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SMALL BUSINESS
CAPITAL FORMATION ADVISORY COMMITTEE

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U.S. Securities and Exchange Commission
100 F Street NE
Washington, D.C.

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MS. GARRETT: Good morning and welcome to today's meeting of the SEC Small Business Capital Formation Advisory Committee. Happy New Year. It's good to see all of you.

Julie, do we have a quorum for the meeting?

MS. DAVIS: We do have a quorum. And I will give the standard SEC staff disclaimer just a reminder to everyone that the views we express today are our own and do not necessarily reflect the views of anyone else at the commission.

MS. GARRETT: Thank you, Julie. Before we get started, I'd like to extend a special thank you to the chair and the commissioners for attending today's meeting. It's nice to have you here.

We also extend a thank you to Martha Miller and her team in the Office of the Advocate for Small Business Capital Formation for continuing to do an incredible job at advocating for small businesses.

We also want to thank our guest presenters for taking the time to come today.

And finally, we appreciate the members of the public who have tuned in to watch the meeting via webcast on SEC.GOV.

1 The main topic on our agenda today is the
2 discussion of the accredited investor definition in the
3 context of capital raising. We have invited outside
4 speakers who will present on this topic, and I look
5 forward to the committee engaging in discussions with
6 them.

7 Our first item on the agenda, though, is that
8 the SEC Small Business Advocacy Team will present an
9 overview of their 2021 annual report that covers the
10 state of capital raising activity from startups to
11 small-cap. They will also demonstrate for us the
12 office's newest educational materials, foundational
13 tools on their website that I think we will all find
14 useful when working with small businesses and investors
15 as they attempt to navigate the securities laws.

16 The committee will then turn to the topic of
17 the accredited investor definition. This is the topic
18 on which the committee discussed and made
19 recommendations in 2019. In addition, the SEC adopted
20 changes to that definition in 2020.

21 The reason for the discussion today is that as
22 part of this rulemaking agenda for the upcoming year,
23 the commission has included considering updates to the
24 financial thresholds in the definition of accredited
25 investor.

1 The SEC Small Business Advocacy Team will give
2 us an overview of the 2020 amendments to the accredited
3 investor definition and help put into context how the
4 accredited investor definition interrelates with other
5 capital raising goals.

6 After the overview, we will hear from our two
7 outside speakers. We have Shelly Omilade Bell and Eli
8 Velasquez on how the accredited investor definition
9 impacts capital raising opportunities for both
10 entrepreneurs and investors in their network.

11 After lunch break, the committee will continue
12 discussions about the accredited investor definition,
13 and we will consider potential recommendations.

14 Now, we would like -- love to hear from the
15 chair and from the commissioners. We welcome Chair
16 Gensler and Commissioners Peirce, Lee, and Crenshaw to
17 today's meeting, who will make opening remarks.

18 Good morning, Chair Gensler.

19 MR. GENSLER: Thank you, Carla, and all the
20 committee members. It's good to be with you again. I
21 appreciate the members' continued willingness to
22 volunteer your time to represent the interests of small
23 businesses. But more than that, to give us advice on
24 how the SEC, its current rules, the rules that we might
25 consider affect capital formation and this critical part

1 of our economy. I will keep my remarks brief today.

2 Today's agenda includes an overview of our
3 Small Business Advocacy Team's 2021 report. The report
4 provides a deep dive into the data on what's happening
5 with capital raising from early startups to small-cap
6 companies.

7 I encourage everyone to take a look at the
8 report, as well as the new educational resources on the
9 capital raising hub website. We welcome your feedback,
10 and I thank Martha and her team on all the work they
11 have done there as well.

12 Your agenda also includes a discussion of the
13 financial thresholds in the accredited investor
14 definition. The accredited investor definition plays a
15 central role in our regulations. Private issuers that
16 limit their sales to accredited investors are able to
17 raise unlimited money in a private offering without
18 having to register those securities or otherwise comply
19 with the full range of regulations designed to promote
20 market transparency and integrity of the efficient
21 allocation of capital and the protection of investors.

22 So you can imagine, since it was first
23 adopted, it's had a lot of focus. It's intended to
24 identify investors that, in essence, do not need the
25 protections that apply in registered offerings. And the

1 definition was first adopted, as you know, about 40
2 years ago in 1982. And then revised as Carla said
3 last -- or two years ago now.

4 It's essential, not just for investor
5 protection, but also for the health of our markets that
6 we continue to think about this definition. This
7 committee offered recommendations, as Carla said, back
8 in 2019. I will be interested to hear if there are any
9 changes to those recommendations, any additional context
10 you may suggest we consider.

11 I thank the members for volunteering your
12 time, of course, to provide us with your expertise, your
13 perspective. I look forward to the readouts from
14 today's discussion. Thank you.

15 MS. PEIRCE: Thank you, Carla, and the
16 committee for your continued work. I look forward,
17 particularly to today's discussion on accredited -- on
18 the accredited investor definition.

19 If we're going to increase participation in
20 our capital markets by a broader group of investors and
21 founders, we needn't move off measuring the ability to
22 participate in private markets by wealth and income.

23 Starting a business if you're an Ivy League or
24 living in New York City with a wealthy network of
25 friends and family might not run into -- might be no

1 problem at all. You might not run into any difficulties
2 from the current thresholds or whatever they might be
3 raised to in connection with the rulemaking on the
4 agenda.

5 But it's a whole different story for a founder
6 with a good idea and a community that believes in her,
7 but a community that doesn't have generational wealth or
8 high income. That story too often ends with the founder
9 giving up her dream.

10 A couple years ago, as has been mentioned, we
11 took a step in amending our accredited investor
12 definition. And in doing that, we actually took the
13 step of expanding our view of the type of individuals
14 who can be deemed to be accredited.

15 The concrete changes in that rulemaking,
16 expanding the definition of who to include certain
17 financial professionals. Those changes weren't
18 revolutionary, but we did open the door to future
19 further expansion to include accreditation or education.

20 So nobody has walked through that door yet, but I
21 remain hopeful that someone will. It requires people to
22 come in and talk to the commission about the
23 education -- the educational or accreditation background
24 that they think should qualify as sophistication.

25 Until yesterday, I thought there would be no

1 appetite for a complete elimination of the wealth and
2 income thresholds. My philosophical argument against
3 them is that people's dignity requires that they, not
4 the government, should decide how to spend and invest
5 their money has not found receptive years in the
6 building.

7 Yesterday, however, the commission proposed
8 retail-like protections for private fund investors. If
9 those protections go final, then the argument for
10 keeping retail investors out of private funds, and out
11 of private markets more broadly, weakens. Wealthy
12 investors, the argument went, could look out for
13 themselves. But I guess now we're not saying that
14 anymore. So what remaining justification is there for
15 barring less wealthy investors from private markets?

16 I look forward to your discussion today. Your
17 conversations will help us to focus on how the
18 accredited investor thresholds affect the ability of new
19 and growing businesses to raise capital. Thank you.

20 MS. GARRETT: Thank you, Commissioner Peirce.
21 And good morning, Commissioner Lee.

22 MS. LEE: Good morning. Thank you, Carla. As
23 always, I am pleased to join you, and I want to extend
24 my thanks as always to the committee members for their
25 service, and to Martha and her team for their work

1 supporting the committee and on behalf of small
2 business.

3 And as with the others we have heard from this
4 morning, I am very pleased to see that the committee is
5 giving further consideration to the accredited investor
6 definition because it is a critical investor protection
7 mechanism in the private markets.

8 And as has already been mentioned, this
9 committee's 2019 recommendation on accredited investor
10 in that you urged the commission to index the accredited
11 investor wealth thresholds to inflation on a going-
12 forward basis. I think that's a commonsense
13 recommendation that has been made by a range of other
14 commenters and by the commission staff, and I support
15 it.

16 Because wealth thresholds, while some may view
17 them as imperfect as measures of sophistication, they
18 still are the principal means of qualifying as an
19 accredited investor, which, of course, the wealth
20 threshold is anchored in decades-old Supreme Court
21 precedent. So you know we should ensure the thresholds
22 which have been untouched for four decades remain
23 meaningful.

24 And doing so, I think, by indexing to
25 inflation is consistent with the approach we take to

1 other monetary thresholds and other contexts such as,
2 for instance, certain exempt offering limitations. So
3 as we continue to evaluate the accredited investor
4 definition, I hope the commission will give due
5 consideration to your indexing recommendation.

6 And also in the 2019 recommendation, the
7 committee suggested that the commission consider
8 alternative pathways to accredited investor status. And
9 as you know, and was mentioned earlier, in 2020, the
10 commission designated certain FINRA administered
11 licenses as a means of qualifying as accredited.

12 And I would be very interested to hear
13 feedback or data from this committee on the effects of
14 that amendment and if or how you think it's working out,
15 and any other thoughts you may have on how the
16 commission can make sure that its rules in this space
17 strike the right balance.

18 So with that, I will just say thank you again,
19 and let you get to your agenda.

20 MS. GARRETT: Thank you to Commissioner Lee.

21 And good morning, Commissioner Crenshaw.

22 MS. CRENSHAW: Good morning, Carla. And good
23 morning to the committee and my fellow commissioners and
24 the Office of the Small Business Advocate. I didn't get
25 that right, but Martha and her team, thank you all for

1 your hard work. And thank you for the report. I know
2 so much goes into to the report that you have to do
3 every year, and I just want to say thank you for all of
4 that work. And I always find it an extraordinarily
5 interesting and information-filled report, so thank you.

6 Also to everyone on the Small Business
7 Advisory Committee, thank you for your continued hard
8 work. We really appreciate it. We say that every time,
9 but we truly mean it. It's a lot of time goes into this
10 a lot of thought. And all the advice and
11 recommendations you give to us are incredibly valuable.

12 So as you discuss the accredited investor
13 definition today, I will just share a couple of thoughts
14 on how I am thinking about it. As a policymaker, I
15 really often find myself calling for more data so that I
16 can make the most informed decision possible. And I
17 think I have the same intuition here.

18 If we were to change the accredited investor
19 definition, I'd really be interested in how many
20 investors from underrepresented groups will gain access,
21 how many entrepreneurs will have more access. And based
22 upon the success rate of investments, how many more
23 people would become a part of successful investments?

24 Now, I admit that answering these questions
25 with absolute certainty is difficult, if not impossible

1 and that any benefits that exist from increased access
2 would likely have a multiplier effect that's hard to
3 measure. But increased access may improve the process
4 of investors and entrepreneurs and their economic
5 interactions, and that's hard to take into account.

6 However, the rate of fraud and loss have a
7 similar multiplier effect, but in the other direction.
8 Thus, I think it -- you know I think in understanding
9 the benefit and cost trade-off with a higher degree of
10 certainty is certainly a worthy research question, and
11 would help inform and calibrate any policy decisions.

12 So to the extent your analysis and
13 recommendations can incorporate data points or identify
14 areas that the SEC should allocate resources to
15 investigating in research, I would find it very helpful.

16 And a particular concern I would like to
17 reiterate are the costs related to fraud. Annual
18 reports from NASA for the past six years have
19 consistently shown that Reg D offerings, and other
20 unregistered offerings, are high on the list in schemes
21 used to defraud people. So better enforcement is one
22 potential answer. But I am concerned that we don't have
23 really sufficient and holistic data on the rates of
24 fraud in this area.

25 And all of this being said, one of the more

1 compelling pieces of data that I think we do have before
2 us is the racial wealth gap and unquestionable
3 disparities in access to capital and opportunities. I
4 think the accredited investor definition thresholds are
5 one input. But to the extent you all have thoughts on
6 how else to bring about greater access, inclusion and
7 equity, and to do so while upholding key investor
8 protections, I would really be interested in those
9 thoughts too.

10 So for example, how do we address data that
11 indicates 80 percent of early-stage investment companies
12 have resulted in loss to early-stage investors? And
13 what are ways to mitigate the potential for a total loss
14 of investment? And what are other areas of the
15 securities laws framework that could be used to help
16 achieve greater equity in the racial wealth gap, also
17 again, while maintaining investor protections?

18 I guess just one last thing is I am curious
19 about the use of other opportunities like 504 and other
20 offerings. What are the hurdles? What are the
21 constraints or perceptions to overcome uses of 504
22 offerings, for example? And how can we overcome some of
23 those if that's one avenue that might be another viable
24 option?

25 So again, data, I think, for me is really

1 critical. And any insights you have again on where we
2 could be helpful in gathering more data and/or if you
3 have data points that you could point me to, that's
4 always something that I find extremely helpful.

5 So appreciate all your hard work again, and
6 look forward to the discussion today.

7 MS. GARRETT: Thank you very much,
8 Commissioner Crenshaw. And thank you, Chair Gensler,
9 and the rest of the commissioners. We appreciate your
10 comments and your thoughts, and we will hope to address
11 some of your suggestions today during the meeting.

12 The first item on our agenda, as some people
13 have mentioned, is that Julie Davis, the Senior Special
14 Counsel on the SEC Small Business Advisory Team, will
15 provide an overview of the office's 2021 annual report,
16 which covers an in-depth profile on the state of capital
17 raising activity.

18 This is a very impressive report. If people
19 have not seen it, I highly recommend looking at it
20 because it has a wealth of information and data. And it
21 is very -- a great document that they put together.

22 Julie, would you like to present?

23 OVERVIEW OF THE ANNUAL REPORT

24 MS. DAVIS: Sure. Thank you, Carla. And I am
25 going to share some slides. Actually, Jenny Riegel is

1 going to share some slides. Thank, you Jenny.

2 So this was our office's third annual report.

3 And we think it gives a pretty compelling overview of
4 FY 2021 with lots of data on the state of capital
5 formation, highlights from our office's research and
6 outreach, engagement during the year. That may include
7 our policy recommendations and, of course, it includes a
8 summary of this fabulous committee's activities and
9 recommendations over the years.

10 So there is only time today to highlight a
11 fraction of what's in the report. But I encourage
12 everyone to check it out and with the complete version.

13 It's available on our website for download, and you all
14 know our website. It's SEC.GOV/OASB.

15 A lot of the data we compiled in the report is
16 directly on point with topics the committee has covered
17 over the years. So we put together slides with the
18 visuals from the report organized by topics that you
19 have focused on. So all these slides are also posted
20 with meeting materials on the committee's website.

21 So the first topic that will cover, in an
22 overarching way, is what are the barriers to entry for
23 entrepreneurs. The committee has talked multiple times
24 about the fact that speaking securities legalese is not
25 something most entrepreneurs do. In fact, even for

1 lawyers, like those who don't practice every day, and
2 the security laws, usually lack this fluency.

3 So one of the first challenges that we saw in
4 our report and -- is that half of new business founders
5 report information, education, or knowledge as a
6 challenge in capital raising. And that's more than
7 twice the rate for entrepreneurs who have mature
8 businesses. We all know that great entrepreneurial
9 insight does not -- it just doesn't translate into
10 fluency with almost a century of layered security laws.

11 So as this committee has often said, inclusive markets
12 require more accessible capital raising toolkit.

13 Half of entrepreneurs also report challenges
14 building networks and connections, which in turn poses
15 challenges for their startups. These challenges are
16 often magnified for women and minority founders.

17 There are plenty of reasons that startups fail
18 but the number one reason is running out of cash and the
19 inability to raise new capital. Most new companies
20 fail, not because they don't have a great idea, service,
21 or product, as you all well know, but because of
22 financial barriers.

23 When you take a closer look at those financial
24 barriers, we see that they vary across demographic
25 groups significantly. For instance, Hispanic Latino,

1 and African American/Black small business owners start
2 with just a fraction of the liquid wealth of their white
3 counterparts. But simply personal wealth sets the
4 financial starting line for many entrepreneurs. Funding
5 is just more accessible for those who own a home or have
6 family assets. So the wealth gap ends up creating yet
7 additional barriers for many underrepresented
8 entrepreneurs.

9 Network connections are also critical to
10 capital raising even at later stages. Network
11 connections are still the dominant source of VC deal
12 flow. Entrepreneurs without personal or professional
13 networks struggle to get in front of venture capitalists
14 to access professional networks of funders.

15 So the next topic is also one this committee
16 is quite familiar with, differences in capital raising
17 across geographic areas. At your November meeting, our
18 team demonstrated our new capital trends maps that are
19 available on our new capital raising hub website.

20 We have worked closely with our colleagues in
21 DERA are our -- the SEC's is Division of Economic and
22 Risk Analysis, to develop these maps to show where and
23 how businesses are raising capital across the country.
24 We hope these tools will inform entrepreneurs,
25 investors, and policymakers alike.

1 So this map shows a concentration of Reg D
2 offerings by state. I am sure it will be no surprise to
3 anyone on this -- in this meeting, that California and
4 New York have the highest number of offerings. But I am
5 also guessing -- I can see like Steve, Jason, Sue, Greg,
6 that they look -- when you look at Washington State,
7 Texas, Florida, all of those states had offering numbers
8 that are also in thousands.

9 And then I look down. Louisiana, Hank, I --
10 you may not be surprised to see that while Louisiana had
11 a lower total number of Reg D offerings with 86, the
12 total dollar amount raised in Louisiana was higher than
13 for its neighbors, Arkansas, Mississippi, Oklahoma. So
14 just a lot of really interesting data on these maps.

15 Moving on to Reg Crowdfunding, we see some of
16 the same states in darker shades, meaning companies
17 there have been collectively raising higher dollar
18 amounts using Crowdfunding.

19 Youngro, if we take a look at Texas, I -- it
20 looks like you and maybe Sara too have been seeing a lot
21 of activity there. I am always interested in Texas.
22 It's my home state.

23 For Reg A offerings, you'll see that there
24 haven't been as many, but the trend is similar with
25 other exemptions in the sense that New York and

1 California have a greater number of Reg A offerings than
2 amounts raised compared to other states.

3 And here, you get a look at a map of
4 registered offerings, which includes IPOs. I personally
5 think that dark line of Midwestern states from
6 Catherine's Pennsylvania down to Missouri is really
7 interesting. There is more contiguous dark shading here
8 than we saw on the other exempt offering map. And you
9 know, Bert, I know you mentioned a couple of meetings
10 ago that you have been pretty busy. And the Illinois
11 stats on all these maps show that there has definitely
12 been a lot of activity there recently.

13 As this committee has highlighted time and
14 again, where you are located still matters a lot in
15 capital raising. Geography is the most critical in the
16 earliest stages when angel investors tend to focus on
17 their local communities and those within their network.

18 So this map highlights growth startups backed
19 by venture capital, reflecting a concentration in tech
20 hubs dispersed across the country. So like check out
21 the dark shading in Georgia, North Carolina, Colorado,
22 Minnesota.

23 That -- the -- but also if you look at that
24 paler swath down from Idaho down to Mississippi, I think
25 it really helps illustrate some of the points this

1 committee has talked about with respect to funding
2 struggles faced by entrepreneurs in states that don't
3 have that well-developed funding ecosystem.

4 So we'll move on from geography into
5 demographics. The committee is focused on the need to
6 improve access to capital for underrepresented founders.

7 And our report has data on how that's going for women
8 and minority-led businesses.

9 Many of you are familiar with the stats
10 showing that women founders continue to raise less VC
11 money relative to men. For those women who did raise
12 capital, the companies with only women founders raised
13 less per round than their men founder counterparts. The
14 gaps are pronounced when looking at both median and
15 average round sizes.

16 Funding for men and women CEOs vary
17 significantly depending on whether they are operating in
18 men-dominated versus women-dominated industries. In
19 terms of both average funding and average retained
20 equity, women founders do far worse when there is a
21 perceived lack of industry fit.

22 In other words, when women raise capital in an
23 industry dominated by men, they raise less money and
24 retain less equity, a combination that means they are
25 raising capital in significantly worse terms than men.

1 Minority-founded companies also continue to
2 raise less capital than their white-founded
3 counterparts. While trends have shown some progress in
4 recent years, VC-backed companies are still
5 predominantly led by white men.

6 Those pretty staggering statistics on founders
7 raising venture capital are in sharp contrast to the
8 rates of entrepreneurship. Looking at this data on who
9 is founding companies and the working-age population, we
10 see that rates of entrepreneurship roughly reflect the
11 population at large. That points to a big difference in
12 who is starting companies versus who is accessing the
13 capital needed for those companies to grow and scale.

14 On the next topic, what are the demographics
15 of investors in small businesses, the committee has
16 talked a lot about pattern matching. And not
17 surprisingly, there is a connection between who writes
18 the checks and who receives the funding. Our report
19 digs into statistics on the investor pool.

20 You can see here women definitely remain
21 underrepresented among angel investors. And the same is
22 true for minority angel investors who are vastly
23 underrepresented compared to the broader population.
24 Those trends among angels are not dissimilar to trends
25 among venture capitalists where again, we see women

1 vastly underrepresented among investment partners, that
2 is the people with the power to allocate the funds.
3 That said, you can also see here there is an incremental
4 progress in representation in recent years.

5 Similarly, we see -- we continue to see
6 underrepresentation of minorities by decision makers at
7 VC firms, although some modest progress has also been
8 made here in recent years. In fact, over half of firms
9 report having recently brought on more diverse
10 leadership, but of course, we all know more work
11 remains.

12 Diversity among funders directly impacts
13 diversity amongst is funded. As this committee noted in
14 your May 21 recommendation encouraging small regional
15 funds, pattern matching perpetuates a cycle that has
16 concentrated capital and limited geographies,
17 ethnicities, genders, and educational backgrounds.

18 While many sophisticated investors recognize
19 the bias inherent in pattern matching to the typical
20 example of a successful young, white, male entrepreneur,
21 it is critical to empower diverse investment decision
22 makers who can support and invest in solutions to the
23 problems that they too face.

24 And speaking of your recommendation on small
25 regional funds, that's an easy transition to the next

1 topic. How are those funds faring?

2 Funds raised by emerging fund managers shown
3 here in pink or purple, however, it looks on your
4 screen, are on the decline. This is an area the
5 committee has been more interested in because emerging
6 fund managers and their smaller funds are more likely to
7 invest in a more diverse pool of entrepreneurs, as well
8 as entrepreneurs geographically located in areas not
9 traditionally served by more established fund managers.

10 The decline in emerging manager fundraising is
11 in contrast to the rise in fundraising by established
12 funds who saw significant increases in 2020 and 2021.

13 Some of that increase in the value of
14 established funds can be attributed to another
15 interesting trend in venture funds. Liquidity events
16 reached record highs in 2020, and the capital from these
17 portfolio company exits have in turn fueled
18 reinvestments by LPs into new funds raised by
19 established VC players.

20 Those liquidity events that return capital
21 back to LPs and funds take multiple forms from
22 acquisitions to IPOs with public offerings providing the
23 vast majority of liquidity to investors. Keep in mind
24 though, what we saw two slides back, that a lot of the
25 capital is going back into established funds, while

1 funds raised by emerging fund managers are on the
2 decline.

3 Moving on now to nontraditional VC investors,
4 what is their impact? Over the last few years
5 nontraditional investors, generally firms and
6 institutions not labeled as VCs, have increasingly
7 crossed over from public markets to also invest in
8 mature and later-stage financing rounds. The typical
9 larger investments made by nontraditional investors are
10 continuing to drive up valuations and later VCs, later-
11 stage VC deals.

12 The so-called crossover investors, such as
13 mutual funds and other investors that traditionally
14 focused on public companies, have increased their
15 investing activity in late-stage pre-IPO rounds. And as
16 the committee discussed during your September meeting, a
17 significant percentage of companies going public in 2020
18 had raised private rounds of capital from crossover
19 investors before their IPO.

20 Our next area touches on what is happening
21 with registered offerings, a topic the committee also
22 discussed at your September meeting last year. As you
23 know, the experience of smaller public companies often
24 differs from that of their large and mega-cap
25 counterparts.

1 For example, on average, smaller public
2 companies have the largest percentage of retail
3 investors, twice the percentage of larger companies,
4 while having the smallest percentage of institutional
5 investors. This feeds into challenges with obtaining
6 research coverage, which then, in turn, impacts
7 liquidity.

8 And you're all well aware 20 -- or 2020 and
9 2021 saw a market increase in IPO activity. Our report
10 shows record amounts raised in public offerings and
11 record numbers of companies going public compared to
12 recent years. This included significant growth not only
13 in traditional IPOs but also in stock offerings.

14 You all have many times noted the critical
15 nature of pre-IPO capital raised in the private markets
16 that prepares companies for the public markets. It's
17 just so interesting to note that when we look at
18 exchange-listed IPOs in the last decade, just how many
19 are VC-backed companies.

20 So diving into smaller public companies, in
21 particular, we also saw a growth in equity offerings
22 both in the number and amount of proceed cluster with a
23 spike in Q1 of 2021.

24 And that's the slides that we have for today.
25 What I have highlighted is obviously only a portion of

1 what's contained in the report. As I mentioned, the
2 full report is available for download on our website
3 where you'll also find other reports and resources,
4 including new additions to our capital raising hub that
5 Amy Reischauer, from our office, is going to demonstrate
6 in just a little bit.

7 But first, Martha, and I, and the team are
8 happy to take any questions on the report or hear
9 feedback on areas you would like to see us cover in
10 future reports.

11 MS. MILLER: And as Julie mentioned -- Julie,
12 by the way, fantastic job covering at lightning speed, a
13 fraction of what is in the report.

14 For those who have seen our last two reports
15 and this one, you know that what we endeavor to do is to
16 create a single resource that encapsulates as many
17 different metrics to measure what is happening with
18 capital raising activity. From the earliest stages, all
19 the way across the lifecycle and through public
20 offerings, and then looking at small-cap companies.

21 Because we looked out there and saw there was
22 a lack of someone that was consolidating this, that we
23 could make really informed decisions. I agree
24 completely with Commissioner Crenshaw on it's important
25 to make data-driven decisions where we can -- or not

1 data-driven, but data-informed decisions where we know
2 what's happening.

3 And so I encourage you one, to take a look at
4 the report. But more importantly, if you spot areas
5 that you think we need to be staying on top of or trends
6 that we didn't cover that you think merit inclusion, to
7 reach out to us because we welcome that feedback. It's
8 a sign that you have read the report and read it
9 critically and that you are engaged in this area.

10 So we take zero pride in authorship. We want
11 this to be a resource that can inform policymakers.
12 Inform those on the Hill to which our office -- or to
13 whom our office reports, as well as the commission at
14 large. So any questions you have comments, feedback, we
15 welcome it.

16 MR. SOLOMON: I will just make one comment
17 quickly. This is an incredible effort like, and it's an
18 incredible output. I -- as I mentioned to some of you,
19 this is the kind of thing that folks like me would spend
20 months trying to pull together with a team of people.
21 And just to be able to have a basic conversation with
22 folks who can impact capital formation and investor
23 protection just to make the case.

24 And of course, you don't want folks like me do
25 that, everyone thinks that I am coming with an agenda

1 even though I'm just trying to present the facts. And
2 here, you have done an amazing job at simply pulling the
3 facts together, you know, and laying them out.

4 And so what it does for all of us, certainly
5 on this committee, but even beyond, is it gives us a
6 tool with which we can advocate and evangelize for small
7 businesses. I intend to use it and parts of it in
8 presentations that I am giving to highlight the value of
9 really just being informed and getting below the
10 rhetoric.

11 And so not only is it a great tool, as
12 Commissioner Crenshaw asked for guidance, but it's one
13 that we can use, I think, and should use liberally to
14 help educate folks that are in influential positions.
15 So great, great job.

16 MS. MILLER: Thank you, Jeff. The great job
17 goes to the entire team here.

18 Yes. Sara, it looks like you had a question?

19 MS. HANKS: Yeah. Comment, great resource,
20 absolutely superb and so easy to read and understand. I
21 just had a question about, are we expecting any other
22 reports or analyses from anybody else, including, you
23 know, the Division of Economic and Risk Analysis? Are
24 they going to be producing anything? I think I missed a
25 report recently.

1 MS. MILLER: They are probably. Our DERA team
2 is there, the acronym is fondly referred to within the
3 SEC, they are probably one of the busiest teams that you
4 can come up with at the SEC. They are always producing
5 things. In terms of time line of things, that I think
6 Sara, you would be particularly interested in, I can't
7 speak to that off the cuff. But I know that they are
8 incredibly busy, not only with the rulemaking analyses
9 that they do but publishing reports.

10 So if there is some specific data that you
11 would like to follow up on, happy to have a side
12 conversation to make sure that to the extent it is
13 available, that we get you access to that. But the
14 short answer is lots of reports. I fully expect for you
15 to see lots of work product coming out of the team, led
16 by director Jessica Wachter here at the SEC.

17 MS. HANKS: I will be following up with you on
18 that --

19 MS. MILLER: That sounds good.

20 MS. HANKS: -- specific thing. Thank you.

21 MS. MILLER: Anything else before we turn it
22 over to Amy Reischauer to talk through our new building
23 blocks resource, the newest iteration of content on our
24 capital raising hub?

25 All right. Without further ado, Amy, take it

1 away.

2 NEW BUILDING BLOCKS RESOURCE - CAPITAL RAISING HUB

3 MS. REISCHAUER: Excellent. Thank you. I am
4 happy to be back. I'm happy to share our newest set of
5 resources since we last -- or since you last heard from
6 me. Another kind of small step in our efforts to help
7 with that educational barrier that Julie flagged
8 earlier.

9 So as you recall, and I think Julie mentioned,
10 we launched the capital raising hub last fall. I shared
11 our Navigator tool and our capital trends maps back in
12 November. And we continue to share those tools
13 throughout our networks, and we encourage them to share
14 them in their circles.

15 And another theme you're hearing from us
16 today, we always invite feedback for how to improve them
17 and what other tools or resources folks are looking for
18 and can serve unmet needs. So we really tried to listen
19 and incorporate that feedback.

20 And in fact, some of the resources we have
21 been developing were directly inspired by that feedback.

22 The navigator tool, for example, was inspired by a
23 comment we heard from an attendee in an event maybe a
24 year or so ago, looking for a decision tree or a tool.
25 We half-jokingly refer to it like a mortgage calculator

1 to kind of narrow down options. So a year later, we
2 have the navigator.

3 Similarly, we were chatting with colleagues at
4 another agency this time, folks who are knowledgeable
5 about growing and funding a business, but not
6 necessarily a securities lawyer. And they were looking
7 for kind of the simple, cheat sheet, CliffsNotes, you
8 know one-pagers on some of these basic capital raising
9 fundamentals that pop up from time to time. And so
10 that's what inspired us to develop the latest tool, our
11 building blocks.

12 I will share my screen to show you those if I
13 can find them. Here they are. All right. So here we
14 are at our old or relatively new friend, I guess, the
15 capital raising hub. And just below the navigator and
16 the trends match, you'll find our building blocks. So
17 there they go.

18 So the goal here is to again, break down some
19 of these top kind of very common questions that we hear
20 about. And we have started with four. We had to start
21 somewhere and -- but we hope to expand as we develop
22 more or learn more or hear from folks what questions
23 they keep seeing.

24 So for each of these topics, we have tried to
25 provide an overview of the issue and then include links

1 to any additional resources that we have. So we have
2 our offering pathways. I apologize for a little bit of
3 the delay all the way from Northern Virginia here.
4 There we go. So we walk through again, each of the sort
5 of common exemptions and information on registered
6 offerings.

7 And then with each of the -- within each of
8 those you'll see we also try to link to other content
9 available on the site. So not new content, great
10 content that's been there for years, but isn't always
11 easy for folks to find. So you'll see we pop through to
12 an in-depth dive on 506(b) or whatever the exemption is
13 that you're looking for.

14 We also have for today's topic du jour, we
15 have a summary of the accredited investor definition.
16 Again, pardon the delay. But you'll see we break down
17 the various buckets for entities and individuals there.

18 We also have one on general solicitation. This one we
19 were very excited about. It's a question that comes up
20 a lot.

21 To clarify, this isn't new guidance. It's
22 just trying to consolidate the guidance that we do have
23 in a single place. So for folks who are just starting
24 to grapple with what this means, we at least have a
25 resource we can point them to kind of give them a

1 primer.

2 And then our last one is on funds. You know,
3 kind of a very jargon-heavy topic. We have tried to
4 summarize how funds break down and the various advisors
5 and how they -- how -- the role that they play in
6 raising capital. You'll also see that within each of
7 these, where there are terms that folks may not know, we
8 link through again to some of our other resources.

9 So here you'll see 3(c)(1), I don't know what
10 that means, we'll pop through to our cutting through the
11 jargon glossary, another resource we launched much
12 earlier last year. But it brings us to one other minor
13 update that we have done since we last chatted.

14 What we have really tried to do is to
15 integrate our resources. So here, we launched the
16 building blocks. And within the building blocks, we
17 also try to direct you to the jargon glossary where
18 that's useful. Well, if you have come in from a
19 different portal, and you have started off with your
20 jargon glossary because you came across 3(c)(1)
21 somewhere else, we also then have reflected within the
22 glossary that, hey, there is also a building block on
23 private funds.

24 So again, part of our goal is not just to add
25 content, but to continue to make the content that's on

1 the site, whether it's new or existing, we want to make
2 that more user-friendly, more explorable, more
3 navigable. So trying to serve folks, whether they are
4 coming in at a sort of a 100 level securities legalese
5 or an expert level.

6 So that's the goal. We'll continue to try and
7 do that looking forward. We'll also continue to try and
8 develop what we hear folks -- you know, whether
9 businesses, their investors, or advisors are going to
10 tell us that they need or improvements that they want to
11 our resources.

12 So again, I will beat the drum and reiterate
13 the request for your feedback or feedback from folks in
14 your various corners of the ecosystem. And, as always,
15 let me stop sharing so you can see my face there. I am
16 happy to answer any questions.

17 MS. GARRETT: Amy, I just wanted to say that I
18 think that these tools are just a great resource, and I
19 hope that people know that they are out there. Because
20 the more that people, securities lawyers, investors can
21 know that these tools exist, you know, the more feedback
22 you'll get. But also, I just think that they are a
23 great resource for people. Even experienced securities
24 lawyers can learn a lot from it. So I can't even
25 imagine how much people can learn from it that are not,

1 you know, in the securities field. So great job.
2 Amazing.

3 MS. REISCHAUER: Thank you. Thank you. Yeah.
4 It's -- I think we use them even within the office
5 because it's a great place to -- you know if you go to
6 our resources, you can find all the relevant releases at
7 the same time, as opposed to trying to remember where
8 did I find this, where can I find that? So that's --
9 that idea of integrating and making them comprehensive
10 has been a big goal.

11 MR. YADLEY: Certainly, it's not always a good
12 thing, but when it's a compliment, it is. Really the
13 organizational effort that you put makes it so easy, and
14 people do look for a portal to information and the
15 visual graphics, and this goes for the prior
16 presentation too. It's really terrific. So
17 congratulations.

18 MS. REISCHAUER: Thank you.

19 MR. SOLOMON: Yeah. we openly admit at Cowen
20 that we use it. It's just -- it's a very helpful --
21 again, non conflicted, independent set of pieces of
22 information where again, it's a trust factor and the
23 openness and the ease of use. It defies, I think, what
24 most people think about when they think about big
25 government. So you know where if anybody has tried to

1 navigate things like the Department of Motor Vehicle's
2 website, sometimes those aren't so helpful.

3 But I think when you, you know, when you go to
4 an SEC website, and everything you need to know is there
5 and in one place and easy to navigate, it just speaks
6 volumes. So congrats. I know it's a huge undertaking,
7 and we all do, and it's really just, it's emblematic of
8 what this group does. So congratulations.

9 MS. GARRETT: I kind of thought that you guys
10 were more securities, you know, lawyers and less tech
11 people, but this is pretty amazing tech stuff too.

12 MS. MILLER: Amy, I will not let her get the
13 last word here so that she doesn't refute me. But she
14 is not only the technical expert who has written and
15 worked on many of these rules, but she has a unique
16 ability to translate it into a way that people can
17 actually understand it in the language that regular
18 people use, not just the securities lawyers who
19 thoroughly enjoy speaking in CFR references.

20 So kudos, Amy, and the entire team, for
21 bringing this resource live, and we -- as always, we
22 welcome feedback. This was built by and driven by
23 feedback. This was not a product where we said let's
24 build something we think would be interesting. We built
25 something to solve a need that was expressed to us. So

1 if you spot other areas where we can provide clarity, if
2 you think something doesn't make sense that's on there,
3 or it conflicts with how you understand things, please
4 reach out. Because that feedback is invaluable because
5 this is very much a user-driven product.

6 MS. GARRETT: Okay. Well, thank you, Amy.
7 And thank you very much, Julie, for that overview, and
8 for all the work your office is doing.

9 I think at this point, we will turn to our
10 main topic today, which is the accredited investor
11 definition. You know, as I mentioned earlier, this
12 committee evaluated potential amendments to the
13 accredited investor definition in 2019. And at that
14 time, we made various recommendations with respect to
15 the financial threshold in the definition.

16 What we were recommended in 2019 was one, to
17 leave the current financial thresholds in place,
18 subjected to possibly adjusting such thresholds downward
19 for certain regions of the country.

20 And the second recommendation we made with
21 respect to the financial thresholds was that going
22 forward, the financial thresholds could be indexed for
23 inflation on a periodic basis.

24 The commission's rulemaking agenda for this
25 year 2022 noted that the commission may seek public

1 comments on updates to the financial thresholds in the
2 accredited investor definition as part of potential
3 changes to the offering rules.

4 While in 2019, we weighed in on specific
5 approaches to amend the accredited investor definition
6 by providing feedback on questions included in the
7 commission's concept release, during today's meeting,
8 I'd like for us to focus on key considerations that the
9 commission should consider as staff draft potential
10 proposals on the topic of financial thresholds in the
11 accredited definition.

12 There is not a concept release at this point,
13 the staff has not drafted a potential proposal. And so
14 we are actually tackling this before the potential
15 proposal has been drafted.

16 To provide us with an overview of the current
17 accredited investor definition and following the 2020
18 amendments, and to explain the interplay of the
19 definition in the context of various exemptions, I have
20 asked Small Business Advocacy Team to put together a
21 short slide deck to help frame the issue.

22 And now I will turn this over to Martha, who
23 will walk us through that slide deck.

24 ACCREDITED INVESTOR DEFINITION

25 MS. MILLER: Excellent. Thank you, Carla, for

1 teeing this up, and for requesting us to provide a
2 little context. So what I am going to do is share some
3 slides that are also posted online for those who want
4 them for reference on the committee meeting materials,
5 really to contextualize what the accredited investor
6 definition means in context. So most of you are very
7 familiar with this. So I am here preaching to the choir
8 on topics that you know about, but wanted to level set
9 and make sure we were all on the same page.

10 So today, as Carla mentioned, you're talking
11 about the who of accredited investor. So that's the
12 status that you need to have to participate in
13 offerings. And the reason that the definition of
14 accredited investor matters is because together with the
15 different offering pathways and the rules around those,
16 it determines what investment opportunities are
17 available.

18 I will use the analogy that I have no business
19 using because I know next to nothing about this sport.
20 But it came up the other day, and I thought it actually
21 helped frame, you know, today talking about the
22 accredited investor definition. And in particular, the
23 financial thresholds is a little bit like in boxing,
24 talking about what are the different weight limits for
25 the different types of matches. It's different from

1 then talking about the rules of the game, and
2 ultimately, whose hand is held up with the boxing glove
3 at the end is the winner.

4 But that is the analogy I will use here that
5 what we're really doing is establishing who gets the
6 opportunity to be in the ring during the game. So that
7 is the very crude analogy, and that is the extent of my
8 boxing knowledge. So I should stop right there with it.

9 So looking at the accredited investor
10 definition, we have got two different pathways to be
11 accredited. One applies to individuals and the other to
12 entities. So let's look at the individual pathways.

13 For individuals, we have two different largely
14 buckets of criteria. One is the financial criteria.
15 This is the one that you often hear the most about,
16 where we have a net worth test and an income test,
17 either of which you can satisfy to be considered
18 accredited.

19 There is also additional professional criteria
20 that can be satisfied. This was brought up earlier in
21 Commissioner Lee's remarks talking about some of the
22 investment professional criteria. But you see here some
23 of the different things that are more about the hat that
24 you wear, as opposed to the individual income or net
25 worth that you bring.

1 To highlight a couple of recent changes. You
2 may be familiar that in 2020, the SEC adopted final
3 rules that maintain the current financial threshold
4 thresholds without adjustment for inflation. The
5 commission also, in that same release, clarified that
6 spousal equivalent so domestic partners, qualify for
7 purposes of the pooled net worth and income tests. So
8 that's just something else to be aware of.

9 Also added new criteria for investment
10 professionals. So those are the different FINRA series
11 examinations that are listed here. That having those
12 means you qualify separately from the financial
13 criteria.

14 And lastly, the commission added knowledgeable
15 employees of a private fund criteria that would allow
16 those employees to satisfy the accredited investor test.

17 So those are the criteria that currently apply to
18 individuals.

19 I want to also highlight the criteria that
20 apply for entities. This is one that gets a little bit
21 less conversation, but this is looking at nonnational
22 persons, and how they could qualify as accredited.
23 There are a number of tests.

24 The general number that you see tossed around
25 is looking at \$5 million, either of investments or

1 assets otherwise. And I want to highlight here that in
2 2020, at the request of many commenters, the SEC
3 clarified eligibility for many entities based on this
4 investment and asset test. So namely think about LLCs,
5 Indian tribal corporations, and other entities that were
6 not previously explicitly listed in the rules. Clarity
7 has been provided there. And the SEC also provided
8 clarity on eligibility for certain financial firms and
9 entities to be considered accredited.

10 So that is the current state of the definition
11 of accredited investors for both individuals and
12 entities. I want to briefly highlight the impact that
13 has on the different offering pathways. Because the
14 definition in and of itself doesn't mean much until you
15 couple it with what does that allow accredited investors
16 to do versus nonaccredited investors.

17 The offering pathway that is most commonly
18 used under Regulation D Rule 506(b) does not limit
19 accredited investor participation. There is a limit on
20 nonaccredited investors subject to enhanced disclosure
21 requirements if they are participating in the offering.

22 The more new exemption that came about through
23 the Jobs Act Rule 506(c), often called general
24 solicitation offerings, does allow you to raise capital
25 from exclusively accredited investors subject to some

1 verification requirements.

2 Regulation crowdfunding does not have limits
3 on how much individual accredited investors can invest
4 in different offerings, but there are limits on
5 nonaccredited investors.

6 And lastly, with Regulation A, there are
7 different limits on accredited and unaccredited
8 investors depending on whether or not they are
9 participating in a Tier 1 or Tier 2 offering.

10 So that is the interplay of the accredited
11 investor definition with a different offering pathways
12 that have specific criteria applicable to accredited and
13 nonaccredited investor. There are obviously many other
14 pathways that Amy highlighted when previewing the
15 building blocks earlier, but wanted to underscore these
16 here.

17 That comes to the end piece of the equation,
18 the investment opportunities. So startups and early-
19 stage companies are typically raising capital using the
20 offering exemptions that we shared on the slide before
21 the data backs up. These are the predominant pathways
22 that early-stage companies are using when they go out
23 and raise capital.

24 And they also apply to private funds, the vast
25 majority of whom are also raising capital, using the

1 same offering pathways. They themselves are issuing
2 securities to investors, and then are investing those
3 funds in other operating companies. And most funds
4 limit participation to accredited investors. And
5 actually, many limit it to a higher threshold for
6 qualified purchasers who have to meet even higher
7 investment test thresholds.

8 There is much more data on the utilization of
9 these different offering pathways that is in the annual
10 report that we highlighted earlier. And if you want
11 more information, I encourage you to check out the
12 building blocks on our capital raising hub that Amy
13 highlighted earlier.

14 As we also were talking and helping Carla and
15 Jeff in preparation, they mentioned the importance of
16 looking at some data on the interplay of the financial
17 thresholds with some other factors that might be
18 concerned. So I wanted to also highlight briefly some
19 appendices of data.

20 Again, all of these slides are available on
21 the advisory committee's website under the meeting
22 materials. Here you have the advisory committee's prior
23 accredited investor recommendation. This is lifted
24 verbatim from the PDF that was provided. I am not going
25 to read this to you. That is available on the advisory

1 committee's website.

2 What I wanted to share is a map showing
3 differences in the median household income. The latest
4 data from the Census Bureau is as of 2019. But as you
5 can see from this map, median household income varies
6 dramatically depending on where you are. It's a
7 reflection not only of cost of living differences and
8 salary differences but broad geographic differences as
9 well, something important that the committee has weighed
10 in on in the past when considering this definition.

11 The other piece is that's looking at -- this
12 is looking at households with income over \$200,000.
13 Again, this is pulling from census data, recognizing
14 that this income threshold does not line up exactly with
15 all measures of the income thresholds for accredited
16 investor. This is the closest we could get based on how
17 the Census Bureau parses data. But as you can see, it's
18 a relatively small percentage of the population in each
19 of those states. And even within that small percentage,
20 it varies considerably by state and geography.

21 Looking at the Census Bureau's 2020 income
22 data, we see that households with income over \$200,000,
23 as well as the mean and median household income, vary
24 dramatically by race and ethnicity. These are the
25 specific categories of race and ethnicity that the

1 Census Bureau reported out on from the 2020 data. But
2 what this shows here is, depending on who you are, you
3 may be starting at a very different point in terms of
4 how you might go about qualifying under the financial
5 criteria.

6 And then this last slide shows the Federal
7 Reserve's Survey of Consumer Finances that breaks down
8 by race showing in the first column white followed by
9 Black, Hispanic and other, which is where they are
10 actually grouping other races and ethnicities together
11 for purposes of a single reporting metric. Looking at
12 the differences in median net worth, which I will note
13 net worth is the criteria that people are much more
14 likely to use of the financial criteria instead of using
15 the income test. That is the one that it seems most
16 investors are using for purposes of qualification.

17 Two other factors that we thought would be
18 relevant is looking at what proportion of the population
19 is participating in employer-sponsored retirement plan,
20 and what are the median equities held for purposes of
21 contextualizing the investments of those individuals.

22 Again, all of these slides are available
23 online. And Carla and Jeff and the committee, I hope
24 that this was helpful for each of you for purposes of
25 thinking through the different considerations with the

1 definition.

2 MS. GARRETT: Yes, Martha, that was very
3 helpful. One -- and maybe we'll talk about this later.

4 But one slide I thought we might -- or one figure I
5 thought we might see was what if the financial
6 thresholds were indexed back to 1982, and if that was a
7 possibility in terms of what the commission is
8 proposing, the number of households that would qualify
9 now versus then. And maybe that's not data you have,
10 but I was just wondering if it was. Because I know that
11 that was something that we had thought about.

12 MS. MILLER: Yes. So the commission at the
13 time that it was calculating, I mean, it was using some
14 of the 2019 figures when it put those out in the
15 release. They did run a calculation or a division of
16 economic and risk analysis of exactly what those
17 thresholds look like. And I can pull that information
18 and share it with the committee.

19 But that is they looked at what a retroactive
20 inflation adjustment back to the 1982 dollar amounts
21 would do. And the proportion of qualifying households
22 that would be eligible under a revised definition. And
23 not surprisingly, it would have a dramatic shrink to the
24 overall pool of accredited investors and drop that total
25 percentage considerably. But we can pull those numbers

1 right now.

2 MS. GARRETT: Yeah, or we can start with our
3 speakers, and it could be something that we look at, you
4 know, this afternoon or you can pull it now, and we --

5 MS. MILLER: Yeah. No, and I'll --

6 MS. GARRETT: -- can look at it after our
7 speakers.

8 MS. MILLER: And through a quick draw, I have
9 got the numbers pulled up. So what the commission was
10 considering back in 2019, and again, this was different
11 commission and analyses so this is not at all
12 forecasting where the current commission is.

13 But the numbers that they calculated at that
14 time were potentially increasing the individual income
15 threshold from 200,000 to \$538,000. And then the net
16 worth threshold from \$1 million to \$2.7 million. That
17 would reflect the impact of inflation since 1982.

18 And they were estimating that this would
19 shrink the accredited investor pool to 4.2 percent of
20 the population of U.S. households, down from around 13
21 percent of U.S. households. So again, it would go 13
22 percent that could potentially qualify under current
23 metrics as accredited. Not to say they are all
24 operating as accredited investors and participating in
25 that. But that would shrink it down to 4.2 percent,

1 which is about a 60 percent-plus decrease in the pool of
2 potential investors.

3 They also considered some other impacts of
4 inflationary adjustments. All of that is included in
5 the 2019 release that the commission put out. I hope
6 that answers the question, Carla.

7 MS. GARRETT: Yes. It does. And I think, you
8 know, as Commissioner Crenshaw said, she'd like, she
9 likes data. So to the extent we have, you know, any
10 data today to put forward -- I am not sure we will. But
11 if we do, I think it could be full. But I think the 13
12 percent down to 4.2 percent is a dramatic number. And I
13 would imagine that that also affects underrepresented
14 communities even more severely.

15 So at that -- at this point -- Jeff?

16 MR. SOLOMON: I just add one other thing that
17 may be helpful, And I don't know if this data exists.
18 But certainly, I mean, we can look at what the intention
19 of the original framers of this rule was in 1982.

20 So they -- there was obviously a lot of
21 discussion and debate about how to set those in 1982.
22 And it would be interesting to see how the groups you
23 just highlighted what -- if there is even data available
24 for, you know, income and net worth by those groups in
25 1982. By those standards, how many of them would have

1 been included, right?

2 And I don't know that they looked at that
3 1982. But if it's much more meaning -- even if they
4 kept it the same, you know, would certainly give us a
5 framework for understanding wealth gap and income gap
6 that's occurred over the last 40 years.

7 And if the goal was to include more people in
8 1982, whether they thought about it consciously or not,
9 I think it would be helpful to know. Because a way to
10 think about level setting this might also be to say, you
11 know, what was the intent initially when those levels
12 were set just as a way to anchor the conversation? I'd
13 love to see that data if it exists.

14 MS. MOTT: One other thing, Carla, if I may
15 add. Did we or did the commission take into
16 consideration the impact on the residence being no
17 longer included in the accredited definition --
18 accredited investor definition? That changed about 9,
19 10 years ago where they excluded the residences. And
20 prior to that, the residence was included in your net
21 worth.

22 So I don't know if we -- I guess I am thinking
23 we should also understand that because it's certainly
24 changed the number, I think, 9, 10 years ago that were
25 angel investors that no longer could be included because

1 their residence was excluded, so just a thought.

2 MS. GARRETT: Okay. Does anybody else have
3 any questions for Martha or thoughts?

4 MS. CASH: I don't have a question. I have a
5 comment that I appreciate -- Martha, thank you. The
6 overlay of the data from a geographic standpoint,
7 economic standpoint, and race standpoint, I think if our
8 goal really is to start to close some of these economic
9 gaps for underrepresented people, understanding that
10 geographic and economic piece is really important.

11 I think about my income as someone who lives
12 in Orange County in Southern California compared to my
13 aunt's who's retired income who lives in the south,
14 never made more than \$200,000 per year but has retired
15 comfortably in a comfortable position. Probably doesn't
16 have a net worth of a million dollars, but has
17 disposable income. So it's, you know, interesting to
18 think about the geography and where people live as we
19 think about this definition of accredited investor.

20 MS. GARRETT: Thank you, Kesha. I agree with
21 that.

22 Okay. I think we'll go now to our speakers.
23 And today we have invited two speakers to share their
24 perspectives on how the accredited investor definition
25 impacts capital raising opportunities for both

1 entrepreneurs and their investors, particularly those in
2 underrepresented communities.

3 And we'll -- as I mentioned before, we'll
4 first hear from Shelly Omilade Bell. And Omilade is the
5 founder of Black Girl Venture, a social enterprise that
6 focuses on creating access to social and financial
7 capital for black and brown women founders. And she
8 herself is a serial entrepreneur and has trained many
9 other entrepreneurs.

10 We are also joined by Eli Velasquez, who is
11 the Co-Founder and Managing Partner of Investors of
12 Color Network, a national network of Black, Latin X, and
13 Angel -- Asian angel investors that are focused on
14 closing the racial funding gap in early-stage capital,
15 building generational wealth, and cultivating investor
16 network. Eli also serves on the board of the Angel
17 Capital Association.

18 I look forward to the committee engaging in an
19 active session with both of our speakers today. And at
20 this point, I will turn it over to Omilade, please.

21 HOW THE ACCREDITED INVESTOR DEFINITION IMPACTS CAPITAL
22 RAISING OPPORTUNITIES FOR ENTREPRENEURS AND THEIR
23 INVESTORS AND UNDERREPRESENTED COMMUNITIES

24 MS. BELL: Hello. Thank you so much for
25 having me. Especially thank you to Martha and Amy who

1 have been working really hard on a few of these
2 initiatives and getting things to be understood better
3 by all. So I really, really appreciate it. And thank
4 you for just the space to have this conversation. In
5 fact, I am so excited that you're having the
6 conversation.

7 You can call me Omi, but it is pronounced
8 Omilade, like I owe you a latte, like you owe me a
9 latte. Okay. So that's one way to do it. And then Omi
10 me which is like, you know, you owe me money, right?

11 You know I loved that Martha brought the
12 boxing match analogy into it. Because I actually have a
13 performance poem that I wrote called Entrepreneurship Is
14 A Boxing Match. And it talks about entrepreneurship as
15 just that.

16 And if you're in the D.C. area, you should
17 ride over to Union Market and on the side of the market
18 facing the Gallaudet side, you can see a huge mural
19 about just that, entrepreneurship as a boxing match that
20 we did with Nike and some local business owners.

21 I -- when I think about opportunity, right,
22 who has an opportunity like Martha mentioned, now who
23 has the opportunity to step into the ring, I think that
24 the commission should be thinking about where are we
25 saying who doesn't have the opportunity, right? Like,

1 who has the opportunity, and then who are we saying
2 communicating with these rules that they don't have the
3 opportunity?

4 I -- at Black Girl Ventures, we work on access
5 to capital, community, and capacity. With that, we came
6 up with the vehicle. We are a nonprofit. We come up
7 with a vehicle that crowdfunds grants through a pitch,
8 competition or a pitch program. And then we grant that
9 capital back out to the founders.

10 The reason that I started is because the news
11 came out that black women were starting businesses at
12 six times the national average yet receiving less than 1
13 percent of venture capital. And my thought was, I know
14 how to build community, and I know how to pull people
15 together, and so I want to pull everybody together, and
16 then ask them to watch these pitches, vote for them with
17 their dollars, and then we'll take that money, and we'll
18 create our own capital if we're not going to get it from
19 investors, or we're not going to get it easily from
20 banks. We're not going to get it for multiple reasons.

21 If it's just not flowing easily to the black
22 and brown communities, then I would, you know, create
23 this mechanism. And at first, it was a little crazy. I
24 think people thought I was crazy, right? Like some of
25 the people who were in the more traditional finance

1 realms, people didn't think that people would give to
2 businesses or give for that reason.

3 But today, we funded over 274 women. We have
4 efforts across about 15 cities. We work with -- we have
5 had family offices work with us. We also work with the
6 NBA, Nike, you know, a lot of global organizations or
7 companies. But even have been doing all that work,
8 having been a tech founder -- I created tech that can
9 handle the voting and the donating. I have gotten these
10 women funded, you know, just from our mechanism, but
11 also other investors that exist through my network.

12 But I, as the founder and CEO of this company,
13 would not be able to invest in all of the businesses
14 that I am finding, with all of the business acumens that
15 I currently have, unless I go through one entity called
16 FINRA, which has yet to put out exactly how we get these
17 certifications in a way that is accessible. I would not
18 be able to invest in the community I built, that I grew,
19 and that I helped also grow, and that I am able --

20 You know as I look at the markets, and also
21 predict where we should go or where we should be as
22 Black Girl Ventures, but I am unable, according to the
23 SEC's rule, to be able to invest in them myself because
24 I wouldn't be accredited.

25 And so that is troubling for me, right? So

1 when we say access, we talk about financial
2 sophistication, the traditional idea of financial
3 sophistication includes the idea that a person acts
4 rationally, maximizes profit, and is risk adverse. And
5 then there is this idea of like the behavior theory
6 around finances which is, you know, can you exercise
7 self-control?

8 And we should probably move to a place where
9 we talk about investment a little differently in order
10 to understand why there needs to be room for more
11 investment. Because a lot of this is based off of
12 prediction, based off of your own market trend
13 intuition. It's that financial sophistication needs to
14 be questioned if the current rule describes the level of
15 financial sophistication that makes sense only for a
16 small pool of people to be able to invest.

17 I would argue that that same -- those same
18 things I just mentioned, acting rationally, maximizing
19 profit, and being risk-averse, applies to mothers. I
20 would argue that, you know, it applies to so many
21 different kinds of people who have had to be in these
22 positions, built companies, but still cannot get a
23 return on their capital through investing.

24 So I will stop there to give some space to
25 Eli. Definitely open to any other, you know, questions

1 as we continue the conversation.

2 MR. VELASQUEZ: Awesome, thank you, Omi. Then
3 again, a pleasure to be here. Thank you, Martha and the
4 team, for inviting us to speak.

5 I am going to share a little bit about my
6 background and kind of my experience traveling through
7 the accredited investor journey and the challenges along
8 the way. So I have a mechanical engineering degree.
9 Subsequent to getting out of engineering, I went to go
10 work for the Boeing Company in Orange County,
11 California, and I was building rockets. So yes, I am a
12 rocket scientist.

13 I subsequently went to law school and started
14 doing IP work for Boeing. But then I made a transition.

15 And I was on a career trajectory there within the
16 Boeing Company where I would have become accredited with
17 a few more years under my belt and move into management,
18 et cetera.

19 But I decided to go back to my hometown of El
20 Paso, Texas, a border community, very poor. And I took
21 a job at a nonprofit building out of binational
22 technology incubator. So that automatically cut my
23 salary in half. So the accredited -- and the accredited
24 hurdle was very, very far away from me at that point.

25 I subsequently started managing an angel

1 network in town. And then I was over -- I set up a new
2 company to conduct due diligence for the state venture
3 fund. So it was a \$200 million fund investing in
4 emerging technologies. Mobilized about \$20 million of
5 capital into university spinouts, lab spinouts, and
6 other type companies.

7 So conducted pretty in-depth due diligence
8 because these were public dollars at work and, you know,
9 highly politicized as well. And so you have to be very
10 conscientious of how you make those investment decisions
11 and recommendations.

12 I subsequently went on to take an academic
13 role as an Associate Vice Chancellor for the Texas Tech
14 System. While there, I founded a new angel network,
15 called the Lubbock Angel Network. But I still didn't
16 meet the accredited investor definition.

17 To date, I think your organization's made
18 about 30 plus investments, you know, 6, 7, 8 million
19 dollars across the board, but I still can't participate.

20 I can watch by the sidelines, but I can't write the
21 checks because I don't meet the income threshold. And
22 even though the academic institution paid well, it
23 didn't pay enough to meet that threshold.

24 And at that point, I became very frustrated
25 because a younger individual in the group said to his

1 wife, why don't we talk to your parents and unlock our
2 trust and, therefore, I can now participate in angel
3 investing? And I see this young gentleman was about 20
4 years my younger, start writing checks 30, 40, \$50,000.

5 And eventually builds a very quick portfolio and starts
6 seeing exits.

7 At that stage, I said I need to figure out a
8 way to really get myself in this space and be able to
9 participate. So I became a pretty hard negotiator when
10 it came to my income requirements or my salary with
11 future job opportunities. And I was very clear, it must
12 meet a minimum of \$200,000 in order for me to work here
13 because I need to be able to participate as an angel
14 investor or as an accredited investor. I was fortunate
15 enough to work with organizations that understood that
16 and enabled me to then grow my career into the space.

17 And finally, you know, about two or three
18 years back, finally make my way into the angel investing
19 field. I think back, and I think one of the biggest
20 regrets that I have is that the story that I shared with
21 you from the beginning, when I went back to El Paso,
22 dates back to 2005. And I think back to the companies
23 that I hear exited along the way that I could not myself
24 have participated. And I think about almost 20 years of
25 lost investment opportunities, right, that could have

1 provided potential generational wealth.

2 So how do we then, you know, determine to what
3 degree an individual can participate has to be beyond
4 just the money that they make. And so when we built the
5 Investors of Color, we have to have at the forefront,
6 you know, the individuals that are accredited, so that
7 they can participate.

8 But one of the things that we have found has
9 been one, it's very difficult to find those kinds of
10 individuals. And then two, we need to do a lot of
11 education and community building. Because as Omi said
12 like you know in early-stage investing, you're going to
13 do investments with people you like and people you
14 trust, right? And that's a certain level of
15 sophistication that comes with that, to understand is
16 this the kind of individuals or organizations that I
17 want to put my trust in to actually make these
18 investments and then put my money to work?

19 So what we have -- we found over time is, it
20 is very difficult to find these individuals. Two, even
21 if they have met that threshold, they are not aware of
22 different asset classes like angel and venture. So we
23 do education around that component.

24 And then the third part is really ensuring
25 them that yes, this is a high risk, but high -- a

1 potential of high return. And so there is a lot of
2 education around risk as well.

3 So when we're thinking about the accredited
4 investor definition, we definitely, of course, have to
5 think about geography. We have to think about income
6 inequality and where, you know, people of color are not
7 necessarily going to be making the same amount, but are
8 very -- could be potentially very savvy with how they
9 manage their money.

10 Two, net worth is very difficult to attain
11 because generally, net worth is transitioned generally
12 through real estate and there is a whole segment of lack
13 of generational wealth as we have seen by the, you know,
14 the net worth disparities across people of color.

15 And then lastly, the current certifications
16 around FINRA are largely driven by the profession that
17 you're in. And so it's not a one-size-fits-all. But
18 there is, I believe, an opportunity to really think
19 carefully about what levels of sophistication and
20 education are required to enable more people to
21 participate and begin to open up new funnels of capital.

22 So I will stop there and kind of open it up
23 for discussion and questions about other things that we
24 may have seen as well.

25 MS. BELL: Can I -- one more thought. The

1 ability to earn is not directly related to the ability
2 to invest. And so I think that's what we have to visit
3 that like this is also not a charity move. This is an
4 economic move. And that the economic participation of
5 all the SEC is an office for all, a commission for all.

6 And so the economic participation of all in the various
7 levels of American finance is of the utmost importance
8 to our economic development and our economic health as a
9 country.

10 And so like the inclusion of more people while
11 as Commissioner Crenshaw, I am sorry, I mentioned about,
12 you know, needing to be conscious of fraud, you know,
13 makes sense. But inclusion of more people also pushes
14 economic development ingenuity returns for a group of
15 people who have been historically financially locked out
16 of the ability to buy homes and locked out to levels of
17 loans and access to capital.

18 It is of the utmost importance that we think
19 about this as economic participation. And that if my
20 retirement can be invested by a group of people that you
21 have determined make over a million dollars are smart
22 enough, then why can't I be invested in my own
23 retirement in some other ways that are important to me?

24 MR. SOLOMON: Can I ask a question? I'd love
25 to just -- first of all, I think I have already declared

1 myself on these calls to be 100 percent in agreement
2 with what you both just said. It's that aside. And
3 just as you think about how to define sophistication, I
4 mean, we're just in the backchat. We're having, you
5 know, there is a few of us that are chatting in the chat
6 room and basically saying like, okay, well --

7 I mean I talked to investors all day long, you
8 probably know more about these companies than any
9 investors I would know. So by definition, that makes
10 you sophisticated. Like it's just -- it's tautological.

11 Like I -- if I came in today, and did all the work that
12 you did, it would take me months, you know, maybe a
13 quarter, I don't know. I couldn't possibly know as much
14 about these -- the likelihood of the success of these
15 businesses as you do. And I would be relying on you and
16 the work that you did in order to make an investment.
17 That's just facts. The fact that I am sophisticated has
18 nothing to -- or deemed to be -- have a net worth that
19 allows me to do it, is irrelevant, right?

20 When you think about how to frame
21 accreditation as a way to bring people in and be more
22 inclusive, but at the same time protect them from bad
23 behavior or others that might abuse them, how would --
24 how should we be thinking about that in the context
25 of -- you know, if you look at the groups of people that

1 invest in the companies that you're in, is there an
2 onboarding process? Is there a training process?

3 Is there something that you think that we --
4 can help us to discuss balancing both the need for folks
5 who are less initiated to be educated, prior to, you
6 know, spending their hard-earned net worth on risky
7 ventures? How can we be thinking about that in the
8 context? And maybe I would be curious to hear if you
9 have given that thought or if there is a discussion
10 that's happening in your communities that we're just not
11 hearing? You know, I'd be very curious to hear any
12 tangible thoughts that you have had on this in
13 discussions. Either one of you.

14 MR. VELASQUEZ: Omi, do you want to start?

15 MS. BELL: I mean, I was going to say, I got
16 thoughts, but go ahead, Eli.

17 MR. VELASQUEZ: Yeah, absolutely, Jeff. You
18 know one of the things that we think about is, what
19 level of training and education is necessary. You know
20 with Angel Capital Association, there is a series of
21 training programs that people can undertake. Excuse me.
22 That is an area that needs to be looked at very
23 carefully.

24 There is also institutes of higher education
25 that have created training programs on how to become an

1 investor. You know people have toyed around with the
2 idea of a bar exam type, you know, for -- in order for
3 you to become certified. Is there a licensing, sort of
4 like a -- you know a licensed engineer or like, you
5 know, a licensed lawyer? There is various models that I
6 think are out there. And I think those are kind of
7 there -- that's the kind of the right way to be thinking
8 about it, right, around education.

9 But then the second thing we need to think
10 about is to your point, ensuring that the investment,
11 that the individuals understand how to activate their
12 capital. So that somebody comes and says, I have the
13 next Facebook, clear out your savings account, this is
14 going to hit big, right? That there are measures by
15 which individuals need to take, right? Much like we
16 have defined certainly -- if you're -- for crowdfunding,
17 you can only invest up to a certain amount.

18 That needs to be also taken into consideration
19 in how you tier up to certain levels. And as you garner
20 your exits, how you manage your portfolio, you know, how
21 do you then tier up to maybe another level of investing,
22 and kind of begin to exercise that muscle?

23 So I wish somebody had told me, Eli, when you
24 become accredited, do this kind of math so that you can
25 only risk X amount. And then within that amount, you

1 can build this kind of portfolio, right? Versus saying,
2 when you're accredited go write a 25, \$50,000 check to a
3 cool company that you like. You know, fortunately, I
4 didn't do that, right, because I was surrounded with
5 other folks but -- other, you know, sophisticated
6 investors.

7 But for those that aren't, what are the
8 mechanisms? What are the tools and resources that we
9 can point them to in order for them to understand, maybe
10 I only put 2,000 to work, or maybe I only put 5,000 to
11 work to start, and then I begin to work my way up to
12 different levels of investing?

13 MS. BELL: Well, first, I would go back. I
14 will step back a second and say, what problem are we
15 solving? Because if the problem is fraud, then I think
16 there could be potentially other solutions related to
17 tech, related to, you know, having some type of
18 mechanisms, having some type of things baked into how we
19 report different things tax-wise.

20 Like I think there just could be other, you
21 know, professionals that are more common to everyone
22 that we could potentially lean into. I think that like
23 our go-to is that like it's training. Even the people
24 making over a million dollars are still writing away
25 their checks, right?

1 So all of it, you know, you have your -- a
2 wealth manager told me once, there is two types of
3 people. There are spenders, and there are savers.
4 She's like, I have worked with billionaires who have a
5 cash flow problem. And I have worked with people who
6 you would consider to have very low income to be able to
7 save over the course of time and donate six figures to
8 a -- you know, an HBCU.

9 So I think that the question for me becomes
10 what problem are we solving exactly? Because the
11 trainers don't just inherently solve people doing their
12 first, what I call, experimental investments. Which
13 those first experimental investments are people, they
14 are learning, right? So even having a lot of capital or
15 even having been trained, you know, you're learning at
16 first.

17 So I love the idea of tiering up. But I also
18 wonder that we sometimes just want to overtrain
19 Americans like train you, train, train, train. And
20 it's -- I don't know that it's solving much. So I think
21 that like -- I really feel like there is some innovation
22 here that can happen that's not so related to putting
23 people in front of a class and making them having to --
24 have to go through what we know as the educational
25 system exists, may not work still for all people.

1 So I am just wondering if we can figure out --
2 and I don't have the answer to this, Jeff, but I am just
3 throwing out there. There got to be some more
4 innovative ways to think about how we protect people and
5 include people. And I'm wondering where can we dig into
6 that versus the immediate, just kind of like, let's just
7 train them or everybody got a certification. Like that
8 still is not, I don't think, protecting everybody as
9 much as we could from fraud.

10 MR. SOLOMON: Well, first of all, that's super
11 helpful. I know Jason has a thought on this. I'm just
12 going to make one comment. And then --

13 MS. MILLER: And Greg --

14 MS. BELL: Well, Catherine --

15 MS. MILLER: --also has a --

16 MS. BELL: -- had a thought.

17 MS. MILLER: --thought too. Yes.

18 MS. BELL: Catherine her hand up first if you
19 don't mind.

20 MR. SOLOMON: So, first of all, thank you for
21 that. And I don't think we're just exploring what we're
22 trying to get accomplished. You have beautifully
23 articulated the tension between inclusion and
24 protection, right? And if you think about it on
25 spectrum, it's like a risk slider, right? And

1 certainly, when you're going to be more inclusive, more
2 people are going to be included and more people are
3 going to lose money. Because you know even the best of
4 us lose money every day. Like it happens every day.

5 The construct of the portfolios allow for you
6 to hopefully, have more winners than losers over time.
7 But if your first three investments lose, that's a
8 problem, right, if you are -- don't have the wherewithal
9 to be sustained.

10 So I agree with you. It's not as simple as
11 training everybody up, though that might be an element
12 of it. It's also about portfolio construct and helping
13 people to think about how to invest over time, sizing.
14 There is a bunch of other things that go in here that
15 when you think about this.

16 But your comments are spot on. It's not as
17 simple as train everybody up, and then it's going to be
18 great. I don't -- I think that's -- I don't think that
19 anybody thinks that's the answer, but it's good to call
20 it out. Because some folks may default to that.

21 Sorry. I can't see the screen. Carla, I'll
22 kick back to you. You can play, you know, sort of
23 moderator here.

24 MS. GARRETT: Okay. It sounds like Catherine
25 had a comment first. And then we'll go to --

1 MS. MOTT: Thank you. Yeah.

2 MS. GARRETT: -- Greg and Jason.

3 MS. MOTT: Thank you. I have a couple things
4 that I think that both Omi and Eli can speak to. One is
5 the network. So there is two things. Talk about the
6 network effect of investors. So and you know, I mean,
7 Omi, you were part -- you were kind of alluding to that.

8 I mean you know who your fellow investors are.
9 Entrepreneurs know who the investors are at this point,
10 at this point for -- and then they get introductions to
11 other investors.

12 So there is a network component to getting
13 this early-stage capital. That also relates to another
14 thought I had was that 70 percent of companies that
15 receive venture capital, received investments from
16 accredited investors, angel investors first, so 70
17 percent. That's a pretty big number when you think
18 about the billions of VC money invested.

19 So having said that, if you limit the pool of
20 accredited investors, have you given it thought on how
21 that impacts those companies' ability to get to venture
22 capital? So those are my two thoughts.

23 MS. BELL: I think so 506(a), I believe, is
24 the one that says that you can raise from accredited and
25 nonaccredited investors, but there is some limitations.

1 And then 506(b), it has to be accredited investors
2 only, but you can broadly solicit. So 506(a), you can't
3 broadly solicit and has a mix, and I think it's 506(b)
4 you can broadly solicit, but it has -- solicit, but it
5 has to be accredited investor.

6 So to the network effect though, is that if
7 you're not deep into networks, if you don't have a
8 network, if you're, you know, parents can go to Harvard
9 or Yale or whatever the, you know, the most fancy or
10 most appreciated by America programs are, then you're
11 kind of left out of those networks.

12 So the only time I may know that you're
13 raising is if you broadly solicit, right? So and if you
14 broadly solicit, the only way you're doing that, it's
15 because your 506(b). Well, by the time I find out about
16 you, I still can't invest because I am not -- maybe not
17 considered as an accredited investor.

18 But 506(a), if you can't broadly solicit, but
19 I could potentially get into the network with you. So
20 if you think about, like even that part of it, where
21 it's like, locking people out who don't already have a
22 network. But then if you don't have a network, and you
23 brightly solicit, and then people without a network who
24 even, you know, maybe close to the threshold, they still
25 can't get in.

1 So it's a -- it's really locked up when it
2 comes to the network effect and the way that the rule is
3 laid out.

4 MR. VELASQUEZ: Yeah, I want to touch on that
5 from both sides, Catherine. One, on the founder side,
6 one of the things that we have had to do is be extremely
7 proactive in going out to find founders. And you know
8 we're scouring LinkedIn, and we're scouring events and
9 whatnot. We're very, very out there hunting around for
10 founders to try to get them involved and engaged.

11 Two, on the network effect, we also found that
12 engaging the investors, they come in, and it takes
13 several rounds, and we have monthly calls. It takes
14 several rounds before they finally start kind of finding
15 their peers.

16 And one of the things that we are going to do
17 this year -- kind of goes a little bit to what Jason is
18 alluding to -- is we're going to be creating communities
19 of practice within our network. And enable folks that
20 have an interest in health care or climate tech or
21 space, right, to be able to, you know, congregate
22 together and slowly start to bring deals and look at
23 deals.

24 But what we have found has really enabled
25 folks to really participate, and start finally writing

1 checks, has been with notable investors, people who
2 have, you know, a track record, people who have that
3 experience, who come in and say, I believe in this
4 company, I have made the investment. And this is where,
5 I think, it lands.

6 Where we then step in, we say, yes, if you
7 have the means to participate, we're not going to tell
8 you what to do with your money. But there is also
9 another option to start at a much smaller level, so that
10 you can start exercising as little as \$1,000, \$2,000,
11 \$5,000, right, to be able to start building that network
12 amongst each other.

13 And then once the investment closes, we create
14 what's called an investor pod. And we bring those folks
15 together, and we say, hey, everybody, we all got in on
16 this deal together, let's all figure out why we liked
17 it, what else we like, and whether you want to do it
18 again with another company.

19 So this is extremely hard, I call it hand-to-
20 hand combat, right. But this is what's necessary
21 because traditionally, you just can't get into those
22 existing, what I call, mainstream networks. And so we
23 have to be creating this new structure and this new
24 network from scratch.

25 JASON: Hey, I think I was in line so I will

1 just -- I will jump in. So I think it's a really great
2 discussion hitting on the core fundamental issue. And I
3 think the role of the SEC around protecting investors is
4 an incredibly important role.

5 But I think a thing to recognize in terms of
6 sort of financial inclusion and risk-taking, right now,
7 an unaccredited investor is free to invest in crypto, to
8 invest in meme stocks options trading, all sorts of
9 other behaviors that are actually -- we're -- in a way,
10 we're actually pushing folks towards many other risky
11 behaviors versus investing in well-vetted private
12 companies that are actually where most of the value
13 creation is happening in the equities markets. And so I
14 just want to say that out loud.

15 I think, Omilade, you have -- asking exactly
16 the right questions, what are we trying to solve for?
17 And I think what I am hearing is there is two things.
18 One is how do we solve for the risk of fraud? And
19 second, how do we sell for keeping individuals from
20 over-leveraging themselves or taking too much risk on
21 the early part of what they're -- of this learning
22 curve, knowing that licensing and training is not really
23 how people learn how to invest in this asset class?
24 They learn by doing. And so you have to have a measured
25 approach.

1 And I -- the thing that I feel like is like
2 the unlock missing sort of suggestion here is thinking
3 of a different way to solve these things. Which it --
4 and it's strange that the regulations around taking
5 investors into pooled capital vehicles, actually, it
6 makes it easier for an unaccredited or barely accredited
7 individual to invest directly in a risky startup versus
8 doing it in some other pooled fashion. And so maybe
9 there is some way to think about that.

10 And maybe there is a way to think about
11 different levels of accreditation to understand which
12 investors truly are sophisticated. And allowing the
13 less sophisticated or newer investors to invest as long
14 as they are investing alongside sophisticated investors.

15 Because that controls for fraud. That controls for
16 that sort of minimizing some of those risks.

17 And maybe instead of thinking as much about
18 how do we identify who is who, we think more about, when
19 do we know that a given transaction feels de-risked
20 because of who else is participating in it? And maybe
21 think more about what are the limitations on how much
22 someone can invest in a given deal based on the -- their
23 level of sophistication or their prior history of making
24 similar investments? That's my comments.

25 MR. YADLEY: Yeah. I --

1 MS. GARRETT: Thanks, Jason.

2 Greg, are you going to -- next?

3 MR. YADLEY: Thanks. I -- a number of my
4 points have just been expressed by the last couple
5 speakers. But I think we're all acknowledging a lot of
6 the same things. Omi has properly said what we all
7 know, is that we are looking at the issue from an
8 economic perspective, really a social tool, an equity
9 tool. This is America, and we have democracy and
10 capitalism, and we want everybody to be able to have
11 that. That wasn't the discussion in 1982.

12 There, we were balancing two of the SEC's
13 three objectives and mission of capital formation and
14 investor protection. But remember, that the context was
15 exemption from registration. Because the basic rule is
16 when you offer somebody investment opportunity, it has
17 to be registered with the SEC and the applicable states.

18 And the reason for that was that there was a
19 gate that was going to help protect people. So what the
20 SEC was doing with Regulation D, which was a total
21 reworking of the older private placement rules, which
22 had been in place for four decades, since the 1934 Act.

23 Was, okay, if somebody is not going to have to
24 register, and they are not going to have the protection
25 that one gets from a registration statement, who can

1 invest?

2 And it was conceded, at the time, that money
3 did not equal sophistication. And sophistication was
4 there because without the SEC mandating what the
5 disclosure is, somebody has to be sophisticated enough,
6 knowledgeable enough to be able to evaluate the offering
7 and the risks of the offering.

8 So money was sort of a proxy indirectly, in
9 that if you had money, you could hire a lawyer, you
10 could hire a financial advisor, you could talk to an
11 accountant, you could do all these things that we have
12 talked about.

13 And I mean there was a movie that you can
14 watch on Turner Classics, How to Marry a Millionaire. A
15 millionaire was a big deal, it was a round number. And
16 some of the sidebars, you know, it could have been 5
17 million; 5 million was really, really rich in 1982, but
18 so was a million dollars.

19 So I think several of us have already said
20 today, and this is -- this bears repeating because this
21 gets mixed up whenever we have this discussion, investor
22 protection. Everybody agrees investor protection is
23 important. We also acknowledge that after the fact,
24 fraud, you know, finding the bad guys and doing
25 something, still people lost their money. So being

1 defrauded is a bad thing, and we care about that.

2 But that is different, as we have said today,
3 with risk. And that really should be, I think, our
4 focus as we move forward. We're not going to eliminate
5 the bad guys, but we can help people take measured
6 risks. As Jeff said, if your first three investments
7 don't work out, you are behind the gun because -- and
8 that has ripples for everything else, including whether
9 you can maybe buy a house, which if you did in 2018, and
10 can sell it today, you're rich. So that's important the
11 point about over leveraging, as Jason just mentioned.

12 I think Omi is spot on in not overtraining
13 people, having them learn a little bit. But the
14 onboarding, I think we can include that concept.
15 Because that happens, for example, when you invest
16 through a broker. Brokers have responsibilities. There
17 is a suitability requirement, right?

18 And you have to fill out a questionnaire that
19 talks about what your objectives are, long-term, short-
20 term, do you need income, you know, what's your age,
21 what's your risk tolerance? All those things that I
22 think we can build in here, but there won't be a one-
23 size-fits-all.

24 And so I think the commission has really
25 approached this the right way, by so far, having some

1 low-hanging fruit that qualifies in the expansion of the
2 definition. But sophistication is different for
3 different people, right? I will look at my son and me,
4 and it's not a question of who's smarter. He's smarter.

5 It's, what are we talking about? Because if
6 we're talking about a tech investment, I may be able to
7 understand what the disclosure is, but he has a much
8 greater appreciation for what you do with it. And that
9 leads to one of the things that Jason also mentioned a
10 minute ago, and that our committee has looked at before,
11 which is how to bootstrap people who get through this
12 sort of onboarding and get some advice or their
13 guidelines.

14 And the Office of Small Business Capital
15 Formation is doing a great job of educating people about
16 what you ought to be thinking about when you make
17 investments and what percentage of your net worth and
18 how to approach it. But investing alongside a lead
19 investor, investing in a pooled investment, those are
20 things that I think we should really focus on.

21 And the other thing are local investments.
22 Crowdfunding has helped a lot of people raise money.
23 Small businesses, it's given investors, smaller
24 investors, the opportunity to participate. But what has
25 gotten lost from the original concept, in my mind, is

1 local investments that.

2 And again, our committee has talked about
3 that, is something local, you don't need to be as
4 sophisticated if you're looking at a retail store or a
5 restaurant or another service, or a repair shop in your
6 locality because you understand where you live.

7 So I am not sure I said anything profound.
8 But I think a couple things we just need to stay away
9 from as we try and creatively integrate all these ideas
10 is we need to protect against fraud. But that is
11 different than helping people evaluate risk.

12 And the other thing is -- and I think the
13 numbers that Martha shared, are incredibly relevant.
14 There is never going to be a right number for the
15 financial metrics here, net worth and income. But the
16 last thing we should do today is go backwards and
17 decrease the pool of people who are currently allowed to
18 invest. There has not been studies that I have seen
19 that show that that really is the cause of fraud.

20 Of course, there is a fair amount of fraud in
21 506 offerings because there are more 506 offerings than
22 there are public offerings. So we should talk about
23 fraud in another context, not in the context of creating
24 more economic opportunity through access by helping
25 people be better investors. Off my soapbox. Thank you.

1 MS. HANKS: I wonder if I could build on
2 something that Greg said. The -- I really think we
3 should emphasize the decoupling between risk or and
4 fraud. And I think one of the problems that we have
5 with the rules as they are, is that the rules show a
6 touching faith in the integrity of fraudsters.

7 Because you know, you're allowed to commit
8 fraud only on these people, you know, who are -- who
9 meet the test. A fraudster is going to fraud. They are
10 going to commit fraud. They do not say, well, we're
11 doing this fraudulent offering and so we can invert. We
12 can take, you know, this person and this person, but we
13 can't take her to defraud her because, you know, she is
14 not accredited. That just doesn't happen. I mean,
15 fraud happens in a completely different place than the
16 definition. So we need to decouple the definition from
17 the investor protection issue.

18 And I just wanted to say one thing in response
19 to Commissioner Crenshaw's, you know, considered
20 comments this morning, where she had talked about the
21 loss mitigation. I kind of want to push back on that a
22 little because we're not in the business of loss
23 mitigation. That would be a sort of merit regulation
24 approach, which is not the way the SEC comes from.

25 Where the SEC comes from, is do you realize

1 you could lose everything? Are you sure you realize?
2 How much have you got, and are you going to lose it all?

3 Think about that. That's where we really come from
4 when it comes to assessment of risk. Understanding the
5 risk of loss, not preventing the risk of loss.

6 MS. GARRETT: Thank you, Sara. Sapna, do you
7 have a comment?

8 MS. MEHTA: Sure. I have nothing really to
9 add. I think I have checked off most things off my list
10 after Jason and Greg talked. But I think we are in
11 agreement that narrowing the definition of accredited
12 investors is not the answer.

13 I also don't think we went far enough with
14 allowing people with financial accreditations to invest.

15 You know anyone who knows investing in startups that
16 have a limited operating history, you know, limited --
17 that don't have audited financials, you're really in
18 investing in a team of people. You're investing in an
19 idea. And you don't really need any financial
20 accreditation to be able to gauge those metrics which we
21 had discussed back in 2019 in our meeting.

22 You know I do also worry about investor
23 protections. But I think, given as Jason said, if
24 people are allowed to invest in Robinhood and meme
25 stocks and, you know, there is a panoply of other risky,

1 much riskier, investments people can make. It does seem
2 a little patronizing to then tell people who --
3 especially people who have been working with these
4 companies, who are clearly sophisticated, and who knows
5 what the risks are, and who know what the, you know,
6 what the cost-benefit analysis is of investing in a
7 company like that -- to tell them that they cannot
8 invest.

9 You know I think it is a bit of a problem. I
10 think companies, it will naturally weed itself out. I
11 mean the problem is, when you say that if
12 unaccredited -- nonaccredited investors can only invest
13 alongside accredited investors, then you start getting
14 into where you have like a priced round maybe like.

15 I mean there is a bit of a problem where once
16 the company gets successful, then whoever is leading
17 that round or whoever is coming in, is going to take
18 that whole allocation. And companies typically don't
19 want a bunch of individual investors on their cap table.

20 Sometimes the smaller the investment, those investors
21 tend to be the loudest, and it's -- just becomes harder
22 for a company to manage.

23 We have had several companies that did take
24 early money, and you know are having trouble keeping up
25 with the information requests from some of these earlier

1 investors. And so I think it kind of -- you want to
2 make sure that there is not like a hazard problem, or a
3 hazard problem here where like the companies that
4 investors want to get into are only the bad ones that no
5 one else -- like, you know, like that of a VC fund or a
6 larger investor is not investing in.

7 But again, I think as long as people are aware
8 of the risks, they know they can lose everything, they
9 are not going to be -- you know, that this is a risky
10 investment. Maybe we allow -- like, maybe it's a
11 bright-line rule, and it's like, all right, anyone can
12 invest up to, you know, \$50,000, whatever it might be,
13 or whether it's like an amount, I think it gets a little
14 trickier if you make it a percentage of income. And
15 that's when rules start to become a little less
16 effective.

17 And I also think that it should -- it's risky
18 to make it to change the amount based on geography.
19 While it makes sense, I just think it needs to be a
20 bright-line rule easy to understand for everyone so that
21 it's very clear what the definition is. And I do -- and
22 I raised it on -- in our 2019 meeting.

23 But I -- you know, I also think there should
24 be some carve-out for being able to invest in a local
25 investment. You know again, is it risky investing in

1 your friends and family than your network of people?
2 Sure. But I mean, I think people are not stupid, and
3 you don't really need to have some level of
4 sophistication to understand that risk.

5 But it does help, you know, people be more
6 invested in their own communities, and for companies
7 that otherwise wouldn't have access to a network or, you
8 know, like VC money to be able to like get going with
9 local investments by going to their friends and family.

10 So anyway, I do think we need a way to
11 incorporate either like friends and family and people
12 investing in local businesses to be able to participate
13 however that comes along. So thank you.

14 MS. GARRETT: Thank you. Youngro?

15 MR. LEE: Thank you, Carla. And I also agree
16 with everything Sapna said and Jason said. I think
17 all -- at least it seems like most of us are in the same
18 agreement of these issues.

19 I just want to highlight two things,
20 especially with fraud, especially in light of the
21 comment about data. I don't know if the SEC has this
22 data or can collect this data. But in terms of the
23 actual number of fraud or what SEC would consider fraud
24 or anything close to it amongst the Regulation
25 Crowdfunding and Regulation A offerings because that's

1 really a data case, right? You start from zero and now
2 it's literally, you know, I think over a billion dollars
3 or depending on categories, it could be a lot more.

4 So I think it's, you know, the industry view
5 is that actual fraud is extremely rare in a controlled
6 recognition company context compared to whatever you
7 think the fraud is in a Reg D context where you can like
8 that. So I think that's one point to highlight the
9 fraud issue. But there is definitely other ways to
10 control for that or change that, other than to change
11 the definition of the credit investors.

12 But the second, and more important, point that
13 I want to highlight is that the harder -- so if the SEC
14 does look at this definition of accredited investors,
15 100 percent have to look at the definition of securities
16 in parallel because they are directly related. Because
17 the definition of accredited investors only impacts your
18 investments of securities, right?

19 But guess what? What is not considered
20 securities, there is no limitations or no restrictions
21 of any kind. That includes things like NFTs, real
22 estate. We literally have TV shows of people flipping
23 houses. People lose a lot of money on those things.
24 Collectibles, shoes, arts, music, you know, so many
25 things that are happening in this world. I can go to

1 Coinbase and literally spend \$200,000, on the new
2 cryptocurrency that was listed today. I can lose all my
3 money tomorrow. There is absolutely zero, zero
4 protection against investors on that.

5 So that's the one that I really want to
6 highlight. That if the SEC does want to look at the
7 definition of credit investors, you must look at the
8 definition of securities, if you are truly -- if the SEC
9 truly wants to kind of pick on the investor protection
10 issues so thank you.

11 MS. BELL: I love that.

12 MR. SOLOMON: I am pretty sure that's coming,
13 Youngro. So I am pretty sure that's coming.

14 MS. BELL: Yeah. I was -- okay, Jeffrey, you
15 took what it is I want to --

16 MR. LEE: But I hope -- if it's coming, it
17 should come at the same time, right?

18 MS. BELL: Yeah. He was going to say, you
19 know, that's definitely coming. Like I feel like that's
20 going to have to come just because of the way things are
21 going now, like societally.

22 But I also want to be sure that we don't mesh
23 it together so much that we can't make a decision about
24 one. Because that also in terms of, you know,
25 roundtables about law or, you know, legal policies or

1 just policy reform, that's typically where things get
2 stuck is because someone says, hey, if we're going to do
3 that, then we got to do this.

4 And then the entity or the government or the
5 policy makers are like, oh, we don't want to do that yet
6 so we're not going to do anything. So I just want to --
7 I agree with you that I do think that's going to happen
8 anyway, whether this definition changes or not.

9 At the same time, I just want to also put
10 forward that this definition does need to be visited no
11 matter what happens next with all the other securities.

12 I think you're right, in terms of it does have to be
13 visited.

14 But what happens in policy from my experience
15 in doing this work is that we kind of get hung up and
16 stuck if the policymaker or the people writing the rules
17 are not ready to visit the other parts of where they are
18 going to have to visit. And I don't think that it has
19 to be dependent upon it. While it does need to be
20 visited whether this definition changes or not.

21 MR. LEE: And just to be clear, surely a 100
22 percent I agree I meant if the definition is narrowed in
23 a negative way that impacts prior investing, then you
24 have to consider other things. My view personally is
25 that the definition should be, frankly, broadened

1 including exceptions for local investments and family
2 and friend investments.

3 So if our tax exemption is to follow the UK
4 regime, which very, very encourages, you know, investors
5 to participate in these local and entrepreneurship and
6 diverse. So yeah, so 100 percent the same phase I
7 meant. If the definition is basically going to be a
8 negative, then the rationale for doing so on the basis
9 of investor protection, frankly, does not make sense,
10 given all these other things happening in society today.

11 MS. GARRETT: Okay. Thank you. Guys, it is
12 noon. And so I want to thank Omi and Eli for your time
13 today. It was a very great and dynamic and informative
14 discussion among you guys, the committee members. And
15 we really appreciate you coming to speak with us today.

16 And so we're going to break for lunch now.
17 And the webcast will be stopped during lunch. And it
18 will resume at 1:00. And its committee members can join
19 no later than 1:00. We would appreciate it. And we
20 will get started, and we'll continue our discussion of
21 the accredited investor definition and the other things
22 that we have discussed this morning after lunch. So
23 have a good lunch, and I will see you then. And thank
24 you again.

25 MR. GENSLER: Thank you all

1 (Whereupon a luncheon recess was taken from
2 12:02 p.m. until 1:00 p.m. Eastern.)

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

4 MS. GARRETT: Welcome back, everybody. I hope
5 you had a nice lunch.

6 We are going to continue our discussion from
7 this morning about the accredited investor definition.
8 We had a quite substantive and lively discussion this
9 morning. And I think it will be useful as the
10 commission considers potential changes to the definition
11 of accredited investor, that we possibly make some
12 recommendations or some guiding principles for the
13 commission to consider when considering changes to that
14 definition.

15 We may want to reiterate some of our 2009
16 recommendations or we might want to change some of them.

17 But I would like to put forth some key principles that
18 we think are important for the staff to keep in mind.

19 One other point I want to make is that two of
20 the commissioners this morning did mention that they
21 would like to share our thoughts and get feedback on
22 whether the expansion from 2020 of the accredited
23 investor definition based on professional credentials,
24 you know, has been working. And you know maybe some
25 people could just, you know, talk to that whether they

1 think that has had much of an impact or not.

2 So at this point, I will open the, you know,
3 discussion up. I will start with maybe one good point
4 that was made and reiterated by many people, including
5 Sara, this morning, which was making sure that people
6 understand that there is a difference between risk of
7 loss and fraud.

8 And maybe we can talk about that concept and
9 people can expand upon that. So that we have some
10 principles for the commission to consider. Because
11 those are two very different concepts, and we can't fix
12 both with the accredited investor definition.

13 Would anybody like to start on that? Sara?

14 DEFINITION OF ACCREDITED INVESTOR - CONTINUED

15 MS. HANKS: Yeah. I just wanted to make a
16 sort of general context type question. I am worried
17 that we are looking at the definition of accredited
18 investor in isolation. Martha did a brilliant job this
19 morning of putting in context, the use of the accredited
20 investor definition in various types of offerings. But
21 that's not the only place it shows up. It shows up in
22 12(g), and plays -- and, you know, has another kind of
23 knock-on effect.

24 I just worry that we're sort of looking at
25 this one issue when we know -- because of all of the

1 discussions that have been happening, we know that the
2 staff is looking at other things with respect to the
3 private market, possibly 12(g). I don't know what else.

4 You know integration is also relevant. It's listed on
5 the -- you know the rulemaking.

6 And so I would love it if there is any way for
7 us to understand the other things that could be going on
8 here. Because, you know, we're only giving an opinion
9 on a small part of the picture here. And I worry that
10 it's all of our comments being out -- being discussed
11 out of context are going to be used out of context,
12 possibly.

13 MR. SOLOMON: But let me ask. And, Carla, you
14 know, you and I have had the benefit of having -- sort
15 of preparing for this a little. So let me ask if the
16 staff actually for a little bit of guidance here, and I
17 know -- are -- you're going to tell us to talk about
18 whatever we want to talk about so I got that already.

19 But there is a proposal that is in front of
20 us, but it's actually very straightforward and extremely
21 narrow, right, and we have been asked to comment on it.

22 And this morning, we heard all the reasons why
23 even discussing this might not make a lot of sense, and
24 we can reassess it. But staff would it be helpful if we
25 at least had a conversation narrowly on the proposal --

1 on the narrow proposal that is in front of us?

2 We have already made a statement maybe again,
3 we may just want to reiterate that comment because it's
4 very specific. And then have a broader conversation
5 about whether or not accredited investor, the accredited
6 definition is even relevant anymore.

7 How would -- because I am afraid we're just
8 going to wander all over the place and not actually get
9 to a spot where we're being asked to do something in
10 this particular case very specifically.

11 So Martha, Julie, can you give us some
12 guidance here?

13 MS. MILLER: Yeah. It may be unsatisfactory
14 guidance in response, but I will nonetheless try to
15 answer the charge.

16 So what is listed in the SEC's regulatory
17 agenda that is linked in the committee's agenda is the
18 fact that one of the areas for potential rulemaking is
19 the exempt offering framework. It's actually the first
20 item that is listed numerically on that list.

21 If you click on it, if you're looking at the
22 online version, what you'll see in the description is
23 one of the items is to look at the financial thresholds
24 in the accredited investor definition. So in what is
25 put forth in the commission's agenda is specific to the

1 accredited investor definition.

2 Now, Sara rightly flagged it is within the
3 construct of broader exempt offerings. But the
4 commission did indicate some specific subjects within
5 that broader construct that makes sense. So I -- you
6 know certainly, not speaking for the rule-writing teams
7 or the commission and all the lovely disclaimers that
8 Julie kicks us off with apply.

9 But I would say it's incredibly helpful for
10 the committee to weigh in with specificity on the
11 financial thresholds. But to further feel free to
12 contextualize that to the extent there are broader
13 principles or frameworks that could be considered.
14 Because as we have talked about, accredited investor is
15 a definition on its own.

16 It defines next to nothing besides whether or
17 not you are in the proverbial ring. The important piece
18 is what then happens with that definition. So I think
19 that contextualizing it certainly makes sense. But I
20 would encourage the committee to not lose sight of the
21 specific area that the commission entertained interest
22 in.

23 Does that give you -- an -- it's an
24 unsatisfactory answer, but does that give you something
25 to work with for the rest of the afternoon, Jeff?

1 MR. SOLOMON: No. That's unsatisfactory. I
2 just think that reaffirms that we have a very specific
3 piece of business in front of us. And we should just
4 again, the -- we can discuss that specific piece of
5 business. I just don't -- what I don't want to do is
6 just have the whole freeform conversation and then right
7 in the last two minutes, we have got to make a
8 discussion.

9 Maybe the -- and again, I defer to you, Carla,
10 because you're chairing the meeting. But maybe it makes
11 some sense for us to just very quickly figure out if we
12 have a consensus around the charge that's in front of
13 us. Then we can at least have a statement on the
14 specific question that's being asked. And then if we
15 want to provide incremental commentary, which I'm -- I
16 think we all heard this morning, I think we're dying to
17 give incremental commentary. That -- maybe that's a
18 better way to frame advice for you and for the
19 commission.

20 But Carla, I will defer to you. I just -- I
21 thought before we started down a whole discussion, we
22 should at least try to figure out if there is a
23 practical way I do this.

24 MR. YADLEY: Can I just add there is a little
25 bit of circularity here inevitably. And I think just

1 looking at that specific question about the financial
2 metrics is hard because, as I said earlier, I don't
3 think there was any real magic to that when it was
4 adopted. Clearly, a million dollars isn't what it used
5 to be. But I don't think this committee will ultimately
6 agree that it makes sense to reduce the pool of
7 investors when our objective, big picture is to get more
8 opportunity for people to participate in offerings.

9 We talked about the importance of data and not
10 to drive a decision but to inform a decision. Some of
11 those United States maps that were shown earlier, were
12 very informative. But does that mean, for example, if
13 we said, okay, we're going to keep the 200,000,
14 \$300,000, and the million-plus indexed for inflation on
15 a going-forward basis where they are? Let's get data
16 and see those percentage of households.

17 Your three slides, which were two and a half
18 years old now, and there is always a lag time. So if we
19 want more current information, we have to wait a while.

20 And then we'll find out what percentages those are, and
21 then just apply them to the states where the average
22 income and median household income were lower, and we'll
23 put the same percentages there so they'll be lower for
24 those people.

25 It almost seems like an exercise in accounting

1 that doesn't get us anywhere. So what is the issue
2 here? And I think the issue is we need more people
3 involved in offerings. So it is exactly right what Sara
4 said, that it's in context.

5 And Jeff and Carla, maybe the way to, do it is
6 to break down to do we want to make recommendations
7 today about the numbers or do we want to move on to
8 other things. But I don't want to misunderstand what
9 our esteemed office leader was saying because it is our
10 responsibility. But if the commission is focused on the
11 metrics, then we really do need to decide we want to say
12 what we said before, which is we don't want to make them
13 lower. And we want to do some further study about how
14 to make them different, probably lower for states where
15 the participation levels are going to lag because income
16 and medium household lag, and then we go on to other
17 things.

18 MS. GARRETT: So both -- I think both points
19 are well taken. I do think that we should quickly or
20 you know just to discuss first that, you know, maybe we
21 can just get a couple of things out of the way. Let's
22 just say that the commission proposed retroactively
23 changing the financial thresholds and the accredited
24 investor definition and indexing them now going, you
25 know, forward. So they changed the income, I think it

1 was to \$500,000 per year and the net worth to 5 million.

2 I might be wrong on what those numbers would
3 be. I am sorry. The net worth would be 2.7 million and
4 the salary would be 538,000. So let's just say that the
5 commission thought that it might be a good idea to go
6 back and retroactively change the accredited investor
7 financial threshold numbers. Does anybody on this
8 committee think that is -- would be a good idea --

9 MS. MOTT: Carla?

10 MS. GARRETT: -- to -- yes.

11 MS. MOTT: Yeah. This is Catherine. So the
12 Angel Capital Association looked at this before when --
13 in 2018, when the Dodd-Frank Bill proposed raising them,
14 from 200,000 to 450,000 and from 1 million to 2.5
15 million. And what we were able to show with the data --
16 and I'll -- I can go back to the ACA and get the data --
17 was it would have probably eliminated about close to 60
18 percent of the angel investors in the country, and it
19 primarily hurt the middle of the country.

20 So you know think about where again, we have
21 talked about this, that one size does not fit all. You
22 know so Omaha, Duluth, you know, Pittsburgh, St. Louis,
23 those were the regions -- Alabama -- were hurt, most
24 significantly by this. So the number of people writing
25 checks would have decreased dramatically. Yeah. So

1 this one -- so back -- so that backs into one size does
2 not fit all.

3 The other thing is, we were very much involved
4 in the discussions with --when the -- with Dodd -- with
5 Senator Dodd, and we negotiated look. You know we
6 understand that there needs to be some adjustment. So
7 at that time in 2018, they excluded your residence. How
8 we settled on that was you -- they excluded the
9 residence. So you know you no longer could calculate
10 your net worth in your -- you know of your -- or include
11 your home in your total net worth. Yeah. So any equity
12 that you had in your home. So that was eliminated.

13 That hurt the market somewhat, but not
14 dramatically. It just, you know, it did hurt the market
15 a bit. So I just want us to keep in mind is, if we're
16 going to accelerate this at such a rate from 1 million
17 to 2.7, 200,000 to 538, it is not going to hurt San
18 Francisco, New York, and Miami.

19 But it is going to hurt the rest of the
20 country where I believe we need jobs the most and job
21 creation and innovation. The other thing is if -- and
22 my understanding is this administration has a mission
23 around DEI, diversity, equity, and inclusion. And if
24 those things go up, nobody's going to be hurt more than
25 the minority population. So I would be very concerned

1 if these go up dramatically.

2 I think at one time, and I think Stephens on
3 the phone, we revisited this, and we said, not to do it
4 retroactively, but to maybe go forward with an inflation
5 adjustment. I can't remember when we made that
6 recommendation, Stephen -- if Stephen is on the line.
7 But you know that was something that we settled on, I
8 think, in the middle somewhere at one point in time.
9 But it was either two terms ago or three terms ago. I
10 don't know. But anyway, that's --

11 MR. YADLEY: let me interrupt, Catherine. We
12 did it -- we said it with the prior Advisory Committee
13 on two occasions, and on December 11, 2019, I think was
14 last time.

15 MS. MOTT: Thanks, Greg.

16 MS. GARRETT: Sue, did you have a comment that
17 you wanted to make? I think you're on mute.

18 MS. WASHER: Sorry about that. One of the
19 things that I just feel needs to be stated boldly is
20 that this ruling of your net worth determining whether
21 you're -- have an ability to make good decisions about
22 investments is just antiquated. I just don't agree.
23 And I think that our two speakers this morning
24 illustrated that perfectly. They don't meet the hurdle
25 of net worth, but they are exceptionally sophisticated

1 investors.

2 And so to say that accreditation is only based
3 on your net worth and your salary, I just frankly think
4 is wrong. And it is not something that we should use to
5 say whether somebody can make investments and help their
6 communities and help small businesses.

7 And then to say that we're going to increase
8 it year over year makes it even worse. And as Catherine
9 rightly pointed out, it's going to hurt minorities the
10 most of anyone. It's going to hurt the heartland of the
11 United States if anyone.

12 I think we need to come up with a completely
13 different paradigm as to how we're going to expand
14 investments into small minority-owned businesses. And I
15 just think it's flatly wrong to say just because you
16 have a million dollars net worth that you know how to
17 invest.

18 And I think it was also supposed to be
19 productive. If you were a millionaire, you could afford
20 to lose money. Well, there is no limit on how much they
21 can invest. They could invest all the million, and they
22 could still be destitute on the street. So that doesn't
23 really serve the purpose either. So I think we just
24 need to completely rethink how we're discussing this
25 issue.

1 MS. GARRETT: Thanks, Sue. And I just want to
2 point out that in our recommendations in December of
3 2019, so we did recommend to leave the current financial
4 thresholds in place subject to possibly adjusting them
5 downward for certain regions of the country. We also
6 said going forward possibly index the financial
7 thresholds for inflation.

8 And then as a totally separate kind of way to
9 qualify as an accredited investor, we had revised the
10 definition to allow individuals to qualify as accredited
11 investors based on measures of sophistication. And we
12 said in doing so, the commission should create bright-
13 line rules for qualifying as an accredited investor by
14 sophistication, which could include professional
15 credentials, work experience, education, and/or a
16 sophistication test.

17 So that would be a separate way to qualify
18 that's separate from the financial threshold. And in
19 2020, the SEC did revise the definition of
20 sophistication, but they did so in, I think, a
21 relatively narrow way and not as broad as we have
22 recommended.

23 But based on that, I am going to just put that
24 on the table. And, Bailey, I understand you have a
25 comment.

1 MS. MILLER: Bailey, I think we have got you
2 mute.

3 MS. DEVRIES: There we go. Thank you. I was
4 just saying I think that was an excellent point by Sue.

5 And when we talk about rethinking, you know, we're
6 trying to find a path forward here. If we start with
7 what we're solving for, are we solving for protections
8 of investors? Are -- what are we solving for, is it the
9 protections? Are we solving for increasing investment
10 in certain areas? When we think about the
11 administration's focused on DEI, you know, how do we
12 take all these pieces in the mosaic and decide, you
13 know, where to move the needle and focus?

14 It does go to that conversation around ability
15 to take risk, willingness to take risks, and
16 understanding of risk. And I did want to offer up that
17 perhaps an area where more focus would be beneficial is
18 around what can we do to educate the market or provide
19 more opportunities for them to access private funds?

20 So provide them with more education and
21 opportunities to invest in risk, diversified vehicles to
22 access the benefits of the private markets, and to
23 efficiently and effectively move capital there without
24 taking on the concentrated bets of investing in a single
25 company.

1 And it ties back to some of the points around
2 local investment. We have Treasury and SSBCI funds.
3 What are we doing to take that funding from Treasury
4 that is moving into the communities and providing
5 opportunities for local investors to put money in pooled
6 vehicles that are also trying to forward economic
7 development within the states and local communities?

8 So I really, you know, would love to figure
9 out if there is ways to have more of the conversation
10 around the differences of fund investing versus direct
11 investing and what that means in terms of willingness
12 and ability to take risk. And also how that can be
13 beneficial to the companies as well to have more
14 vehicles there and we're promotion of that.

15 MS. GARRETT: Thank you, Bailey. Does anybody
16 have any thoughts to add on what Sue and Bailey have
17 mentioned? And if not, then I welcome other people
18 discussing issues that have been raised.

19 MR. SOLOMON: Carla, maybe it makes some
20 sense. In the chat, people can take a look at the prior
21 just so we all have it. If you haven't looked at the
22 chat yet, you can click on the link, and you can pull up
23 the prior comments that we made again, was it on the
24 topic that we have been asked?

25 And again, I think all the comments that have

1 been made this morning and this afternoon are valid, and
2 if nothing else, it will -- the public, you know -- if
3 nothing else, the public record of these events will
4 reflect the fact that this committee doesn't believe
5 that the current standard for accredited investors meets
6 the needs of capital formation for small businesses or a
7 greater amount and emphasis on inclusion for --

8 And, in fact, the existing guidelines act as a
9 deterrent in some instances, and increasing them will
10 further make them a deterrent to including people that
11 should be included in capital formation, wealth
12 creation, and honestly investing in companies, small
13 businesses.

14 So I think we have say that, and we can, if we
15 try to boil this down to something tactical, we can make
16 a commentary. We're always free to make a commentary.
17 I just want to make sure we don't lose the, you know,
18 the ability to either reaffirm, repudiate, or revise our
19 prior statement because it's out there. And so we
20 should just, I think, spend some time on taking a look
21 at it and deciding, are we reaffirming our statement?

22 Are we repudiating that statement or are we
23 revising that statement? Those were the -- I just think
24 for a practical standpoint, we should do that before we
25 run out of time. And then we can talk about how we want

1 to give advice and commentary.

2 MS. GARRETT: Okay. That's great. I agree,
3 Jeff. I think we should do that. I see that Bert has a
4 comment. He was having trouble calling in. So, Bert,
5 are you on the phone now? If you are talking we cannot
6 hear you. Maybe you're on mute. Bert --

7 MR. FOX: Can you hear me now, Carla?

8 MS. GARRETT: Yes, we can.

9 MR. FOX: All right. Great. Thank you. I
10 have been having IT issues. I agree with your comments,
11 Jeff, but I guess I'd like to go one step further.
12 Because I do feel like -- and I'm anchoring back to some
13 of Greg's comments this morning too. I feel like we're
14 anchoring back to accredited investor is the only way
15 that you can raise capital privately. And it's probably
16 the most common one, right, without a doubt.

17 But I do feel like practically speaking, I
18 think there is a couple different threshold questions.
19 One of which is our prior recommendation, which we seem
20 to say, hey, these wealth or income thresholds were so
21 important, some form or fashion, right? I think we
22 should say, do we all agree with that statement, yes or
23 no? I think there is some compelling points made to
24 rethink that possibly.

25 I think the second question in my mind is, you

1 know, okay, is a -- you know should the commission be
2 thinking about other ways to expand accredited investor
3 or should they be thinking about other ways to expand
4 the ability to participate in exempt offerings to
5 include more D&I participation and everything else?

6 Because I do feel like we are starting to --
7 accredited investor with the entire universe of exempt
8 offerings as well. And so -- but I think I totally
9 agree with you, Jeffrey, I think it's best that we go
10 back and say, almost fundamentally, should there even be
11 a wealth or income threshold period, right? And make
12 that recommendation back to the commission.

13 And if so, whether it's a million, 2 million,
14 I think there is some optics there. The commission has
15 people that could probably study that better than we
16 can. But then I think it gets into if we don't think
17 there is, what should it be? Or if we think there is,
18 are there ways to either expand the definition through
19 things other than wealth or expand?

20 Or should the commission be thinking outside
21 of the credit investor in terms of maybe offering more
22 participation in other mechanisms of exempt offerings?

23 MR. SOLOMON: So can I -- you know we may
24 decide to go further, but let me just try to put some
25 frame on this if you don't mind, Carla, just for a

1 second. Because I -- in looking back at what we wrote,
2 it's very succinct, and it's actually very much on
3 point. So what we said on the Concept Release -- and we
4 did this -- and to remind everybody on the Concept
5 Release for the Harmonization of Securities Offering
6 Exemptions. So this goes back to June of 2019, which
7 seems like, I don't know, a decade and a half ago.

8 We were advised to leave the current financial
9 thresholds in place, possibly -- subject to possibly
10 adjusting those thresholds downwards, for certain
11 regions of the company so -- country. So we did have
12 this concept that one size does not fit all. B, going
13 forward, index the financial thresholds for inflation on
14 a periodic basis. You know so if you want to take a
15 look at it again, I guess, with the overlay of having
16 different potential a possibility for adjusting a little
17 bit more regionally that we would do so with inflation
18 on a periodic basis.

19 And then the third one, and I want to be
20 really clear about this because it encapsulates a lot of
21 what we have said already today and reiterated, provides
22 the definition to allow individuals to qualify as
23 accredited investors based on measures of
24 sophistication. In doing so the commission should
25 create bright-line rules for qualifying as an accredited

1 investor by sophistication, which could include
2 professional credentials, work experience, education,
3 and/or a sophistication test. That is what we said.

4 Now, I think there is some things in there and
5 improvements potentially that we could make based on the
6 some of the feedback that we got this morning. But a
7 lot of what we discussed this morning is in there
8 conceptually in a very organized and succinct way.

9 So I think maybe that's a good framework for
10 taking a lot of the commentary that we heard and say,
11 okay, are there elements of that we want to highlight or
12 reframe? You know just again, I am trying to get to a
13 point where we're taking a lot of the great commentary
14 that we heard from our speakers and amongst ourselves,
15 and just put it into something that is very salient and
16 on the record.

17 MS. GARRETT: So the first -- I mean let's
18 just talk about the first one just -- and I know we
19 don't think financial thresholds are what really -- I
20 know we're focusing on something very narrow in what is
21 a hugely broad area. But the reason I think Jeff and I
22 are trying to focus in on this is because we do feel
23 that the staff has asked us in a way to make -- to let
24 us know what we think about the actual current financial
25 thresholds.

1 And whether you know if there was a
2 possibility that they it could be retroactively, for
3 instance, adjusted, you know what our committee's
4 thoughts are -- in those are? And maybe, of course, we
5 have been saying this all morning is so we know what the
6 thoughts are. But if I just read the recommendation
7 which is, you know -- I don't think that, well, let's
8 just assume the SEC is going to keep financial
9 thresholds in there. And so our recommendation was to
10 leave the current financial thresholds in place subject
11 to possibly adjusting such thresholds downwards for
12 certain regions of the country.

13 I realized that this is a very narrow aspect
14 of a large subject. But are there tweaks to that? Are
15 there big changes to that? Are people still agree with
16 that recommendation that we made, you know, over two
17 years ago if we're just talking about the narrow issue
18 of financial thresholds? Does anybody think that they
19 should be adjusted upward?

20 (Chorus of Nos.)

21 MS. GARRETT: Okay. Is there anybody like
22 even one person on the call that wants to say, yes, I
23 think that they should be adjusted upward, or they
24 should be retroactive to 1982? Okay. So nobody on the
25 call believes that it would be in the interest of the

1 financial markets and for the small businesses if those
2 financial thresholds are increased at this point or if
3 especially if they are retroactive to 1982?

4 And I -- just in terms of maybe a couple of
5 comments, they would definitely hurt certain regions of
6 the country, and investments in certain regions of the
7 country, they would definitely hurt inclusion of
8 underrepresented groups in our country. They would --
9 you know so if there is other points people want to
10 make, but I think -- let me know.

11 MS. WASHER: The only additional comment I
12 would make, Carla, is that I don't disagree that
13 indexing for certain areas of the country where there is
14 lower wealth is a concept to look into. But it doesn't
15 solve the issue of Black- and Hispanic- and women-owned
16 businesses because many of those are in California, New
17 York, and Texas, and Florida. And so they are not going
18 to get indexed. It's not going to help them in their
19 network of the people that they know.

20 So I just want to point that out. It's not
21 that I am disagreeing that it would be helpful to
22 regions of the country with systemic, lower incomes to
23 index it in those geographic regions. But indexing for
24 geography doesn't solve the greater diversity issue.

25 MS. GARRETT: I agree with that.

1 MS. MOTT: It also doesn't allow more people
2 to participate in wealth creation. It -- you know
3 you're decreasing people's, you know, opportunity to
4 create a portfolio of companies that allows them to
5 create additional wealth for themselves. Where if
6 you're really, really rich, you get to participate in
7 private equity funds. But if you're not, this is --
8 allows you to be moderately wealthy, you know, and allow
9 you to create wealth creation. And what accredited
10 investors do --

11 And I will just give you an example of this in
12 my own backyard because that's my best, you know, I
13 guess indicator is my own testimonial, is I had an angel
14 group for 19 years. We just recently raised a fund
15 because we're trying to plug a hole in the Series A
16 market so moving upstream a bit.

17 And all of -- not all of them, I would say 80
18 percent of the -- those who generated new wealth from
19 their portfolio in our group, invested in our new fund
20 because we created money for them. So they put it back
21 in. You know that's what they do. They put it back
22 into the market to continue to drive economic growth and
23 again, create -- you know create wealth for themselves.

24 So, I guess what I am trying to get at is, if
25 we're trying to create more opportunity for underserved

1 populations, then we should not limit their ability to
2 do so.

3 MS. WASHER: What about the idea that was
4 raised in chat, I think, and originally during
5 discussion, but then a couple of us were chatting about
6 it? What about the idea that instead of maybe in a
7 dichotomous way to help with the sophistication, the net
8 worth, what if we added in that independent of
9 sophistication and net worth, there was a maximum
10 amount, a universal maximum amount that you could
11 invest?

12 Because then what you're capturing is that, I
13 think it's still probably would be optically providing
14 some protection that you're not going to let a low net
15 worth person invest a million dollars. But you're going
16 to let them make their own decision about whether they
17 are going to invest \$1,000 in their next-door neighbor's
18 business, small business.

19 You know because we don't have limits on --
20 and I understand the difference here -- we don't have
21 limits on what low net worth people can invest in the
22 stock market. They can go buy, you know, 10 shares of
23 Apple if they want. We're not saying you have to be an
24 accredited investor.

25 Now, in that instance, what is the protection

1 is the public disclosures of a publicly-traded company.
2 But it seems like that we could expand the universe by
3 saying that even if you're not an accredited investor,
4 you can invest up to X in a private company. That's
5 just something I will throw out that people were
6 discussing.

7 MS. GARRETT: The other thing, Sue, that you
8 know we had discussed earlier this morning was local
9 investments, and being able to possibly invest locally,
10 you know, in your local restaurant --

11 MS. WASHER: Right.

12 MS. GARRETT: -- your local, you know,
13 mechanic, et cetera. And whether they are -- you know
14 that would -- could be separate also from the accredited
15 investor definition.

16 JASON: I guess maybe I'll jump in with a
17 couple of thoughts.

18 MS. GARRETT: Go ahead.

19 JASON: From you know -- so I guess
20 specifically to Jeff's question, you know, the current
21 recommendation like I think what I am hearing like we
22 all support it. It makes sense. It's not wrong. But
23 it's -- but I -- the feeling -- and I don't -- and I
24 will try to put words to this.

25 This is a little bit but maybe my feeling but

1 projecting to the group, perhaps, is that it is likely
2 to have a marginal impact. It's it will have an impact
3 in the right direction. And so we'll have some marginal
4 inclusion of, you know, more people. We definitely
5 don't want to move the -- make the barriers higher, but
6 I think that -- the feeling I have got is that it's just
7 not -- I don't know -- I am not sure if it's going to
8 move the needle, you know.

9 And I -- and maybe to like re-summarize some
10 of the thinking I had this morning, you know, I am just
11 trying to distill this down to like what are the key
12 things we're trying to solve for? And whatever
13 proposals we make, I think our -- like our internal test
14 should be, how many of these -- you know how many of
15 those factors are impacted by it and move the right
16 direction?

17 And so one of those is, how do we continue to
18 help control the risk of fraud, right? The second, one
19 is what can be done to either protect investors from
20 risk, although Sara Hanks rightly pointed out, that's
21 not really the objective. The objective is for
22 investors to clearly understand and acknowledge those
23 risks because they are making their own decisions. But
24 that is a factor.

25 And then a third is, you know I think to a

1 point Sapna brought up is, even if you removed all of
2 these barriers, a lot of venture funds are not going to
3 want to deal with small investors. A lot of startups
4 raising capital are not going to want to deal with
5 unsophisticated investors.

6 And so there are structural disincentives to
7 inclusion. And so even if we made everything
8 accessible, there is still an issue of are these
9 opportunities accessible? And so I think that's a
10 factor to think about this. You know how do we not only
11 potentially minimize the cost or overhead or burden of
12 managing large pools of less sophisticated or smaller
13 investors? Are there things we can do that would make
14 that easier? Or maybe better yet, are there any things
15 we can do to incentivize the inclusions of those types
16 of investors in these opportunities? I think that's
17 maybe an opportunity.

18 And then the fourth -- and I think this one is
19 really key -- is just to recognize that investing in
20 this asset class is one that is learned by doing. And
21 that whatever -- however we're trying to create on-ramp
22 and pathways like we need to think through the lens of
23 allowing people to have multiple attempts at this in
24 some way where they are sort of walking along. And I
25 don't think it's licensing necessarily, but just in the

1 organically in the market that's how people learn to
2 invest in this way is they learn by doing.

3 And so those are -- I think those are three
4 key factors to me that, you know, we would want to
5 measure by. And then also clearly, we heard from the
6 commissioners that something to understand in any
7 proposal is what we think the magnitude of impact is.
8 How many additional investors are included when we make
9 a change? What -- any negative movement on any of these
10 factors, if we're increasing the risk for those
11 investors, et cetera.

12 And then the suggestion, the random thought,
13 which has clearly been thought about before, is if there
14 is any way to try and classify the risk of a
15 transaction. I don't know how we want to think about
16 risk, but it could be risk of fraud to be even very
17 more, you know, more precise.

18 Right now, we're spending all the time talking
19 about classification of the investor. And then we have
20 got lots of articulation on the mechanisms of raising
21 money, if it's, you know, 506(c) or a 506(b) or a Reg A
22 or whatever, but the actual transaction itself, we're
23 not really talking about, how to understand if a
24 transaction looks riskier or more likely to be
25 fraudulent or not.

1 Just because it's Reg C, F, or Reg D, or -- it
2 doesn't -- like you don't know if it's -- where it is on
3 that fraud risk spectrum. And I think there are maybe
4 other factors we're not thinking about. One of which I
5 suggested in this sidebar conversation which is looking
6 at who is participating in the capitalization of this
7 business and what is the relative sophistication of
8 those investors.

9 And if you have large professional investors
10 in a company, you know, investing in a transaction,
11 certainly less likely that the transaction is fraudulent
12 as compared to a company that has no other investors
13 where a less sophisticated investor is trying to
14 evaluate that in a vacuum. And all of these regulations
15 or classifications are missing the essence of that
16 around one transaction. So that -- you know just to
17 kind of get all that stuff on the record, Jeff, per the
18 request, like those are the thoughts sort of fitting
19 through my head.

20 And I am curious to get the group's reaction
21 to my feeling that moving the accredited definition from
22 200 -- moving it by a few 100,000 here or there or
23 allowing people that have certain, you know, business
24 classifications or certifications to be included -- it's
25 the -- it's moving the right way, but the impact is

1 going to be small. And that's what I am kind of
2 personally feeling.

3 MR. SOLOMON: I mean, to extend Martha's
4 beautiful pugilistic analogy, you know, you let people
5 in the ring, but you haven't legislated whether or not
6 they are allowed to have foreign objects. You know so
7 if people are allowed in the ring, but you haven't done
8 anything to tell the other competitors that are in the
9 ring, they have -- if they have illegal --

10 JASON: Exactly.

11 MR. SOLOMON: -- weapons there, it doesn't
12 matter who you let in the ring. So I totally agree with
13 you. The fraud thing is always a real specter. And
14 what we didn't talk about this morning and, you know, it
15 is not so much whether or not there is fraud, it's
16 claims of fraud, actually. And you know there is
17 actually rarely fraud I mean --

18 And by the way, I think if you look at as
19 certainly, some of the things that have happened
20 recently, in private companies were very large and
21 sophisticated investors have been defrauded -- which you
22 know some of which has been the subject of books and
23 movies and recent litigation in Silicon Valley -- you
24 know that there is no guarantee.

25 So we have all -- we have these, what I call,

1 individual, you know, case studies that we can use to
2 bolster the statement that you just made, right? There
3 are no guarantees in any of these investments. But
4 having said that, we do see the value in allowing
5 investors to participate in capital formation.

6 And while we cannot guarantee that they will
7 have positive outcomes all the time, what are the
8 mechanisms that we can suggest that give the rails for
9 them to be more likely over time as a group, as a class,
10 to participate and have positive outcomes in the
11 collective because any one situation we can't control?

12 And I think the advice we should be giving to
13 the office and to the commission is to create the
14 pathway for that to occur, right? The pathway where,
15 you know, we can say, if you're asking us just about
16 this, we made a statement before we're either affirming
17 it or modifying it slightly.

18 But the real issue isn't the level of
19 accreditation. It's the process through which we allow
20 people to participate in capital formation, generate
21 positive returns, allow for there to be greater
22 disclosure and partnering with sophisticated investors.

23 And that is what the SEC should be focused on that we
24 think will be more impactful to get positive outcomes
25 for both companies and investors. Because nobody

1 loses -- nobody wins when companies fail. Companies
2 don't win and investors don't win. Nobody wins.

3 So the goal here has to be to figure out --
4 create ways to create path -- frameworks and pathways
5 for capital to find good opportunities in the aggregate,
6 and then win in the aggregate portfolio-wise. And I
7 think that's really, you know, if we want to make
8 incremental commentary to the place we put, we are all
9 saying some version of the same, you know, thing. I
10 think that's true, I mean.

11 And I applaud you all. I will just say when
12 we sat down to prepare for this discussion, and we
13 talked about it, we knew there was a very narrow thing
14 that we're being asked. And we also knew that this
15 group would not sit idly by and simply answer the
16 question. Because we know how passionate we feel about
17 investor protection and inclusion.

18 And so the statements that have been made
19 today, by all of you in the chat and in -- and live, and
20 with the -- and the commentary from our speakers,
21 bolster the statements we have been making for years.
22 And so there is nothing wrong with adding to our
23 commentary how we really feel about it. Because I think
24 the commission -- we think the commission should hear
25 that, even if we're just being asked to answer the

1 question.

2 MR. YADLEY: So, Jeff, two real streams of
3 what we're talking about are the experience factor and
4 then knowledge. Okay. So experience, you earlier said,
5 and I repeated it in a different way, you know, if your
6 first three deals don't work out, you know, you're
7 impeded from at least meeting the financial tests. But
8 you know what, that's experience. So prior investment
9 experience, that's something we could consider.

10 Being an officer, being a manager or serving
11 on a board of companies where you're dealing with
12 financial statements and risk, that's a way. So there
13 is all kinds of different knowledge. And then part of
14 the inquiry is going to have to be beyond that sort of
15 fundamental, financial knowledge.

16 So let's just take a public company that has
17 an audit committee, everybody on the audit committee has
18 to be knowledgeable about financial statements. But
19 then you also have to have a financial expert on the
20 audit committee and that's a higher level of experience.

21 So we could look at a construct like that to do it.

22 The other thing is -- which the SEC has
23 already acknowledged with its recent amendments to the
24 accredited investor definition and asked for more -- is
25 people who can help a less sophisticated, less

1 knowledgeable person invest. So we have tackled at
2 least the securities industry, and you as somebody in
3 that industry, Jeff, might say that's too limited.

4 But there are certain other qualifications,
5 Chartered Financial Analysts. There are others
6 participation in the group that where there are people
7 who help do that. Established angel groups, we talked
8 about that. So I think those are two sort of gates that
9 we could suggest how to at least attack the issue.
10 How -- what kind of knowledge and experience should
11 count for you to be able to invest? And then are there
12 other people beyond those that are already sanctioned in
13 the rule that can act as an advisor and, therefore,
14 allow you to do this?

15 And that has clearly been part of the whole
16 landscape since 1982 with a representative who can help
17 you meet that sophistication, an offering
18 representative, or under Reg D a purchaser
19 representative.

20 MR. SOLOMON: So we have -- I am not sure how
21 much time we have left here. But I think we have like
22 40 minutes. But are there other comments as we try to
23 at least bring this into -- and again, I think when
24 we -- you know, Carla, what we have done historically is
25 taken all the comments and then tried to draft some, you

1 know, consensus and circulate it. Is that still
2 something that you think we should be doing?

3 Can I just ask practically? What we said, do
4 we want to reiterate what we have said already in the
5 statement and then you know reaffirm what we have said
6 or we changing the stance? Because I think a lot of
7 what we said is already in there. And then again, we
8 can expound upon bullet point three with more substance
9 if that -- but are we still okay with the thing we said
10 in the middle of 2019?

11 MS. CASH: I have a -- Jeff, I have a --

12 MS. GARRETT: What I heard --

13 MS. CASH: Oh, sorry.

14 MS. GARRETT: Go ahead, Kesha.

15 MS. CASH: Sorry, I didn't raise my hand. So
16 a quick question. I joined the committee in 2020, so I
17 am getting up to speed on the recommendation in 2019,
18 which sounds very similar to the discussion we're having
19 now. The kind of -- the quick, I guess, question for my
20 own understanding is, why is this topic, this specific
21 topic around thresholds coming up again with the SEC?
22 Like did something monumental happen? Like what's
23 happening to keep revisiting this conversation around
24 the -- increasing the threshold?

25 MR. SOLOMON: Martha? Sorry. I --

1 MS. GARRETT: Well, the administration did
2 change. The administration did change and so there
3 could be different priorities. We did see in the
4 rulemaking process for this year, one of the things that
5 they are looking at is possibly changing the financial
6 thresholds. And that is specifically stated as an idea
7 or an item on their possible rulemaking agenda for this
8 year.

9 So you know as when administrations and people
10 change within the SEC, then different priorities change.

11 And so I -- the reason we are revisiting it is because
12 it sounds like there could be a possibility that
13 thresholds could be increased upwards. And so we're
14 trying to weigh in on whether we, you know, agree with
15 that stance or if we think that could be harmful.

16 MS. CASH: Yeah. And I guess I am asking, are
17 we -- have we seen from that data standpoint is there an
18 increase of, quote, unquote -- I mean, we're talking
19 about the hypothetical potential fraud. Have we seen an
20 increase of fraud like what -- I am just trying to get
21 the driver, regardless of the --

22 MR. SOLOMON: Again, I --

23 MS. GARRETT: And, Jeff, real quick. Just
24 let me mention something because fraud is different
25 than, you know, investment, you know, the risk of losing

1 your investment. The accredited investor definition is
2 not necessarily there to protect against fraud. It
3 could be but fraud is a different element than you
4 invest in a private company that does not succeed, and
5 you lose your investment absent of fraud.

6 And so I think it's important for us to
7 actually kind of put those into two separate buckets.
8 And so maybe the question is, have we seen that more
9 people have lost money because investments have not
10 succeeded in the private market? And I don't know -- I
11 haven't seen -- I have not personally seen data on that.

12 I don't know if data exists. It seems to me like the
13 private markets have actually got bigger and more people
14 are making money in the private market.

15 MS. MILLER: And Carla and Jeff, I am happy to
16 also help answer Kesha's question there. And again,
17 this may not be the most satisfactory answer, but here
18 we go, as I try to delicately thread the needle in a
19 public-facing meeting on a politically-charged topic.

20 I think depending on which side of -- if we
21 think of the accredited investor definition as a fence,
22 and it sets a line, whether we call it the boxing ring
23 line or whether we call it a fence on a farm, let's use
24 farm because I want to get out of the violence of the
25 boxing metaphor.

1 So let's picture wide-open pastures with a
2 fence. Depending on your view of the role of the fence,
3 it might be to keep the people who are walking around
4 from messing with the animals and from going into one
5 area. The other view is it could be protective for the
6 people on the other side of the fence from the animals
7 coming over and messing. And so it depends on your
8 view.

9 Do you view the accredited investor definition
10 fundamentally as something that is a barrier to entry,
11 something that is keeping people from investing, which
12 is how some people view it because that's the side of
13 the proverbial fence that they are most familiar with,
14 or that their worldview may be framed around? And then
15 for others, they may look at that and see it as this is
16 the protective barrier that keeps people from getting
17 hurt.

18 And I think you have two very different views.

19 It's obviously very nuanced. There is benefits for
20 people on both sides of a fence, and I think everyone
21 would agree. The one thing that I think everyone can
22 agree on with accredited investor -- you may disagree on
23 the parameters of the fence.

24 But one thing everyone can agree on is that
25 the way that it's built doesn't quite make sense to

1 people no matter what their view is. It's an imperfect
2 definition. And it's an imperfect definition that has
3 decades and decades of precedent, as Greg was
4 highlighting earlier today, that goes back to the
5 origins of the securities laws to the 1950s, with
6 Supreme Court cases to subsequent congressional action,
7 and push for rulemaking. It's something that has
8 evolved over time.

9 The construct we have, and the reason that it
10 is a perennially favorite topic or not favorite topic,
11 but one that keeps coming up without resolution, is it's
12 really hard to figure out, what does that line need to
13 look like? And how do you strike the balance between
14 access and inclusion on the one hand and protection on
15 the other?

16 And so when you have new people in charge,
17 everyone has tried to take a look at this that I know
18 of. It's the favorite topic of just about everybody
19 that's looking at this area of capital markets, Kesha,
20 because it's the area that everyone recognizes could be
21 fixed in some way.

22 So that's not the most satisfactory answer.
23 But I think it's really important to recognize that
24 there is lots of different perspectives on the value of
25 that line and what it brings. But it's really important

1 to try to look at it from that multifaceted perspective
2 to bring in the different viewpoints that --

3 You know Jason was a numerating his four
4 considerations. I think it all goes to what are the
5 different pieces that need to construct that? And then
6 what does the rest of the landscape of the proverbial
7 farm need to look like for the optimal environment?

8 And I think that that's where the committee is
9 weighing in on. Okay. What does that fence need to
10 look like? But it's not a fence for the sake of just
11 having a fence. It serves a purpose in the broader
12 construct.

13 MS. CASH: No. Thank you for that. That was
14 actually quite satisfying, Martha. I appreciate the
15 farm analogy. And I just you know just it boggles my
16 mind a bit that we're -- you know I think we're having
17 the right discussion. We're starting to have the right
18 discussion. When you look at this and see that the
19 majority, take away Black, Brown, women, the majority of
20 America, by definition is not allowed to participate.
21 So I find it fascinating.

22 MR. SOLOMON: Yeah. I have said it, and we'll
23 go to Bert here. I have said oftentimes, maybe not to
24 look at another analogy, but I was like to look at Home
25 Depot. I am allowed to walk into Home Depot and buy any

1 tool I want. But I am more likely to lose a finger than
2 most other people because I am not good with tools. But
3 there is nothing that keeps me from walking into Home
4 Depot and doing it myself.

5 And I think if you think about the markets
6 that we have tried to promote here, do-it-yourself
7 markets is a big part of the American fabric, right?
8 And here -- and just even the idea of allowing there to
9 be exempt offerings is about allowing for there to be
10 private markets that grew off the back of that didn't
11 use to exist before. It was a watershed moment that
12 really opened up private market investing in the early
13 80s, that obviously has taken off significantly since
14 the financial crisis.

15 And so there is a whole element of what's
16 happened with accreditation that's enabled there to be
17 growth of the entire private equity and venture capital
18 communities, right? So we shouldn't lose sight of the
19 fact that exempt offerings are a key part of capital
20 formation, right? But like a lot of other things, they
21 have conspired to keep people out. And maybe there was
22 good reason for that. And maybe there is still good
23 reason that certain people shouldn't be participating.

24 I think what we're advocating here for, and I
25 think it's really -- it's amazing how creative this

1 group is, and so on point and so consistent, even though
2 you're relatively new to the group, relative to the last
3 time we discussed this, this is the same conversation we
4 had in 2019. Even though there is a lot of stuff that
5 has happened, and maybe a lot more awareness by a lot of
6 people on this phone call and in America about, you
7 know, social inequity and economic inequity, I think
8 everyone has learned a lot more in the last 24 months.

9 And here we are having a similar conversation.

10 And so I just think part of the frustration, if you
11 hear it at all, from members of the community is that we
12 actually haven't changed our views. If anything, our
13 views have gotten more resolute about the idea of
14 inclusion and the fact that the accredited investor
15 status is not working to create economic inclusion.

16 And yet we're being asked to answer a question
17 very specifically about whether or not to make it more
18 restrictive, in the name of one element, which is
19 investor protection. And that is frustrating for a
20 number of us who believe that we're making really good
21 progress at opening up at least the idea of economic
22 participation, even if it's not happening at the clip
23 that most of us would like to see.

24 And so I think as we get back to trying to
25 figure this out, I think it's really important for us to

1 answer the question. But I also think it's really
2 important for us to reflect in words, succinct words,
3 what the feeling and the advice of this committee
4 remains. And that, I think, is something we have been
5 usually very on point and --

6 But I would get that we consider making
7 commentaries along these lines so that the powers that
8 be in the commission recognize that making decisions
9 like this have broad resyncs social impact, and it
10 should be considered when making rules. I would hope
11 they would listen.

12 Bert, you have had your hand up for a while.

13 MR. FOX: Is it me now? Yeah. Jeffrey, I was
14 going back -- first of all, can you hear me? I'm
15 confirming.

16 MR. SOLOMON: Yes.

17 MR. FOX: Yep. I think you had asked, hey,
18 what do we do with our recommendation, you know, one,
19 two, and three? From what I have heard, my
20 recommendation would be keep the first two the same,
21 basically. I think they are actually worded well. I
22 think I have heard some people advocate we should have a
23 wealth threshold at all. But I personally think that
24 there is some -- you know it's worked for certain
25 purposes, and I don't know that that's worth completely

1 recommending getting rid of.

2 But I think part 3 -- and I think Jason and
3 Greg and others, and I think a lot of -- we have a lot
4 of great ideas, in my opinion, they are outside the
5 scope of the accredited investor definition per se, in
6 terms of -- like in Jason's thing, if we -- if you have
7 a VC, you know, invested company, that's pretty stable.

8 You know if all of a sudden the risk of that
9 investment, depending on how you define it, has gone
10 down, I don't think that automated automatically makes
11 you an accredited investor. I think that's got to be
12 somewhere else in the exempt offering framework that may
13 allow you to participate in that.

14 But again, I think, to me, you keep one and
15 two the same. But for three, in addition to maybe
16 expanding the definition of accredited investor based on
17 sophistication, I think we also say, the commission
18 should look very hard at other mechanisms under the
19 exempt offering framework that would allow for local
20 investment, more participation, and that sort of stuff,
21 balancing investor protection.

22 But it seems to me that there is something
23 there, but I agree. I also agree with Jason. We could
24 take the threshold down to 50 grand of income. I am not
25 really sure it's going to move the needle that much on

1 the accredited investor, and how many more, quote,
2 people are truly going to participate versus thinking
3 about other ways to do that, you know, to get broader
4 participation personally. So you asked for feedback.

5 MR. SOLOMON: That's an interesting --

6 MR. FOX: That was kind of my position, so.

7 MR. SOLOMON: That is an interesting idea
8 that, you know --

9 MR. FOX: Yeah.

10 MR. SOLOMON: -- we could -- you know we
11 could, you know, again, reaffirm the way we reaffirmed
12 or you know because we do say it's possible that you
13 should be looking at raising the bar on the financial.
14 But then drill in on number three, and try to create all
15 these exceptions that allow people to get in through the
16 sophisticated investor definitions which is, by the way,
17 that's how most people get in, by the way.

18 It is. You know we're working on our
19 organization. And I know we're on Wall Street, and
20 everybody has this perception everybody on Wall Street
21 qualifies. Let me tell you the vast majority of people
22 on Wall Street don't qualify.

23 Like the vast, vast majority of people who
24 work at Cowen do not qualify and yet they work with
25 financial sophistication all the time. And they work

1 with these instruments all the time, and they are around
2 it all the time.

3 And so we're constantly trying to figure out
4 how we're -- when we have private investments that are
5 exempt offerings, like funds that we offer, like the
6 funds that we offer, that are filled with professionals
7 who know what they are doing. And we can't offer those
8 funds out to our employees who would benefit immensely
9 from having exposure to those funds.

10 We're trying to figure out ways to get them
11 to -- and we're making risk decisions from a compliance
12 standpoint. That happens. You know if I let these
13 people in, and we lose money, what kind of risk do we
14 have? Because well, they claim that they weren't
15 sophisticated, and we let them in, even though we're
16 trying to get them in, right?

17 That is -- it's a very real problem in every
18 part. And so most people end up getting into
19 investments, not through the financial -- you bring up a
20 great point, Bert -- not through the financial
21 qualifications, but rather the sophisticated investor
22 exemptions that enabled them to have experience.

23 And maybe the right thing for us to do is to
24 drill in on that and allow the powers that be to think
25 about numbers because it's easy politically to make

1 statements around that. But then let's drill into
2 getting this -- what qualifies as a sophisticated
3 investor. And so you're not even really dealing with
4 the numbers. You're just creating a framework for
5 people to come in through bullet point three. What do
6 people do think about that?

7 MS. GARRETT: Jeff, have you seen -- they made
8 some changes obviously in 2020, to that sophisticated
9 investor prong. Have you seen that that's actually
10 broadened the number of people that can come in as a
11 result of those changes?

12 MR. SOLOMON: Not really. I mean --

13 MS. GARRETT: Okay. So it wasn't broad enough
14 from your --

15 MR. SOLOMON: -- it wasn't material --

16 MS. GARRETT: -- perspective --

17 MR. SOLOMON: -- enough to say -- you know it
18 wasn't material enough for us to say -- I mean we're
19 still taking, you know, risks, you know, but it's not
20 material enough -- well, they weren't material enough
21 for us to say, wow, look, everyone can invest now. That
22 didn't happen. We're still struggling sometimes. But
23 again, at an organization -- and I feel like when I
24 speak about these things, we have many more tools at
25 Cowen to be inclusive with our own population than most

1 people in America.

2 But we have to be intentional about that at
3 Cowen, right? We literally have to do education
4 sessions. And we're doing financial literacy, and a lot
5 of other things that get us comfortable, that the risks
6 that people are taking with the money that they have are
7 in line with the reward opportunity.

8 JASON: I'd want to add on to this. We have
9 the same issue, Jeff, that you're describing at Cowen,
10 which is we have employees who are in our business, work
11 on our funds, work on our strategies, understand them
12 deeply, but don't independently meet the criteria. And
13 the one mechanism that has included the largest number
14 of them is the knowledgeable employee definition and the
15 recent -- relatively recent change that was made to the
16 knowledgeable employee definition.

17 It used to be that to be considered a
18 knowledgeable employee, you needed to -- you had to be
19 in the role for a year, you had -- there's certain
20 definitions of the role. But also, you needed to be an
21 accredited investor. If those two things were true,
22 then you could be considered a qualified purchaser.

23 And now that accredited investor also can be
24 met with the knowledgeable employee definition in and of
25 itself. And then so we -- and that change I have seen

1 has moved the needle for us in terms of the number of
2 our employees that are able to put money into our funds.

3 And so I do think that third category is an
4 interesting one. The certification stuff I -- you know
5 I don't know that I have noticed that that's made a big
6 impact. I guess what I don't know is how many people --
7 like how many people directly have fallen under that
8 umbrella that would not meet the criteria some other
9 way.

10 But in thinking about that, the points that I
11 had laid out, the fourth one being recognizing that
12 investing in this asset class is a learned-by-doing
13 activity. I am wondering if something relative to that
14 could be included in that sort of, you know, how much of
15 a -- how you know -- I am trying to think of how to
16 frame this.

17 Like imagine if, you know, once you have made
18 five investments and exempt offerings, you have got your
19 legs under you, and you know how they work, right? And
20 so you can get there however you get there. You --
21 maybe you meet knowledgeable investor criteria. Maybe
22 you get there through some other mechanism.

23 But once you have done some number of them,
24 the training wheels are off, you know how they work.
25 You have, you know -- and at that point, you would meet

1 the definition just by virtue of you having done enough
2 of a thing.

3 But I don't know. I like the idea of trying
4 to expand on that third bullet. It does maybe strike
5 more to at the issue that the wealth and income
6 definitions alone don't really measure sophistication,
7 right?

8 MS. GARRETT: So, Jason, I think what you're
9 saying maybe is just investment experience?

10 JASON: Yes.

11 MS. GARRETT: Is that --

12 JASON: Yeah. Well, that could be an add. I
13 mean because in a way to think about this --

14 MS. GARRETT: That's what I mean. Yeah. We
15 have a long --

16 JASON: If one of our employees --

17 MS. GARRETT: -- a long list of things --

18 JASON: Yeah. If one of our employees who
19 worked for us was -- had invested in multiple of our
20 funds because they met that knowledgeable employee
21 definition, and then they leave our firm and are no
22 longer maybe even working in the industry, that
23 knowledge didn't go away. But under the current rules,
24 they would no longer be able to make any additional
25 investments like that.

1 Plus, that designation of being an eligible
2 employee only allows them to invest in our funds. They
3 can't invest in Jeff's funds, right? And so I think
4 there is some -- it's the right -- it's in the right ZIP
5 code, but it's not in the right, you know, address,
6 right?

7 MR. SOLOMON: Let me -- so are we in danger of
8 losing a quorum here? I just want to make sure that
9 we -- while we have a quorum, that we can get some
10 specific guidance. And I see Carla is -- you're the
11 best at putting stuff in the chat for us to --

12 MS. GARRETT: We're still fine on quorum.

13 MR. SOLOMON: Well, before we lose a quorum,
14 maybe I just -- I don't -- I just want to make sure that
15 if there is a charge here, again, Carla, why don't
16 you -- you're already on it. Why don't we just try to
17 narrow that down?

18 MS. GARRETT: As a first -- just to go back a
19 little bit. The first one we had leaves the current
20 financial thresholds in place subject to possibly
21 adjusting such thresholds downwards for certain regions
22 of the country. But I don't know if we want to have any
23 kind of, you know, other principle with respect to
24 acknowledging that that does not necessarily solve the,
25 you know, diversity and inclusion issue.

1 We could instead of say leave the current
2 thresholds in place, we could just say do not increase
3 the current thresholds. You know so that -- those are
4 two -- that's an option. I don't know which one people
5 think might be better.

6 And then the third one is, this is what we had
7 before, which is really a whole different way to qualify
8 as an accredited investor -- or sorry, yeah. An
9 accredited investor is not based on the financial
10 thresholds. It is based on sophistication. And this
11 was what we recommended before. What I have heard is we
12 have also -- you know Jason said -- investment
13 experience.

14 I think the fourth point that I have heard
15 today is that we may want to have the commission
16 consider -- and I am not sure exactly how to phrase
17 this -- but you know exemptions for local investments
18 and possibly small investments that might fall outside
19 of any of these three items.

20 MR. YADLEY: On your last point, Carla, again,
21 that's been something that we have talked about before.

22 The prior committee talked about sort of a micro-
23 investment, local investment without limits, as one of
24 our colleagues said today earlier, sort of a --

25 MS. GARRETT: Okay.

1 MR. YADLEY: -- local crowdfunding without all
2 of the apparatus that inhibits people from getting
3 experience on a deal.

4 MS. GARRETT: Okay. So that -- I mean, we
5 might not have the exact, you know, pretty word today
6 for our recommendation. But the fourth point would be
7 that the staff consider allowing micro-investments and
8 local investments, you know, independent of the
9 definition of accredited investor.

10 Does that summarize what you said, Greg?
11 Okay.

12 MR. SOLOMON: Kesha, did you --

13 MS. GARRETT: And --

14 MR. SOLOMON: Kesha had her hand up.

15 MS. CASH: Yeah. I wanted to add in sort of
16 the essence of the conversation, and I believe what
17 Martha and Jeff stated so well. Can we explicitly say
18 that we're concerned about or want to, quote, unquote,
19 protect against intended or unintended consequences of
20 furthering the economic income gap, the racial wealth
21 gap however we frame it?

22 But I think -- and we have been doing that in
23 these conversations -- being explicit on paper about,
24 you know, why we're pushing back and pushing out the
25 scope of what this is talking about, I think is really

1 important.

2 MS. MOTT: I agree with Kesha on this.

3 MS. WASHER: Yeah. I absolutely agree with
4 Kesha. That explaining why it is we are concerned and
5 what we think it might do, is crucial.

6 MS. GARRETT: I agree with that. I think that
7 that could be even, you know, one of our lead-ins to all
8 of our recommendations is that -- this is one of the
9 reasons that we are-- we feel strongly about these
10 matters, is that we feel like we do not want to increase
11 the income gap, and we're concerned that this could.

12 MR. SOLOMON: I would also say, you know, and
13 I will throw this out to the group, if you would agree
14 or disagree, I think we should link something in here
15 that says that, you know, a primary funding source for
16 small companies are smaller investors like or
17 individuals, however, you want to say it, right?

18 You know it's a little bit of what we talked
19 about this morning, you know, the most like logical
20 place for most companies in America and for most small
21 businesses to go raise money is from individuals. And
22 so you know again, we want to be sure those individuals
23 are protected. But you know it -- I think our charge is
24 that, you know, we spent a lot of time on investors,
25 even though that's not the primary charge of this

1 committee.

2 The investor advisory committee takes care of
3 investors, at least that's what I have been told. So
4 every time we weigh a little bit too much into investor
5 protection, we kind of get, you know, what do you guys
6 know about that? So even though I think we know a lot,
7 and we feel passionate about it.

8 So maybe the lead-in should also include that,
9 you know part of this is about what matters for
10 companies. So this balance between access to capital
11 for companies oftentimes comes from individuals. And so
12 you know in addition to making it more exclusive, it
13 becomes more difficult for companies to raise capital
14 from individuals. I just think we should weave that in
15 there somewhere.

16 MS. GARRETT: I agree. I think that should be
17 one of our lead-ins also. I mean is that you know our
18 charge here is to help small business capital formation.

19 And one of the ways to do so is to make sure that those
20 businesses have investors. And as you said, those
21 investors might not be -- you know they might be smaller
22 investors and, therefore, they might not always meet the
23 accredited investor definition, especially if it's
24 revised to a very high amount.

25 So we're trying to help small businesses.

1 We're trying to make sure not to increase the income
2 gap. Jason, I'd like to understand a little bit where
3 you say something about your -- we captured the
4 intentionality? What were you talking about there?

5 JASON: I was just underscoring what Kesha was
6 saying in a prior recommendation. I think that, you
7 know, in absence of having specific ideas around how to,
8 you know, mechanisms for aligning with supporting
9 underrepresentation, we wanted to make clear that like
10 that was part of the purpose that were woven in. And so
11 I was just underscoring her suggestion that we add that
12 to --

13 MS. GARRETT: Good.

14 JASON: -- this recommendation.

15 MS. GARRETT: Okay. And if we go back to the
16 recommendation about the sophistication, what counts as
17 sophistication, totally independent from the financial
18 thresholds, we did have a recommendation in 2019. And I
19 put it in, you know, as we have all seen it. And we do
20 know the SEC only acted on a tiny bit of that.

21 We have talked about -- and I think everybody
22 agrees about -- including investment experience in that
23 definition. Are there other items in that definition of
24 what would constitute sophistication that people would
25 like to, you know, add?

1 So basically, right now we have -- which could
2 include professional credentials, work experience,
3 education, sophistication test, investment experience.
4 What were some of the things that maybe the speakers
5 this morning mentioned that they had, that they couldn't
6 even qualify as an accredited investor, and are we
7 missing any of the, you know, items that they brought
8 up?

9 MR. YADLEY: Catherine can probably provide
10 specific language. But membership in an organized,
11 established angel group with, you know, the structures.
12 You know and she can articulate that, and I think also
13 other degrees. I mentioned certified public
14 accountants, Chartered Financial Analysts as a couple.
15 You could extend that to --

16 MS. GARRETT: Thank you, Greg.

17 MR. YADLEY: -- you know consideration for
18 other licensed individuals such as lawyers. Not that I
19 think lawyers necessarily make great investors or
20 understand everything. But the point is is that there
21 is somebody that if they don't live up to their
22 professional obligations, can get sanctioned and lose
23 the opportunity to practice their profession, you know,
24 someone who's not a relative.

25 MS. MOTT: You articulated it well, Greg.

1 JASON: Another thing I heard this morning
2 which -- I mean and Bert was right bringing it up -- and
3 this is maybe out of scope. But what I heard from them
4 was that part of what qualified them to make a, you
5 know, nuanced decision around a specific investment is
6 their understanding of that particular company.

7 And so again, speaks to sort of like the
8 transaction itself actually has, you know, sometimes
9 more relevance than a broad -- I don't know if there is
10 a way to wedge that in here because we're trying to come
11 up with a definition around a person.

12 But the one other thing I put sort of in the
13 sidebar, that I don't know if it's worth underscoring,
14 is that the way that the knowledgeable employee
15 definition, as it exists today, is something that would
16 go away. It's not a permanent attribute of that person
17 that only applies to them, and only for the products
18 raised by the firm that they are at.

19 And so I think maybe something to capture in
20 here is that when someone meets this sophistication
21 definition, it should be universal, and it should be
22 broad. So that they can -- they are either
23 sophisticated or they are not. They are not
24 sophisticated just necessarily around that one narrow
25 thing, and it doesn't go away, right?

1 MS. CASH: Yeah. And I don't know. Again, I
2 don't know the right language and haven't given too much
3 thought to this. But capturing again, that the
4 conversation earlier around understanding of company or
5 industry. But also if you're thinking about local
6 investing, like community leadership, if you're a person
7 in your community, and you know everyone, and you know
8 the local businesses, you know the founders of the
9 companies, you know the CEOs, to me, that's -- you know
10 that's sophisticated.

11 I don't know how you capture that. But I
12 think we got to be a bit broader than a worker at an
13 investment firm in order to be, you know, more inclusive
14 of other folks.

15 MR. YADLEY: Another more specific one, and I
16 know about this because one of my partners is general
17 counsel to an organization that provided a comment
18 letter on April 15, 2020. It was -- it's an association
19 of non-depository trust companies that represent. There
20 is some scores of them, and they do not necessarily have
21 the \$5 million of their own assets.

22 So I will -- disclosing my conflict of
23 interest, suggest that staff take a look at the April
24 15, 2020 comment letter.

25 MS. GARRETT: I am sorry, Greg, so what can

1 you point out what was in the comment letter? What was
2 this?

3 MR. YADLEY: The association of trust
4 companies organizations.

5 MS. GARRETT: Okay.

6 MR. YADLEY: They -- there is some issue about
7 whether they qualify as banks because they don't take
8 deposits. They are regulated by the Comptroller of the
9 Currency in the States. So there was a comment letter
10 that pointed out. And that this is like a family office
11 in many respects.

12 MS. GARRETT: Okay. I am not sure how that
13 would get added to --

14 MR. YADLEY: I am not suggesting that it be --

15 MS. GARRETT: Yeah. Okay.

16 MR. YADLEY: -- that our committee include
17 this in its recommendation. I just would note it for
18 the office, and if anybody that's interested, it's in
19 the public comment file.

20 MS. GARRETT: Okay. So --

21 MS. MOTT: I was just going to ask --

22 MS. GARRETT: Does anybody --

23 MS. MOTT: I am sorry. Wouldn't they be
24 accredited by virtue -- that they be an accredited
25 investor even though -- they may be an accredited as --

1 well, no. I was thinking as an individual. But if you
2 are trust with multiple families, that's not the case.
3 Never mind. I see what you're saying. It's similar to
4 that. But yeah, I see what you're saying.

5 MR. YADLEY: Yeah. It's similar to that,
6 but --

7 MS. MOTT: Yeah. Yeah. I see what you're
8 saying because -- okay. Thanks.

9 MR. SOLOMON: I think we're getting a little
10 short on time and want to make sure we still have a
11 quorum.

12 And, Carla, why don't we just kind of
13 summarize here and then just make sure that we don't
14 lose our quorum?

15 MS. GARRETT: Yeah. I think what we would do
16 is say that, you know, what our committee has discussed.

17 And what we feel like is important is that, you know,
18 the primary funding for small companies are smaller
19 investors.

20 And, therefore, you know we're charged with
21 helping small businesses with capital formation. We
22 don't want to limit too many small investors.

23 We also want to protect against unintended
24 consequences and increasing the wealth gap. And we want
25 to also about making sure we're not being less

1 inclusive. That is not a consequence we want. And,
2 therefore, we would take our recommendations from 2019,
3 we would reiterate the first two, financial pressures,
4 leaving them in place, possibly indexing them going
5 forward.

6 And then we would -- on number three, we would
7 suggest to, you know, broaden the definition of what a
8 sophisticated investor is so that they could qualify and
9 the different ways that we could do so.

10 And we have kind of a list of different ways
11 that the staff could look at broadening that definition.

12 The ones that we have listed before, plus we
13 have investment experience, membership in an organized
14 angel group, other degrees, community leadership,
15 possibly understanding the particular investment.

16 And then the fourth new recommendation we
17 would put in there, which is a little independent of the
18 accredited investor definition. But we would like the
19 commission to consider allowing micro and local
20 investments.

21 Have I missed anything that people would like
22 to add?

23 MS. HANKS: Could I just add something?

24 MS. GARRETT: It's not -- yes.

25 MS. HANKS: Yeah. Just in the reference in

1 the initial preamble that you were talking about,
2 unintended consequences, could we just throw in a
3 reference to the Section 12(g) there?

4 MS. GARRETT: I am sorry. To what? I missed
5 what you said.

6 MS. HANKS: Section 12(g), unintended
7 consequences including --

8 MS. GARRETT: Okay.

9 MS. HANKS: -- the registration thresholds of
10 Section 12(g).

11 VOTE - APPROVAL OF RECOMMENDATION

12 MS. GARRETT: Okay. Okay. So would you guys
13 be ready to vote on that or anybody have any other
14 suggestions before we vote?

15 Okay. All in favor of that -- approving that
16 recommendation, raise your hands, say aye.

17 (Chorus of Ayes.)

18 MS. GARRETT: And, more importantly -- not
19 more importantly -- but if anybody is not in favor, can
20 you please say aye or raise your hands so we know?

21 (No response.)

22 WRAP-UP AND ADJOURNMENT

23 MS. GARRETT: Okay. I think we then have
24 passed that recommendation and tried to tackle a lot of
25 points today and made a lot of progress. I -- you know

1 it was -- I hope that this recommendation will help, you
2 know, the staff and that they'll look at it. And I am
3 sure it will consider it, and I think it's very
4 important for us to get this out to them.

5 So I really appreciate everybody's help today
6 and everybody really taking an interest in this topic.

7 And with that, I will move to adjourn the
8 meeting but not before I let you know when our next
9 meetings are, which is they are Friday, May 6th,
10 Tuesday, April 2nd, and Thursday, October 13th.

11 So thank you very much. And I hereby adjourn
12 the meeting.

13 (Whereupon, at 2:30 p.m., the meeting was
14 adjourned.)

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PROOFREADER'S CERTIFICATE

In the Matter of: SMALL BUSINESS ADVISORY COMMITTEE
File Number: OS-0001
Date: Thursday, February 10, 2022
Location: Washington, D.C.

This is to certify that I, Christine Boyce,
(the undersigned), do hereby certify that the foregoing
transcript is a complete, true and accurate
transcription of all matters contained on the recorded
proceedings of the meeting.

(Proofreader's Name) 2-22-2022

REPORTER'S CERTIFICATE

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I, Kevin Carr, reporter, hereby certify that the foregoing transcript is a complete, true and accurate transcript of the meeting indicated, held on 2-10-22, at Washington, D.C., in the matter of:

SMALL BUSINESS ADVISORY COMMITTEE

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

2-22-2022