows pre-IPO research if it is allowed, if it is distributed electronically to everybody. That is Regulation FD. I would say a way to solve it is to just make it subject to Regulation FD.

I could give you some more, but those are the two major recommendations I would have to approach the

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current process, and would hope that we have a number of other things that really revolve around those two things, and of course, if there is some way of mitigating some of the litigation risk, that would be helpful, too.

MR. TANENBAUM: That is probably not for today. I think one thing would be useful, if we could maybe tie it together, by commenting on all of the components and the constituent elements that you view as necessary to effect a smaller cap initial public offering these days. Some of them kind of get lost in the shuffle.

MR. HAMBRECHT: Okay. First of all, I think there have been steps already that have been very helpful, the Sarbanes' phase-in has been very helpful, but what we found in the last several things we have done, the accountants are very, very liability conscious. I don't know if there is anything that can be done about that, but anything that could allow a small company to go public with a normal certification, I think would be very helpful.

I think they will always charge for what they assume is added liability, but I think the accounting, because of the Sarbanes' phase can be handled, but anything you can do to help would be great in terms of not requiring the additional schedules and everything else that is part of a major S-1.

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Number two, I think some kind of process that allows much more rapid turnaround from filing to marketing would be greatly advantageous in terms of reducing market risk while that happens.

Third, I think the pre-IPO research should be a part of the process, and I do think anything to encourage that dealing with the Spitzer settlement or whatever has to be done, I think it should really become part of the process.

We’ve embraced it. I think it works and I think there is plenty of research out there that is high quality research that can do it.

Fourth, I do believe to really make these IPOs really public offerings, there should be some requirement, as I said, to go to the best execution rule, which says if there is a legitimate buyer out there, you have to recognize it. You have to recognize it through a selling group or some mechanism that allows the real buyers to come into the system and purchase the stock.

Finally, I think there has to be a pathway, immediate pathway to an Exchange listing that I think would provide an after market that is crucial to the success of an offering.

Thank you, happy to take any questions.

MR. GRAHAM: Okay. Thank you, Bill. That was

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helpful. Continuing on with your recommendations, if I heard you correctly earlier in your remarks, you indicated that in your view, I think you were pointing at the number of companies that are backed by Silicon Valley Bank, as I recall, and of that number, there was a significant number that you viewed as potential public companies that could easily go out with $50 million, $100 million market cap.

You indicated that Lona and his colleagues would be significantly burdened if the market opens up for those smaller companies.

You may have already answered this, but focusing on the "how," as opposed to the "if," is there anything you want to add to the recommendations you just made in terms of what in fact is the "how," I think we are all kind of wrestling with the so-called "IPO on-ramp" and various definitions for that.

We have talked about maybe having a separate market for smaller companies and ultimately they graduate into the existing more mature markets.

Do you have anything further to add in that regard?

MR. HAMBRECHT: I do think the best solution would be the way Reg A is currently set up where you basically address a number of documents that have to be

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included and information that has to be included, and I would not envision it as a line by line, word by word kind of review, but more a review that says okay, you have included everything that you think is important to the investor, in their words.

A lot of times with the S-1 the SEC is almost put into the position of rewriting a legal document with lawyers. If we could have it not go through the same process as an S-1 but more from adhering to a schedule of documents that have to be provided and information that has to be provided, and certainly if you see something you don't like, of course, but instead of really getting into comment letters, the kind of process now, which I would assume is very time intensive on the part of the SEC, it's a tough process.

Other things that could help is standardization of certain things, probably the item that takes the most legal time and the most effort in an S-1 is cheap stock. I have often said tell us how you want to do it and we will do it.

If you could somehow standardize that because it's a non-cash charge to the P&L. The investors basically have started to look at GAAP and non-GAAP. I really think the issuers are more than happy to comply with whatever you want.

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MR. NALLENGARA: We have tried to give guidance on that. I think it's a tendency for companies to look at what other filers have done and if their IPO went forward, then I should do the same thing, not recognizing that it may have gone through quite a lot of comment and review.

If there has been near term sales or issuances of stocks before the IPO, and we have seen vast differences in pricing just before the IPO as compared to the IPO, we would like to understand where --

MR. HAMBRECHT: Sure. Again, sometimes if you say this is what is standard, if you want to go off standard, come in and debate it. I think that would be very helpful.

I do think the numbers may sound crazy, but when you really think about it, the population out of the small cap market has declined by 5,000 companies. Secondly, Silicon Valley Bank is not the whole market. When you add in all the angels and everything else that is out there, what I did is I just multiplied their number by two, and my guess is it's probably even bigger than that.

We put a number in the document of 5,000 companies. I do think there will be 5,000 companies that would go public over the next three to five years, but I

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do think there is this immediate backlog.

MR. GRAHAM: Okay. Greg?

MR. YADLEY: Thank you, Bill, for all of your comments. I remember well the late 1990s and that kind of IPO market and while we may not get back there, these are all very good thoughts on how we might improve the situation.

When you were talking about Reg A+, I think we were all listening pretty carefully because that is a topic that we have addressed. We made recommendations before the passage of the JOBS Act. One of the problems, of course, of Regulation A has been exactly what is it and how is it used.

I think you acknowledged that in your view, most companies that would take advantage of Reg A+ would do so intending to be a publicly reporting company. I guess I have two questions. I haven't had a chance to read your presentation, so feel free to tell me you have laid it out there.

It sounds as if for companies that wish to pursue the public path following Reg A+, this would simply be an alternative more user friendly and more streamlined than the emerging growth company pathway as currently set out.

I'm curious as to the other Reg A companies,

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those that wouldn't pursue a real public life. You have indicated there should be an annual filing, some filings afterwards.

What would cause you to recommend to one of your clients that they take that less public path? Is it because initially what you are trying to achieve is the liquidity for the long time investors and then after that, letting the company see without too much post-IPO expense, or what kind of companies would be just this, we have done our Reg A+, we have raised our money publicly, and now we're not going to do 1934 Act reporting but we will give an annual reporting. I think you also suggested an 8-K for material events.

MR. HAMBRECHT: I never quite understood the fear of companies using this and not becoming public companies. To be honest, the companies that I've talked to, the only reason they would use Reg A would be to become a public company. Otherwise, I think Regulation D would be a lot safer and a lot easier. I don't know what advantage they would get out of using it.

MR. YADLEY: This is something that you obliquely referenced, if that's the case, leaving aside that maybe Heath and his colleagues would be happier to have the public information from a Reg A+, why not simply do a 506 offering, if you are really not intending

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to publicly report, why not just do a private placement?

MR. HAMBRECHT: That is exactly my point. I would be surprised if companies used Reg A. It's a lot of work and expense.

MR. ABSHURE: The difference is it will allow you, and Lona, correct me if I'm wrong, it will allow you to advertise to non-accredited investors. That is the point I was going to make. I'm hearing from mainly small bank holding companies that they are really looking forward to using Reg A because they want the ability to advertise shares in their bank holding company to members of their community. However, they don't necessarily want to become public. There is that aspect.

You mentioned something I wanted to ask you about. As you know, the current Reg A+ also authorizes the SEC in addition to the 1934 Act Lite offering statement, which we are used to seeing, to draft rules that will be a “1934 Act Lite” periodic reporting scheme.

I think you basically mentioned what you would like to see, some of your thoughts on what that would look like, but you also mentioned full blown Exchange Act reporting, full blown 1934 Act reporting, which I think is probably going to be necessary to get the Blue Sky covered treatment preemption, if you're going to rely on

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the Exchange listing.

For those companies that choose a lighter touch, I just wanted to let you know that the state securities regulators are working with the ABA right now to develop a one-stop filing program that would also have an uniform review process and probably a one-state review to kind of streamline that, but also remember that the states are only going to be looking at the offering document. We are not going to be looking at the periodic reports when they come out.

MR. HAMBRECHT: To me, our firm and my predecessor firm was in both private placements and public offerings for many, many years. I used to find that the private guys required more reporting, not less. To me, I would almost think a recommendation that says hey, if you use Reg A+, you are a reporting public company, and it would be a good thing.

A bank certainly has the numbers and they could report quarterly and annually. I would think that would be a precursor to getting good demand. I would bet most of them do.

MR. GRAHAM: Another thing that we have wrestled with as the Committee, I think everyone who is concerned about small business capital formation has thought about, and that is crowdfunding. Crowdfunding

comes in a number of different shapes and sizes. I think we are just kind of wrestling with, and apparently the SEC is wrestling with the rulemaking process, in terms of implementing the JOBS Act, but there are other ways of kind of skinning that cat or at least partially.

I think we have seen no action letters, and of course, I think you have more direct involvement.

I was just wondering what thoughts you might have and to what extent this is kind of a viable answer to the small business capital formation riddle.

MR. HAMBRECHT: I think the idea of crowdfunding is conceptually a really good idea in some ways, particularly out in Silicon Valley. An awful lot of the good companies have started with engineers pooling their money and putting things together. They are not accredited investors, but they know a lot more than most accredited investors do.

There is a natural constituency for a lot of companies to get started, and that can be on a talent level like engineers, it can be family, it can be a lot of different ways to do it. I think it is a good thing.

We decided as a firm not to do it directly because I felt that number one, any process that doesn't require financial statements is going to lend itself to fraud. I think there ought to be a requirement that says

you have to have a statement, a balance sheet and profit and loss statement, even if it is something that says I'm not in business yet and it's zero. Investors should know, should have a balance sheet in front of them. I think that should be a requirement.

Secondly, what we found at Hambrecht & Quist over the years on private placements, the appetite is very conditioned by the market climate. Generally, the real appetite for private placement's from outside investors comes pretty much at the wrong time in the market. It comes after some big successes and everybody goes oh, boy, I want a piece of that.

What we found is they would typically come in at the wrong time, buy one or two deals, and then pull back and wait, wait and see. Unless there was some liquidity event within a year or two, they became very discouraged.

Our advice on crowdfunding was number one, financial statements, and number two, some kind of limited liquidity based on reporting. In other words, maybe some kind of a call auction every quarter where you would allow people if they were sellers or buyers, you concentrate it all under a very narrow time frame, and do it on the company reporting quarterly or six months, or something, some degree of requirement that the company

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keep the investor informed and there be some measure of liquidity out there, albeit in a very narrow range. I think that would help.

MR. GRAHAM: John?

MR. BORER: Thank you very much for coming and presenting. The Reg A points you made, I think, are fantastic. I stated, I think, in the first meeting we had at the end of 2011 here, Reg A was in the dust bin and nobody was going to use it. There were 144 Reg Ss and indirect registrations and swaps, the reverse mergers that were taking place, the $5 million limitation was one piece of it.

I don't know if this fits within the rulemaking authority of the SEC, but if you can do away with the review of the filings, which makes it very similar to an S-1 process before you can actually go out and sell securities, I think that would make it so that certain participants may take that path as opposed to just going the regular S-1 route.

I think until that takes place, it's going to be obsolete. Maybe some banks will use it to stay private. I think the market will drive almost every company to do it if they raise more than $5 million to become 1934 Act compliant, the market will require that. I happen to agree with that.

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Two points that I think are more important. You talked about infrastructure, and while you were talking, I was going back through names like Morgan Keegan and Sudrow Tucker, Anthony Rauscher, Bosworth, not to mention Robbie Montgomery, Underberg, you mentioned, H&Q and Alex Brown.

In my view, being a participant in this market for all these years, until we get a vibrant infrastructure and culture of these small firms, Goldman Sachs, J.P. Morgan, Morgan Stanley, Credit Suisse, et cetera, are not going to be doing $25 million and below offerings.

If it is just you out there, like Lt. Dan in the crow's nest, screaming at the hurricane, it's not going to happen.

What in your mind would it take in order to bring that vibrancy back? You have been a financial entrepreneur for a long time and you've done it. Even Thomas Weisel, 2.0, threw in the towel a couple of years ago. He was a pretty bright guy.

MR. HAMBRECHT: First, I feel very lonely. You are absolutely right, the big firms have absolutely no interest in it. You are also right -- the other day someone asked me, I took the Apple tombstone down, and the Apple offering was in 1981, the IPO. There were 68

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firms in the syndicate, three are left in its original form.

There has been a dramatic change. You can say well, they merged or something. H&Q is no more. There are a dozen people left at Chase Bank. There has been a dramatic change.

By the same token, for example, in the Bay area, there is at least four advisory firms that have started, that I think have been started by high quality people that are doing a professional job. They are responding, of course, to the 90 percent of these companies that are going M&A.

I think if the public market opens up, I would guess -- we work with them now, but if we start doing public offerings and small deals, they will want to do them themselves. I think there is more than enough firms out there that would respond but the deals have to get done. I can't tell you how many people I have talked to that have said okay, when you get this thing done, come back and see me.

MR. BORER: With respect to that, I think it connects, the last point on your last slide was a very good one. I think this is one where market participants are just sitting back and it has to do with the adoption of certain of the things in Title I. I think as long as

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the large banks --FINRA, because of 2711, isn't going to be encouraging of the banks going out and doing the early research, allowing the involvement of the analysts in transactions, truly changing the way analysts are compensated.

I have mentioned this here before. Allowing them to do more work towards helping deals get done but prohibiting the fact they are taking on greater professional and other responsibility, they can't make any more money doing it, at least not in any direct way, because that was prohibited.

When will it be that the -- I've talked to people at Deutsche and J.P. Morgan, they are just we're not going to go do it first, and we may never do it, because we have a monopoly at this end of the market, and there is nobody nipping at our heels from below, with the exception perhaps of yourself, but it is going to take a while to change that mindset.

FINRA, from what I have seen, and I have seen several law firms who have said what you can do, but at the same time when the FINRA people come in and say what are you doing that for, and this is anecdotal, they can put us out of business very easily if they like.

We can go complain to Congress all we want, but that's not going to help. How does that change?

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MR. HAMBRECHT: First of all, when I said 68 firms to three, the three that survived are the three firms that have had 85 percent of the IPO business for the last 100 years, Morgan Stanley, J.P. Morgan, Goldman Sachs, First Boston, they haven't changed.

MR. TANENBAUM: First Boston didn't survive.

MR. HAMBRECHT: You are right, they have dominated the IPO business at the high end forever. They have no incentive whatsoever to go small. To be honest, I think structurally, it would be very difficult for them. Their overheads are such that it's pretty hard in a big firm to show a profit with all the work you have to do, and in some ways, a small, hard to understand, company is harder to do than General Motors.

General Motors - Morningstar and everybody else is going to write research on it, but if you have a small semiconductor company, you have to spend time and effort and money understanding it.

I don't think they ever will. I do think the answer for small to medium sized companies is the smaller either boutique banking firms or boutique research firms that have taken the place of the old traditional regional firms and the H&Q type firms. I think they are the ones that are going to have to fill the gap. I don' think it will come from the top.

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MR. BORER: Thank you.

MR. GRAHAM: We are just about out of time. Does anyone have any more questions?

MR. HAMBRECHT: I just thought, it was in this morning's Journal, there was an interview with a man who has an Internet-based real estate company, the question was: "Do you plan to take late stage capital and delay an IPO?" His answer was: "Right now, there are investors who are willing to pay premiums to get exclusive access to a deal before it gets public. More appreciation of company valuations is now happening in private markets as opposed to the public markets. I feel like it doesn't matter what valuation you get, at one point or another."

He's one of maybe 50 companies out there that are on everybody's wish list. This would be a $100 million deal. He's waiting until he gets a big enough deal.

It's the other 950 I'm worried about. They are the guys that don't have this option. They are the ones I hope we can find a way to get some movement in this smaller deal area.

MR. GRAHAM: Bill, once again, thank you very much for spending time with us. Again, that was very helpful.

We are going to break for lunch. As I

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indicated earlier, Chair White should be here in about an hour and 15 minutes, if you want to get back by then and take an opportunity to say hello before we reconvene at 2:00. That is the plan. Thank you.

[A luncheon recess was taken.]

A F T E R N O O N   S E S S I O N [2:01 p.m.]

MR. GRAHAM: Thanks everyone for returning from lunch. As you all have noticed, we have Chair White joining us. As you also know, she was recently appointed as Chair of the SEC by President Obama to serve as the 31st Chair.

She arrived at the SEC with decades of experience as a Federal prosecutor and as a securities lawyer, and prior to serving as Chair to the SEC, Chair White was the U.S. Attorney for the Southern District of New York and the only woman to hold that position in the 200 plus years of that office. She was also the Chair of the Litigation Department at Debevoise & Plimpton in New York.

She would like to give a few remarks, and so I will turn the mike over to her.

REMARKS BY CHAIR WHITE AND COMMISSIONER AGUILAR

CHAIR WHITE: Thank you very much, Steve. Appreciate it. Still the only woman in that District. We have to work on that, I think.

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Good afternoon, everybody. I have met many of you, and I know from your agenda and your presenters, you have already had a great meeting and still more to come, and I do not want to get in the way of that.

I would just like to take a couple of minutes mainly to thank all the members of what really is an extremely important committee for contributing your time and your efforts to the Committee's work. It really is important to the Commission, I just want you to know that, and it is very much appreciated.

I would also especially like to thank Steve and Chris for their leadership and hard work. They are fun people also, I can add, from meeting them last night and today. I would also like to thank -- now that I recognize them -- SEC staff members, Gerry Laporte, Ted Yu, and Johanna Losert, for their work in supporting the Committee.

Is that about right, Lona? And Lona, of course.

More importantly, I would like to thank the staff that does assist this Committee for ensuring that the needs and opinions of investors in small and emerging companies and the entrepreneurs who drive those companies get heard and considered at every level of the SEC.

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Literally three weeks ago today, I was honored to become the 31st Chair. I call myself "Chair" unless it's awkward to write it, then it's "Chairman" of the Securities and Exchange Commission. I must say I have worked with men and women of the SEC since I was U.S. Attorney in New York in the 1990s and 2000s, and then I kind of worked on the other side of the table a little bit when I was a securities lawyer in the private sector, and just gained tremendous respect for this agency and the staff.

I have to say having been here, it has soared. They are just the greatest group to work for that I can imagine. I have totally embraced the SEC's mission and the staff. It is a lot of work but having the time of my life basically. I'm just very fortunate to have been able to not only return to the public sector but here in the public sector.

I do believe very strongly that the best way to fulfill the SEC's mission is to reach beyond the agency walls, to listen closely to a variety of opinions on important subjects, to work collegially within the agency and with outside stakeholders. We may not agree on every issue but we sure want to get that input and get it fully. Respect the objectives and the ideas of all who contribute to the discussions that we have and that we

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welcome committees like yours.

I can't say it enough, are not only very welcome, but I think enormously helpful, and I look to you for expertise and points of view all the time. Thank you again.

This is a committee that really quite forcefully and articulately advocates on behalf of a critical and I fear at times an underrepresented segment of the American economy sometimes, and in doing so, you help make sure the SEC is very much focused on doing our jobs more effectively, and you also make a real contribution to the economy with the work you do.

It goes without saying I think that good policy is never made in a vacuum, it never arises from a vacuum. We need to hear ideas and criticisms and suggestions from experts in the areas that we have a direct impact on at the SEC.

Again, we appreciate the feedback, the insight, even the criticisms, that you learn from, and the suggestions that you deliver to us.

Again, something that probably goes without saying is the SEC can have a dramatic role in the life of a small and emerging business where that business seeks to raise capital, when it goes public, when it contemplates an expansion, or when it is involved

0113

obviously in a merger or acquisition.

I am committed to policy debates and a rulemaking process that ensures within the parameters of obviously our mission that the SEC makes a positive contribution to the success of small businesses. I feel very strongly about that. I think we can do that through our support of efficient capital markets, investor confidence and thoughtful regulation, as advised by you folks and others.

As you know and I certainly know, the Commission is in the process of a series of important rulemakings, including JOBS Act mandates, that are intended to aid small businesses in search for investors who will help them grow, create jobs, and strengthen the economy. In your analyses of these mandates, and I have caught up on this, the voice you gave to small and emerging businesses in the course of that debate is very much appreciated.

I know those rulemakings have not proceeded as quickly as at least some of you and many others would have liked. They are among the mandates that are really my most important priorities. I indicated that in my confirmation hearing, plainly, I want to get the rules done right, but I also want to get them done, but all the while keeping a very close eye on investor protection

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concerns.

That is important to all of us. Among other reasons, investor protection concerns, if you don't pay sufficient attention to them, the investing public will not have the confidence in an enterprise to invest in it and provide capital, so you don't want these new ways of raising capital to not be used or to be under used because investors may not have the confidence to use them.

Looking beyond the JOBS Act and other pending rulemakings, I recognize there are many other issues of concern to this Committee in particular, and those include more streamlined and easier to understand disclosure and a series of recommendations that you issued on February 1, I think, designed to improve capital access and secondary market liquidity for small and emerging businesses.

These are under consideration by the Commission and the staff, and I particularly appreciate your insights, and thank you for helping us to better understand those challenges for small businesses.

There are many opportunities that lie ahead for all of us. We are going to be listening to you early and often and continuously. Thank you very, very much for your work.

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I don't want to take any more of Bob Greifeld's time. I know he is next up on the agenda. Thank you.

MR. GRAHAM: Thank you, Mary Jo. Speaking on behalf of all the Committee members, we are happy to serve in this capacity.

Before we get to you, Bob, we have Commissioner Aguilar in the house. Commissioner Aguilar has been a Commissioner at the SEC since 2008. Prior to serving as a Commissioner, he was in private practice, specializing in securities and corporate law, international transactions, investment companies and investment advisors.

Commissioner, if there is anything you would like to say?

COMMISSIONER AGUILAR: Just really to add my voice to Chair White to thank you and every member of the Committee as well as the staff for all the work you are doing on this Committee. This is not my first meeting with the Committee. I have had a chance to meet some of you before. I've had a chance to see the work product that you have done and grateful for the fact that we are getting that work product.

As Stephen says, I've been a Commissioner since 2008, and given that the market crashed three weeks or four weeks after I joined, I feel like in dog years, I

0116

may be the longest sitting Commissioner ever. I think it's probably 35 years in dog years.

I'm delighted to be here. My own personal career involved representing small to mid-sized companies. I value the need to address their needs, to make sure the capital formation process works for them. There are different views sometimes on what that takes, but I think we are all in agreement with what the end result should be, which is to have capital formation work for issuers and investors.

We had an open Commission meeting today to discuss and vote on, unanimously, I might add, cross border rules on derivatives. Before that meeting occurred, I snuck in here to hear Duncan Niederauer's discussion. I thought he had a lot of good things to say. I'm going to try to hang in here as long as I can to hear what Bob has to say before I have to go to another meeting scheduled.

The fact that you are getting Bob and Duncan in one day, I'm not sure that is allowed legally, but you certainly have managed quite a coup. I will give the podium back to you so we can hear what Bob has to say. Thank you for being with us today and thank you for all the work you are doing.

MR. GRAHAM: Thank you. We are pleased to have with us today Bob Greifeld, who is the Chief Executive

0117

Officer of NASDAQ OMX Group.

Bob has led NASDAQ since 2003, and through many of the important events in NASDAQ's history, such as the acquisition of the Philadelphia Stock Exchange and the acquisition of the Boston Stock Exchange. Prior to joining NASDAQ, Bob led the buy side business of Sunguard Data Systems.

Again, Bob, thank you for joining us today.

PRESENTATION AND DISCUSSION WITH ROBERT GREIFELD,
CHIEF EXECUTIVE OFFICER, NASDAQ OMX GROUP

MR. GREIFELD: It's my great pleasure to be here today. As I speak, don't hesitate to interrupt and ask any questions you might want to. I understand you are not shy about that. That's good.

Let me start with a matter of introduction in terms of who NASDAQ OMX is. It may or may not be necessary. It's good to take a couple of seconds on it.

We have global listings that total over $6 trillion in market capitalization. That is comprised of 3,400 companies, and certainly $6 trillion is a big number.

Do I have a control for the projector?

MR. GRAHAM: Bob, as long as you have managed to interrupt yourself, let me continue with the interruption. I forgot that I was supposed to remind

everyone to see if you can turn off your mics when you are not talking and to keep your cells away from the mics to prevent feedback. Thank you.

MR. GREIFELD: $6 trillion in market capitalization, and that is spread across 23 markets around the globe and three clearing houses. Probably also very importantly is we provide the technology to 70 different Exchanges in 50 different countries, and we have direct visibility in terms of how those markets operate, what they do well, and what they do not so well.

With respect to what the Commission has done, I do want to compliment and express NASDAQ OMX's broad support for the findings regarding trading spreads. I like to call them "intelligent spreads," for smaller Exchange-listed companies, specialized disclosure requirements, and certainly a concept of a separate equity market structure for those of small and emerging companies.

When we look at the JOBS Act, we certainly applaud it as an overall piece of work, but it was remarkably light with respect to the secondary trading of these companies that come to market, and that has been a real life concern for us for a long period of time, where we have a lot of companies that come to market pre-JOBS Act and obviously post-JOBS Act, where their experience

once they come to market is not what it should be. Certainly, there is a dramatic lack of liquidity in that environment.

There is always the question of why that is happening. We certainly think we live in an ecosystem where the public markets have suffered through what I will call "the thousand small cuts," you can't point to any one thing that says this is wrong and this is the cause of the issue, but certainly on a cumulative basis, it has had a negative impact in terms of what has happened in the public markets.

In terms of NASDAQ OMX, our DNA is geared around these small companies that grow into larger companies. When you hear $6 trillion of market capitalization, well, that's a very large number, but let's understand very clearly that we understand why NASDAQ was formed and what it is has done more successfully than any other Exchange on the planet.

This is certainly an interesting set of circumstances where back in the day, I understand it was a hostile, a somewhat neutral hostile environment to some companies, where they were forbidding in Massachusetts, Apple going public because it was too much of a risk for investors.

The point here is obviously interesting and

hopefully the people of Massachusetts did at some point have the opportunity to buy shares in Apple, but beyond Apple, Microsoft, Oracle, Google, Intel, you see they originally listed on NASDAQ as small companies and grew to be very large companies. We don't expect that to be the norm, but it is our fundamental responsibility to make sure that situation can recur in 2013 and beyond. It is something we care about.

When you look at why we care, you see that since 2010, we have had 177 IPOs under $100 million come to our market. We have 1500 other companies under $500 million in market cap that spans all industries, and our smallest market tier today collectively totals $52 billion. As a broad statement, the overall market cap on NASDAQ averages around $5 billion.

It is something we spend a lot of time thinking about what can we do better, what can we improve upon in this marketplace.

One of the things we are doing as a result of the JOBS Act, which we think will be particularly important, is to focus on the private aspect rules on the JOBS Act. The JOBS Act said you can basically stay private up to 2,000 investors, and the employees didn't count towards that 2,000 number.

As we look at companies today, a statement of

fact is they stay private longer, and the question is what kind of organizational capability can we bring to the private market that doesn't exist today.

I would think of this on the continuum, not as a reference point of a public market, but the reference point of a private market that takes in angel investors, venture A, B or C, so it would be seen as another round of investing in these companies but able to do it with the imprimatur of bringing solid listing standards to this marketplace, bringing strict logistical capability of managing the cap table, the shareholder registry, knowing exactly who is buying and selling the stocks, and then possibly running once a quarter or twice a year, once a month, a call auction to provide those limited set of shareholders with some ability to get liquidity above and beyond what is available today.

We think this is an important aspect of the world. We don't think it's the major part. We want to focus on the public market. Clearly, the private market will be there and we think under the JOBS Act, there are ways for us to basically add some degree of organization to it.

As we come to our positions, we obviously want to gain insight from what we see around the world. We first look to our Nordic markets, and this is before

0122

NASDAQ acquired OMX, a marketplace called First North, and that was for emerging growth companies, and relative to the Nordic marketplace, relative to the size of the Nordic marketplace, it has been a success, I would say a qualified success, not an overwhelming success, but it introduced a better state of affairs than what existed before.

We have had 23 companies come to this market since 2011. Most importantly, about five companies per year graduate to the main market. I think that is the ultimate sign of success for these kind of incubator markets. Not every company should graduate, but the fact is you want to be having some positive self selection where a number of them can graduate.

One of the things that is very interesting when you look at the next slide is that we have run a fairly effective market for companies of this size. Before First North came along, the default value would be for these small companies to list on the London based AIM market.

When you look at the world today, we have about 70 percent of our companies having an effective spread below five percent. I think that is fairly remarkable for companies this size, and you flip it around, 80 percent of the AIM companies have a spread over five percent. We have been able to obviously solidify our

0123

presence in the Nordics and also attract additional companies from outside the region.

One of the things we do in the Nordic, which I think is fundamental to the success of First North, is we have the ability to have what we call "liquidity provider service," and in that liquidity provider service, the listed company itself has the ability to pay a market maker to maintain a spread in the marketplace.

To me, this is one of the most interesting slides here, page 12. The typical scenario is liquidity providers are good until you really need them, then they disappear. How can you ask a liquidity provider to catch the falling knife. The falling knife, I think, is a valid point.

If you look at what transpired to the credit crisis early, it was remarkable what the liquidity provision did to the trading of these stocks, and that represents a direct reduction in the costs to investors. We certainly see this as a valuable lesson for us.

Learning from that and other markets we deal with, we say okay, what is what we internally calls "JOBS 2.0," and 2.0 being focused on the secondary trading of these stocks that make it through JOBS Act 1.0.

We would say first, very directly, there should be a market maker support-pilot program, and this would

be at the company's option, no company is forced to do this. They can provide economic support for more aggressive trading and quoting in their stocks.

These programs are not limited to First North at this point. They are in fact very common around the world. I think the U.S. stands out at this point in time on not having them available.

The other option we would definitely put on the table is the smaller companies also should opt into a trading regime that is less fragmented than what exists under Reg NMS for larger companies.

What we see with respect to the payment scheme is we have the first example of approval of that in the U.S. through our Market Quality Program, which is limited to ETFs, not for stocks. We will have some great stats on that in the U.S., but clearly we have stats for outside the U.S. to do that.

In this market structure, the market makers would receive a payment in compensation for commitment to obviously enhance the quality of the market in the registered securities and they can compete for a large pool of dedicated funding. The intention here is obviously a tightened spread, reducing execution costs overall for the issuers.

In this program, these privileges obviously

have to come with obligations and responsibilities. They have to have a competitive price for the vast majority of the trading day, and it can't just be for a 100 share lot, it has to be for a significant number of shares available to qualify.

If they meet these standards, then they should be able to receive a proportion based upon some formula, both in trade and quote payments, and we think the payment from the listing company should be for both trades and for quotes. We want to see tight spreads, and beyond tight spreads, we obviously want to see trades that happen.

As I said, this is new for the U.S., common in other parts of the world. There is data that it does work, and I think it ties in beautifully with the intention of the JOBS Act.

With respect to the fragmentation question, in our Reg NMS stocks, if Apple trades ten million shares a day and it's fragmented, as you see in the pie up on the chart here, that is enough to go around. Let's make it clear, with these smaller stocks, if they trade 5,000 or 10,000 shares in a day, that would be accepted as the norm.

I do remember when the Dodd-Frank legislation was being considered. The concept was how can you move

illiquid over-the-counter instruments to a screen. I had Gary Ginser up in our office. I said Gary, we will look at five or ten stocks and see how they trade. If you pull up Microsoft or Apple, the screen is moving so fast, you can't even see it at the opening.

Then if you pick up any of the 2,000 stocks below that, it's not even like watching paint dry. There is no activity at all. Then you see the volume for the day is 500 shares or 1,000 shares or 1,500 shares. It is unbelievably low.

For us to fragment that volume, I think, is just making a difficult situation more difficult.

In terms of us talking our book on this, I just want to make it clear that our transaction revenue per day from our thousand lowest stocks is around $50. It might go to $75. It's obviously the right thing to do. We think liquidity, hopefully we will attract liquidity, but just make it easier for investors to be involved with the stock, and I think it goes hand in hand with you have market makers being paid by the companies to provide that tight spread and to trade in the stock.

It's good for that to be concentrated for a period of time. Again, there is a point in time where this doesn't make sense. At 5,000 shares a day, I think it makes sense, 10,000, you get to 100,000, you can start

arguing you have to change the set of rules. Certainly, that would be our recommendation.

We certainly see that as a standard practice when you go outside the U.S., in Sweden, the small caps, the First North type stocks, you see 99 percent of it is done in one place and it obviously makes it easy for investors, and then for the intermediaries in the market to deal in that environment.

Our recommendation is quite straightforward, and it is company selected, so to the extent a company was paying for a market maker, it would be their option. If they wanted to stop doing it, they could do it. There would not be any time commitment to it. To the extent the company had a centralized liquidity pool, no, that is not good, I want to change that, they get to do it. They can decide what is the right structure.

I also want to make clear that none of these things are a panacea, per se, but just as we have suffered through a thousand cuts, making these two changes will start reversing that and will help. We are not going to instantaneously create a deep and liquid market, but it will be an easier path to get there.

We obviously think the private markets will be there for a longer period of time, and we recognize our obligation to make sure we can bring some of the benefits

0128

of the public market in a low cost world to the private markets.

Thank you.

MR. GRAHAM: Thank you, Bob. Any questions?

MS. JACOBS: I have one. Historically, as we have spent time on this issue and had a lot of speakers, this group came to the decision: why not? Those of us associated with these illiquid micro cap companies, we are not even advocating even for a pilot. We are just saying for God's sake, just do it. It's only what, five percent of the companies with $250 million in market cap, only represent five percent of the average daily trading volume across both Exchanges. So, why not?

However, we have seen in the press there are folks that are opponents to this, and can you weigh in or provide some color for the Committee? Those folks that oppose this say these spreads -- when decimalization came in, and I don't remember the date, but the purpose in the press at the time was to take fraud out of the process or reduce these spreads and protect the investors.

I don't understand all those arguments today. Are you familiar with that? What I am trying to do is link where we all are today because we are sitting here associated with these markets, we are in them and we are living through it, but there were opponents to what

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happened in the past.

Could you link that for us?

MR. GREIFELD: In terms of going back in time, I think what you saw is you had both NASDAQ and NYSE with market structures where intermediaries were able to collect rent that they did not necessarily deserve. That was seen as the "big evil." I think there was legitimacy to that.

MS. JACOBS: You mean the market makers?

MR. GREIFELD: The market makers and the specialists had issues and investigations, and the spreads were kept wider than they should be. The answer that was delivered was the proper answer for the vast, for the 95 percent of the volume that you are talking about.

We came out -- we reacted properly but then over reacted or reacted in kind of a monolithic way, and didn't think through the smaller -- it was impossible politically to talk about the good things that market makers and specialists did in the supporting of the trading of the stock in the wake of the specialist and the market maker issues.

We came out with one size fits all solution to it. I think enough time has gone by to reflect on what is happening here.

I have been head of NASDAQ since 2003. I think

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the issues were back in 2001 and 1999, but it was still fresh and raw, we had intermediaries making money where they should not have.

The fact is in an actively traded stock where the buyers and sellers are constantly there, the role of an intermediary is quite limited, but as you go down the market cap curve and the volume curve, that role becomes more and more fundamental to the success of the enterprise.

I would hope now enough years have passed where we are looking at this thing academically and intellectually and taking all the emotion out of it, and by any data driven analysis, the five percent of those small companies are not being well served by this market structure, and it is time to do something for it.

MS. JACOBS: One of the other missions that we are charged with is besides capital formation, protecting the investors. The one argument I have never seen made in and around the decimalization and the tick size is what about our current investors who are in the stocks of these small illiquid companies where we have events and they are stuck, they can't get in, they can't get out.

It is almost like double trouble. Does that make sense?

MR. Greifeld: Completely.

0131

MS. JACOBS: I understand now the picture and the purpose where decimalization was concerned. We sit here today, and I want to protect my investors. They were there when we needed to raise money. Do you know what I'm saying? They are stuck.

MR. GREIFELD: If you are a PM, you obviously want to understand why you want to buy the stock, but a fundamental consideration is can you get out. We are at the bottom end of a negative reinforcement cycle. We have low volume and because we have low volume, we can't get higher volume because people who can bring volume to the world don't want to do that.

The market maker, he warehouses the inventory for a period of time and should collect a proper rent for doing that, helping people to get in and out.

There is always a willing buyer and a willing seller. If you go down the market cap curve, you are not going to have a simultaneous buying and selling interest. You need that person in the middle to grease the wheels. It is a fundamental responsibility.

If you are an investor, if you can't get out, even if you think it's a great investment, you don't want to do it. There is no doubt about that.

MR. GRAHAM: I think you have already answered this, but just to confirm, one of the things Chris was

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just touching on is the whole issue of decimalization, and you indicated that you support the Committee's recommendation in that regard?

MR. GREIFELD: Yes, I do. I would probably broaden the topic to what we call "intelligent spreads," a nickel or six cents or whatever is not always the right answer, but there should be different dimensions to what is the right spread for a stock at a given point in time.

Right now, we have fundamentally dumb spreads, it doesn't make any sense. It makes sense for Apple. That part of the market is well served. It does not make sense for other parts of the market.

MR. GRAHAM: Another thing we have talked about as far as that subject area is concerned is the need to have some certainty if you are going to make that change. In other words, the notion of a pilot program that is here today could be gone tomorrow. It does not strike us as the way to go.

Do you have any thoughts on that?

MR. GREIFELD: To me, it's an opportunity to use the JOBS Act. It is to my definition a pilot program. It goes for five years or $1 billion in market cap, and then you move on. I would think JOBS Act 2.0 should fit within that construct. We are not calling it a "pilot," per se, but there is a natural termination

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date. To me, that is the easiest path to get there.

That doesn't address a situation where a small company that's been there for five years and still trades 3,000 shares a day, so it's a pragmatic answer, but I would think we would have enough data, we would have five years of data, and then see where it goes from there.

I don't know if you agree with that. I think that is an easier path to go.

MR. GRAHAM: The devil is always in the details. I think most of us would be of the view in a situation like that, after five years, you take stock where you are, with the eye of making adjustments, not kind of eliminating things, going back to where we were.

MR. GREIFELD: Agree. You would have five years worth of data to see if you made a difference and made things better.

MR. GRAHAM: Another thing is just the whole notion of a separate U.S. equity market for securities from small and emerging companies. Do you think the Nordic stepping stone model is something that might fit the U.S. markets?

MR. GREIFELD: Definitely. It also has worked very well in Canada with their venture market and their way to graduation into the main market is quite strong. Yes, we believe that. As you say, the devil is in the

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details.

We came to this meeting saying if you have the JOBS Act construct and broad congressional support, and SEC support, I'm not sure yet, you could use that. Clearly, the right answer is let's look at the markets and change them based upon the data we see for the better, independent of the JOBS Act. I don't which one is practically more doable.

MS. JACOBS: I have a quick question about taking the JOBS Act and consolidating it for your existing small micro cap companies because you have the lion's share of them.

If there has been activity on your part -- the Committee worked on a set of specific recommendations we thought could materially assist an existing public company, but where we were coming down on several of these issues is that we have this whole plethora of existing public companies that are already engines. They already have gas. They are already moving. Yet, we could provide them some relief.

MR. GREIFELD: Our recommendations here would apply to all those companies, not to pre-negotiate, but we are saying if that right answer is not doable and the JOBS Act companies is the easier path, we would take that as a very positive step, begging the question if it

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worked for JOBS Act companies, you can prove it's good for the companies that have been listed for a longer period of time.

We are pragmatic people. We can play it either way. The better answer is to take care of the existing companies. You can go to a screen today and watch paint dry faster than you can see trading happening in a lot of these companies.

To me, a guy who is a software entrepreneur who ran a private company for a long period of time and as the head of NASDAQ, why do these companies want to be public. There will always be a friction cost associated with the public, you have investors you have to respond to and answer to, but the payoff should be that you have liquidity and ability to raise capital quicker than you would in a private company context.

If you are not getting that benefit, you see a degrading of the value of being a public company. Some companies are waiting longer or delaying it altogether or doing a roll up from a larger company. It is just not as appealing as it was not too long ago.

MR. GRAHAM: Leroy?

MR. DENNIS: I just want to follow up on the comment you made, Stephen, about First North. Maybe understand it a little bit better. Are there different

0136

disclosure requirements for companies on First North, are they significantly different? Do you do an IPO in a ten page document?

MR. GREIFELD: The whole process is easier, so yes, the disclosure, the original documentation, the disclosure regime is less onerous than it would be for a main market listing. The trading is different and the regulatory regime is different.

MR. DENNIS: We heard earlier that on a best case scenario, it was half a million dollars to take a small company into the public markets. Is that number substantially different for a company coming into the First North regime?

MR. GREIFELD: Let me start by saying if the market delivered what it is supposed to deliver, the half a million dollar number is not a big deal. I think the half a million dollar number becomes a big deal when you spend it and then you don't trade, and you have wide spreads. If you spent the half a million dollars even a small company in an active and liquid market where you could raise new capital and investors get in and out, I really think the complaints on that issue would go down dramatically.

When I look at our situation, I think there are a lot of good things we do here for investor protection,

0137

it has a cost to it. I have not been that philosophically opposed to a large part of what Sarbanes-Oxley does. You have to have the payoff on the other side. I think the issue is you are spending the costs but not getting the payoff.

That being said, the regulatory regime is a lighter regulatory regime than you have for the main market listing. I don't have command of what the dollar difference was, but we can certainly get that to you.

MR. GRAHAM: Greg?

MR. YADLEY: Thanks very much for being here. This is very instructive. I think just to sort of put a tail on a couple of the last comments, and we may be getting caught up in nomenclature.

I think our resistance to the use of the term "pilot program" in the traditional sense is with something that would represent a change now, especially if we can do it now, we would hope that it would be permanent enough that people would buy in as opposed to well, it's just a pilot, we can wait them out.

Another fundamental thing, which I think is what Chris was saying, is we are happy about the JOBS Act, many of those recommendations were supported by our Committee as the legislation was pending, but we do have these public companies and we have representatives of

0138

several of them in the room who feel a little bit orphaned, and they are not getting the payoff for being public, and it's not really right that they should have to sit there and continue to be ignored simply because we have the JOBS Act.

I think with respect to decimalization specifically, if there is a way to do both, acknowledging that a pilot program with a pre-directed set of companies may be easier, I think we would like to see as much innovation as possible.

At our February 1 meeting, we talked about recommendations for making regulation right-sized and the idea of a continuum for companies growing through stages, including in the public markets.

I was totally unfamiliar with this Nordic First North market. Thanks for bringing that up. I have a little more familiarity with what's happening in the Toronto Stock Exchange.

Could you just describe a little more what NASDAQ has been able to do to help the companies along, other than simply providing them marketplace? In other words, how did they get to the next phase and then ultimately NASDAQ U.S.? Were the liquidity providers instrumental in that or simply another feature? In other words, how did it actually happen for these companies

0139

that have graduated?

MR. GREIFELD: That's a great question and a multi-faceted answer. Clearly, here in the States, before we get to the Nordic, we refer back to the days of the Four Horsemen, and say what was right then and how is it different now. These companies had a strong research component behind them. You see a lack of that today, and you live in a feast to famine world.

As not a large company, NASDAQ listed our own market, a $5 billion market cap, we have 20 analysts covering us. I don't really need 20. Probably four or five would be more than enough. You go down the market cap curve, and it drops off the cliff with coverage.

We are certainly of the opinion that to the extent that there is economic value to the trading operation, that will support increased research coverage. Back in the days of the Four Horsemen, that was a fundamental relationship between those enterprises.

What we have done in NASDAQ OMX to try to get the pump primed a little bit is we set up a relationship with Morningstar, where they do kind of tear-sheet research, just to help a little bit. That is still a fundamental different thing than detailed research analysis for that.

I think the research and liquidity, if you were to highlight two things, are fundamentally important, and

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they are tied together in some way. The only way they are not is again if the company wants to pay for research itself but then that research tends to have a taint to it because you are paying the person to -- you might as well hire your marketing department, some people might say, to write the research. So it doesn't work. You have to have an ecosystem work for that.

That is what you struggle with, how do you do that. We certainly didn't cover it here but we think if you have a proper market maker support program, the research will start being generated as a result of that.

That is what we desire to do in the Nordics. I don't want to over sell how successful First North is. It is a success on a relative basis, relative to AIM, relative to what existed before. I don't think it has reached its full potential. You do see better research coverage, tighter spreads, and more volume for given market cap levels as a result of that.

MR. GRAHAM: John?

MR. BORER: Thank you again for coming and presenting. I know part of your business is providing technology to other markets and Exchanges around the world, aside from running markets yourself.

If you or your team were to walk into a place and suggest a new market, where one didn't exist before, given no regulatory oversight or burden, what would the key elements be that exist here in the United States with

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respect to regulatory oversight or market structure that if they didn't exist some place else would really be able to allow a market to be more efficient up and down the curve, transparent and liquid?

MR. GREIFELD: It is not "a market." One of the things we have to think about is the continuous market for thinly traded stocks might not be the right model. You could have a once a week call, once a day call, and how do you do that.

In a fragmented world, it's harder to experiment with different structures because you would wind up with no market share. I wish we had more data to show. We don't. Frank is here and might correct me.

When does a call market -- when should a call market step away and you go to a continuous market. We don't see around the world enough discussion or debate about that.

As I said, if we take somebody from 5,000 shares a day to 15,000, you have a 300 percent improvement, but that still may not be the right way to run it there.

If we were starting from a clean slate, I would want to do further experiments or experimentation with call markets for variously thinly traded stocks based upon the nature of them being there.

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I also think the market on a continuum starts from a buyer beware market, which we kind of have with the QIBS and accredited investors here, and then goes to the general public, mom and pop, and how do you manage that transition in a proper way.

We are trying to do a little bit with the private market because when you look at the world today, it is jarring between being private and being public. The twain really don't meet. I think companies have difficulties with that transition.

A direct answer to your question, if we were to design something from the ground up and we had the wisdom of the gods, we would know when to do the call, when to transition to a continuous market and how to do it, and we would have a limited investor set to be a larger investment set as the company itself was able to grow into an increased regulatory disclosure without putting any adverse impact on its business.

One of the things we learned from Sarbanes-Oxley from the large companies, as a percent of revenue, it was a tenth of what it was as a percent of the revenue for the small companies. Companies as they grow have more ability to meet increased disclosure requirements and have more ability to address a wider investor set, and have more ability to then trade in more of a

0143

continuous fashion.

MR. GRAHAM: Shannon?

MS. GREENE: In light of that, piggy backing on that, can you provide a little bit of color on the timing and the thought process behind the recent proposal on the internal audit function for NASDAQ listed companies?

MR. GREIFELD: Yes, I would say this, we were very surprised by the response from our listed companies, in particular, in the biotech world. I think the most poignant story I heard was a research based biotech company that had a partner, but they basically were a group of scientists, and they got the partner payment, and that was their revenue. They didn't really have any customers.

They said you are asking me to hire or pay for internal audit functions instead of hiring when we are scientists, we are a zero revenue type company. That one kind of hit home that maybe that was not the right thing to do.

We are certainly talking to the Commission and thinking about that and how it should apply. I would say we were not careful enough in knowing exactly the state of affairs from all our customers with respect to where they were, and what it would mean, and we are revisiting that right now.

MR. GRAHAM: Milton?

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MR. CHANG: I'm going to be simplistic for a moment. In some sense, the Internet changed the way people get exposure. Anybody really good can get instant exposure.

One of the problems we keep addressing is small companies don't get the excitement of the bankers and analyst reports. Why couldn't there be as part of their reporting answering ten standard questions? The analyst report really contains very basic information that gets people excited. Why couldn't that be presented in a very simple way in a mass exposure sort of way?

MR. GREIFELD: By the company itself?

MR. CHANG: Yes.

MR. GREIFELD: I think it can. If you want to be critical about what the analyst does, it takes the SEC mandated information, maybe it has a meeting with management, and then a lot of times reformats it, and certainly that is a doable thing.

It kind of ignores the independence aspect of the information. Yes, reading the company's SEC information, learning about the company, is very helpful, and to me, mandatory if you're going to make your own investment decisions, but there is still something serving a different function where a trained professional is writing a report.

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MR. CHANG: Independence is really controlled by the legality of what you present. There is very little room for interpretation when it is all said and done.

MR. GREIFELD: I'm not sure I follow you there. What the analyst writes?

MR. CHANG: Yes. In a sense, the analyst's interpretation can also be broken down into a series of questions, so to speak.

MR. GREIFELD: I think you are getting more towards a cash sheet analyst, something like a Morningstar. You have certain analyst functions that will be more of a plain recital of the facts and repackaging of what's available in the public. The higher order function would be somebody distilling that down into what is ultimately a recommendation and a price target and their logic for coming up with that. That is something a company really can't do.

MR. CHANG: I will make my last comment in the sense of once it is discovered, then there is a lot of information you can dig down to sort it out, it is the first step. It doesn't provide the rest of it. The rest of it would be taken care of by itself.

MR. GREIFELD: I think what you are getting at is can you do 80 percent of the work -- I think I

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understand -- a higher order analyst could lever their time. That is a good thought. You see that in some of the firms where they have some of the research done offshore. But I don’t think you could make the division of the work that way. It is something to think about.

MR. GRAHAM: Charlie?

MR. SUNDLING: My question is if maybe you can provide some insights on the feedback that you might be getting from the category companies we have been talking about this morning, which are the market cap of $250 million and less. We heard some really interesting statements, for example, about Adobe. I believe the number was they raised $8 million on their IPO, very small.

It is critical that these companies were funded and remained independent and were allowed to grow. Some of the other statistics that were brought up were as a company gets acquired and becomes part of a larger OEM, generally the trend is for reverse job growth, where you get consolidated out, all the duplicated jobs are eliminated and so on.

Small company, software tech CEO, probably 30 or 40 folks that fraternize with who are in the same boat, and we have been around doing this thing and looked at the AIM and some of these other markets and so on, but honestly, I would say nobody takes, this size of a

0147

company, takes public markets as a serious liquidity exit strategy, there is so much private equity, there are so many strategic buyers, as you go through all the different regulatory requirements and everything else going on, I don't know anybody that talks about IPOs any more, at least not in the same way that we all did back in the mid-1990s.

It is what every kind of CEO's dream was, and what I say has changed is we have become much more pragmatic, you are looking at an exit as a final event, whereas an IPO to me has always been maybe a partial exit, but what you are really betting on is what you can do once you are public.

My question is around -- the statistics that we saw, and I don't know if that was only limited to NYSE or if it is just in general, showed there was an absolute cliff for small company IPOs in 2001. There was a little dead cap bounce and that was it. The number is extremely small.

For all the objective evidence suggests what Mr. Hambrecht's headline was on one of his slides, is the IPO market for small companies dead, is it gone, is it ever coming back, so as you talk to would-be listing companies, and just from a philosophical standpoint, and I would guess the ones you end up talking to have already

0148

philosophically shown an interest in being public, of course, how many don't show up even to have that conversation?

Do you have any statistics or insights or anything else about just philosophically have small companies decided to stay away from the public markets in general?

MR. GREIFELD: I don't know if they have decided to stay away, but they are staying away because they are not hospitable to them at this point in time. We certainly recognize that as the basic statement of the problem.

I don't want to overstate the problem because certainly back in 2001, there were probably companies that came to market that should not have. The denominator of the problem is smaller than you think, but it is still there, and something that we thank this Committee for their efforts on.

What can we do as NASDAQ to help with that. We have covered a lot of different pieces today. Just to cover them in a little different way, a large global bank with their cost infrastructure cannot be involved with these smaller companies and make a nickel. We call it at NASDAQ OMX "the corporate kiss." The allocation from corporate in J.P. Morgan as a well run bank is still

0149

monumental in terms of what they have to do without getting less.

There clearly has to be entrepreneurial based investment banks that have name brand and credibility to make this market work. They will be interested in it if it is on their low cost structure, still profitable for them to be involved with it, and it would not just be the IPO but obviously the after market support, and support you as it grows.

What makes them interested? Clearly, if they have a profitable market making operation, profitable research associated with it, that would help.

Where are the investors? Investor funds have restrictions on liquidity. They have to be able to buy and sell to get out. There is less of them available, and we certainly don’t have a period of time where you are capturing the imagination of the retail investor with some of these things, and that could be just the part of the cycle we will be in, and we can be in there for a period of time.

Our feeling is the barrier to be public today will still be higher than we want it to be. The work of this Committee and the Commission hopefully will lower that. We clearly see with the private market there is going to be that period of time where that would be a

0150

valuable service to them, and as a glide path into the public market.

If you are saying the public market's position of where it is today and then you have the venture market where it is today, assuming those things are right, there is a gap there, and it is our job to see if we can come up with something that helps address that, where people would have a weekly, monthly, once a year call market, control the register to know who their shareholders are, they still have the ability to pick shareholders, and shareholders will then demand what they need with respect to audited financials and have that kind of work in a better fashion than it does today.

For the existing public companies, we need to do what we said and that will improve their situation and not to be negative, I don't think it is going to be overly dramatic, but I think it will be helpful in terms of what we are talking about here.

MR. GRAHAM: Any more questions for Bob? Tim?

MR. WALSH: If someone was opposed to your liquidity concentration program, what argument would they make?

MR. GREIFELD: It's an easy one to debate or argue against. It is saying we want a monopoly in the trading, the listing venue has a monopoly for a period of

0151

time. That can't hold. It's not the right thing.

It is a question of what is the proper incubation period before you fragment the liquidity. To me, the first job is to have a liquidity pool, build that, and then try to fragment it by competition. First, build it. How do you best build it? We have to get the fire going first, and we are not doing that today. Others will definitely differ on that.

Once you do the math in terms of what we are talking about, I think the opposition will be a lot less. You need incubation time. These small companies, it's hard to survive and to grow. We need to do everything we can to encourage that to all parts of the value chain.

MR. GRAHAM: Leroy?

MR. DENNIS: I just have one more small question. On First North and other markets like it, has there been enough data to suggest whether or not there is an increase in investor fraud in those kinds of companies as opposed to where the full protections are, institutions like the SEC have in place?

MR. GREIFELD: That is a great question. I don't have command of that data. I'm not sure I can get back to you with the answer, but we will see if we can. [Inaudible.]

I will say a politically incorrect comment, the risk of fraud, it is not as endemic in the system up

0152

there as it is here.

[Laughter.]

MR. GREIFELD: I didn't say that, I retract that statement. We will see if we have the data but I'm not sure. I think our set of challenges here in the U.S. is actually more intense on the investment fraud base.

MR. GRAHAM: Bob, everything you have said is now part of the webcast for all time.

[Laughter.]

MR. GREIFELD: Oh, boy. It's six hours ahead in the Nordic, I might get through the night.

[Laughter.]

MR. GRAHAM: Thank you again, Bob. We very much appreciate your contribution to the dialogue. Thanks for taking the time.

MR. GREIFELD: I appreciate you folks volunteering your time. It is obviously an important topic. It is multi-dimensional. It's not easy, it's hard. Appreciate what you are doing.

MR. GRAHAM: Thank you. We will give Bob and Mary Jo and Jim an opportunity to excuse themselves. We will do a quick wrap up.

DISCUSSION OF NEXT STEPS AND CLOSING COMMENTS

MR. GRAHAM: I think today has been a very productive day. I think there is a lot we have to

0153

digest. I think the next thing we need to do is to think about in a critical way some of the information we got today, couple that with some of the issues we already felt were kind of on the table and come up with a set of recommendations to discuss at our next meeting.

What I would suggest is that we allow Chris and I to get together and talk with Lona and Gerry, formulate a set of recommendations that we can then get out to you, and then see if we can come to some agreement on a set of issues that we should focus on at our next meeting.

If the Committee feels that might be the correct approach, that is what I suggest we do, as opposed to taking time today and kind of going back and distilling what Duncan had to say, what Bill had to say, and what Bob had to say.

Does that make sense?

[Nodding of heads.]

MR. GRAHAM: Okay. I would like to wrap up by asking Lona to give us a wrap up as to where we stand on prior recommendations and then maybe if you are willing, where we stand on the rulemaking that is of particular interest to this Committee.

MR. NALLENGARA: Thanks, Steve. I think the Chair sort of stole all of that in her remarks. We are working on the rulemakings, so there are three primary

0154

rulemakings that all of you have been talking about and we have been talking to you about in the JOBS Act: general solicitation, crowdfunding, and in Reg A+, all of which we touched on, more so Reg A+ , today.

We are working on those. Chair White indicated today and she has indicated in other venues that those are her priorities along with getting through other congressionally mandated rulemakings.

Everyone asks what is the schedule, what is the time table. I don't know other than we are working as hard as we can. We have rulemaking teams on each one. They can all work independently of each other. They are staffed separately. They can all work as hard as they can, which they are, and we are getting them done as quickly as we can.

With respect to your four recommendations that you made at the last meeting, those have been provided to the Chair as well as to the other Commissioners, and they are posted.

You hopefully saw some of the media coverage of some of those recommendations. As you know, right after your meeting, there was a Roundtable the Commission had on decimalization. The Commissioners are considering next steps from that Roundtable, some of the ideas relating to tick size and decimalization we talked about

0155

today, regarding whether a pilot is something to proceed with.

I know this Committee had questions about whether a pilot is the right answer, and also whether it should be some subset of all companies should be eligible to use it. Part of the idea of a pilot -- I know a pilot is a question for all of you to begin with -- part of the idea of a pilot is to be able to have something to assess on whether you need to modulate what the pilot put in place to make sure you are getting the result you want, and part of having a sample size is also being able to compare the companies that were subject to the pilot to companies that were not subject to the pilot to understand what liquidity may have occurred or may not have occurred.

There is consideration among the Commissioners on next steps. That is something to come as well.

On the other recommendations, the Exchange as well as the disclosure, the final recommendation related to specialized disclosures, I think that was something for the Commission to inform Congress. We will leave that one aside for the moment.

On the other two, we have a study/report that we are working on disclosure requirements in Regulation S-K. That, we hope, will be a step towards broader

0156

disclosure review, looking at all our disclosure requirements, looking at things like what we are asking of companies, whether we are asking the right things of the right companies, and where we are asking for that information to be disclosed. That, I think, to the extent you are interested, would be something this Committee could help the Commission and the staff with as we work through that.

Your recommendations will serve as a guide to what this Committee thinks is a good first step.

I think that covers it. As always, I have no answers, just more questions. Hopefully, one day I will be able to answer the "when" question, but it will likely be after it is done.

MS. JACOBS: Lona, is there any movement at all? Not that all four suggestions have to be taken collectively. To take the $75 million market cap exemption and move it to $250 million, some of this is in the purview of rules and regs and doesn't take an act of Congress. It's not of the magnitude that decimalization would be.

MR. NALLENGARA: You are right, Chris. Many of the things that you have provided us a recommendation on are things the Commission could do on its own. The priorities, the rulemaking priorities now are getting

through like what Congress told us to do, so that is completing Dodd-Frank, getting through the JOBS Act mandates.

The next step with respect to smaller companies is to look at a number of the issues you have talked about here, and one of those is disclosure reform, but looking at disclosure reform is also looking at are we asking for the right information from the right size of companies. Is $75 million right, is $250 million the right number. If we are cutting it that way, why are we cutting it that way, what are the indicia of the companies at each level that makes sense.

Duncan indicated the $1 billion number, he didn't understand where that came from. He suggested it was there wasn't a basis for it, he thought it was too high.

If we were going to have rulemaking with respect to changing $75 to $250 million, we would have to have a basis to make that change. Our analysis would have to show data to support a change from $75 to $250 million. That is work we have to do. That is work that would be part of a broader project on disclosure reform.

MR. GRAHAM: Don't sell yourself short, Lona. You have answered our question, the answer is unsatisfactory.

[Laughter.]

MR. SUNDLING: Steve, I have a question. It's more of an observation. The topics that we have taken on here from crowdsourcing to tweaks in Reg D to the public markets, it is a lot of stuff.

One of the things in these Committee meetings and the content coming out of here that I find falls into the disturbing category is what's going on in the public markets. I guess my question is does it warrant separating that out into when we talk about the public markets specifically as a separate topic, focus on a get well plan just around getting public, staying public, and all the things involved because that on its own is a massively complex and broken part of this equation.

The part that is disturbing is given the amount of importance that has to the economy in general, we hear from all this testimony the jobs that get created post-IPO, all these jobs are elements, and I guess my concern is when it gets bundled in, all this stuff together and we look at it more holistically, what you need to do, as it is kind of piled in there, there is going to be smaller recommendations in each one of these different categories, but that certainly seems to be something that is good and broke and needs to be looked at very closely, and I'm sure it is.

Even for this Committee, maybe that is a

0159

separate topic that we can focus on and just come up with a ten point plan of some type to address it.

MR. GRAHAM: I think I understand your point. I think addressing things like tick size and kind of the whole disclosure framework, the IPO on-ramp, alternative markets for new public companies and that sort of thing, I think that addresses that broad issue.

Maybe there are other things we haven't thought of that we should be focusing on as well. Please keep those in mind.

The other side of that is while we understand when companies become public, they become the big job creators, as far as the life of that company is concerned, like Duncan was saying this morning, most of the jobs in this country are going to be generated by companies that have no aspiration whatsoever to ever be a public company.

We can't forget that either. He described it as capital formation for Main Street. I think that side of the equation tends not to get the headlines, but I think that is certainly of equal if not greater importance in terms of the overall economy and job creation.

That is just my take.

MR. DENNIS: Steve, I agree. The other thing I would caution the Committee on is don't lose hope in what

0160

we are doing here. I sat on the previous Committee with Gerry and some of our recommendations were -- I think most of them eventually got adopted. It just takes a while.

I know we all want things to move tomorrow, but the SEC does have to analyze it and make sure they are going in the right direction. I know when we left that original Committee, you kind of felt depressed that nothing was going to get done, but then lo and behold, it does happen.

I guess my advice is to keep charging and keep coming up with good ideas because it just takes a while to move the beast.

MR. GRAHAM: Thank you for that. Our next meeting is scheduled for September 17, I think. D.C.?

MR. NALLENGARA: Yes.

MR. GRAHAM: Details to follow. Can I get a motion to adjourn?

MR. CHANG: So move.

MR. GRAHAM: Second?

COMMITTEE MEMBER: Second.

MR. GRAHAM: Anybody opposed?

[No response.]

MR. GRAHAM: Thank you.

[Whereupon, at 3:20 p.m., the meeting was adjourned.]

0161

PROOFREADER'S CERTIFICATE

In the Matter of: MEETING OF ADVISORY COMMITTEE FOR SMALL AND EMERGING COMPANIES
File Number: OS-265-27
Date: Wednesday, May 1, 2013
Location: Washington, D.C.

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

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0162

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I, Jon Hundley, reporter, hereby certify that the foregoing transcript of 160 pages is a complete, true and accurate transcript of the testimony indicated, held on May 1, 2013, at Washington, D.C. in the matter of: MEETING OF ADVISORY COMMITTEE FOR SMALL AND EMERGING COMPANIES.

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

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