THE UNITED STATES SECURITIES AND EXCHANGE COMMISSION

MEETING OF THE SECURITIES AND EXCHANGE COMMISSION SMALL BUSINESS CAPITAL FORMATION ADVISORY COMMITTEE

Via WebEx Video Teleconference

Friday, May 8, 2020

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U.S. Securities and Exchange Commission

100 F Street, NE

Washington, D.C.

PARTICIPANTS:
Jay Clayton, SEC Chairman
Hester Peirce, SEC Commissioner
Elad Roisman, SEC Commissioner
Allison Lee, SEC Commissioner
Carla Garrett, Chair
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Hank Tobert
Julie Davis
Jennifer Zapralka

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MS. GARRETT: Good afternoon, and welcome members of the Committee, the Commissioners, and the SEC Staff to this meeting of the SEC Small Business Capital Formation Advisory Committee.

I also want to welcome members of the public who are tuned in to today's meeting. And thank you for recognizing the importance of access to capital for small businesses, especially in the current COVID-19 environment.

It was just a year ago that our Committee had its inaugural meeting, and this is the seventh meeting of the Committee. I appreciate all the Committee members' hard work and the great support that we have received from the SEC's Office of the Advocate for Small Business Capital Formation.

I also want to thank the Commission and the Commissioners for listening to this Committee's thoughts and recommendations. I know that we are all honored to be able to assist the Commission.

Before we start the meeting, I would like to share some Webex reminders for the virtual environment. All members' microphones should be muted. We ask that you mute and unmute your microphones when you speak to reduce background noise. You may do so by clicking the microphone icon at the bottom of the video screen.

If you would like to be recognized to speak, please use the chat function in the Webex so we can recognize people in an orderly manner. Or you can also wave if you'd like to do that.

When you do speak, please first state your name, so that everyone, including the court reporter and the members of the public, can know who is speaking.

And if any members have any tech issues during the meeting, please email Malika or Julie.

Julie, do we have a quorum for the meeting?

MS. DAVIS: We most certainly do, thank you.

MS. GARRETT: Great. Thank you. Would you like to give the SEC disclaimer?

MS. DAVIS: Yeah, I will. For any Staff who are speaking today, I will make the standard disclaimer that any views we express are our own and do not necessarily reflect the views of the Commission, any of the Commissioners, or any of our colleagues on the Staff of the Commission.

MS. GARRETT: Thank you. Thank you very much.

I would like to welcome a new member of the Committee. The Small Business Administration has appointed a new representative to the Committee, William Manger. Bill is the SBA's Chief of Staff and Associate Administrator for the Office of Capital Access. His office guarantees loans made by banks and other lending partners to small businesses that cannot otherwise obtain financing on reasonable terms. I think we've all heard a lot about the SBA lately.

Bill was appointed in March of 2017, and has responsibility over the SBA's loan program policy, technology, operations and oversight. Prior to his current SBA roles, Bill served as managing director at Brock Capital Group, where he advised and supported small and medium-size businesses in their efforts to raise capital.

Bill, the Committee is very glad to have you, and we look forward to hearing from you later in the meeting with an update on the SBA's actions during this unprecedented time.

I would also like to welcome Commissioner Peirce, Commissioner Roisman and Commissioner Lee, who will say a few words before we begin. And Chairman Clayton plans to join the meeting around 2:00 p.m. and will address the Committee at that time.

Commissioner Peirce.

COMMISSIONER PEIRCE: Thank you, Carla, and thank you to the members of the Committee for joining for your second virtual meeting. And welcome, Bill, to the Committee.

Today's agenda continues the important dialogue that you began last month on how the Commission can help small businesses address capital needs in light of COVID-19.

The specific actionable suggestions raised by members of the Committee provided the impetus for the Commission's actions earlier this week to provide temporary conditional relief for small businesses to pursue crowdfunding offerings. Thank you for those ideas. And we share your eagerness to see issuers take advantage of that relief.

There may be more that we can do to aid small businesses with urgent funding needs. And so I hope that you will consider and help us consider what solutions might be hiding within our federal securities laws. Are there temporary adjustments to other exemptions that we should consider?

For example, Reg A. That essentially prohibits issuers from making offers through television, radio or print advertising in newspapers after qualification. Providing hyperlinks to the offering circular in these forms of media is impossible. Would the ability to reach potential investors through these forms of media meaningfully expand the pool of Reg A investors? If so, how can we allow the use of such media without compromising investor protection?

The interstate exemptions available under Rule 147A and Rule 147 also warrant attention. Now that many Americans have fled from urban areas to their second homes outside of those areas or to rental properties, should we allow interstate offerings to include part-time residents or residents with a nexus -- some sort of nexus to a state? Not only would this change expand the utility of the exemption, but it would allow people to invest in their communities, in the communities that they're living in during this time and relying on during this time.

The second item on your agenda is the discussion of our proposed rule to facilitate capital formation and to expand investment opportunities by improving access to capital in private markets. The proposed reforms would increase the offering limits of Reg A, Reg Crowdfunding and Rule 504 offerings and would remove unnecessary friction from the capital-raising process. I look forward to your thoughts on these proposals as well as whether the proposals go far enough.

Bold action will be necessary to facilitate capital formation in the coming months, which are sure to be difficult ones. Last night, I was listening to a podcast interview with a serial entrepreneur. What I heard in her voice was not discouragement at the challenges that lie ahead, but enthusiasm about building a new business to help people better cope with their new reality. I hope that you will apply similar optimism and creativity in thinking through our proposal. For example, should we deregulate offers and focus our attention on the time of sale? Should we, to the extent our statutory authority allows us, start anew with our offering framework and create a simpler one to provide a clearer path for issuers trying to raise capital at different stages of their life-cycle?

Thank you, and I am very excited to hear your discussion on these topics.

MS. GARRETT: Thank you, Commissioner Peirce.

Commissioner Roisman.

COMMISSIONER ROISMAN: Thank you, Carla. And good afternoon. I hope everyone is doing well. I had been hoping to give these remarks in Boston after enjoying a coffee and a cruller. But I am grateful that we have the ability to get together virtually to discuss the important issues facing small businesses today.

Thank you to everyone who has called in to participate and thank you to our Office of the Advocate for Small Business Capital Formation for pivoting seamlessly to a virtual meeting when circumstances changed. And thank you immensely for our Office of Information Technology, which has enabled us.

I was happy to see that today's agenda both continues the discussion of COVID-19 updates and observations, and also provides the Committee with the opportunity to look towards the future as the Commission considers feedback on the recently proposed rulemaking that seeks to improve the exempt offering framework for issuers and investors.

Before we move forward, I would like to thank Martha's office and members of this Committee for contributions to the Commission's recent temporary amendments to Regulation Crowdfunding. I hope that our response to your call to action shows how valuable the Commission finds your input. With each meeting I attend, I learn something new and take things away that I want to discuss further.

I look forward to hearing what you have to say today, and please do not be shy about letting the Commission know what we can do now and going forward to help America's small businesses. Thank you. And welcome, Bill, to the Committee.

MS. GARRETT: Thank you, Commissioner Roisman.

Commissioner Lee.

COMMISSIONER LEE: Thank you, Carla. And thanks to the rest of the Committee, as always, for lending your time and expertise to help the Commission address the needs of small businesses. Your work has taken on even greater significance now as we wrestle with the challenges of COVID-19, so I appreciate that.

And as you can see from the Temporary Crowdfunding Rule, we took the suggestions from your last meeting to heart and the Commission was able to provide some short-term relief to existing small businesses that are in compliance with the Crowdfunding Rule. That is a testament to Martha's office, to this Committee, to the hard work of the Corp Fin staff, especially Jennifer Zapralka and the Small Business Policy Office. So thanks to all for your work on that and I hope that it will work as intended.

I see that you'll also be discussing the exempt offering proposal and I look forward to that discussion. I have to apologize in advance that I have to drop off at 2:00. But I will log back on later when the link is up and listen to your deliberation on that.

I know how important it is to each of you and to the Commission to find ways to bolster small businesses and their ability to raise capital. This is important to me as well, both professionally and personally. I come from a long line of small business owners, going back to my great grandfather, who owned a general store in north Georgia during the Great Depression. I myself started and helped run a small business in the '80s, my sister owns a small business, and I have numerous members of my extended family who are small business owners. So I understand the importance of sustaining small business in America.

I also know the importance of ensuring that those who invest in small businesses have the time, the information, and the capability to make well-informed decisions about the nature and extent of the heightened risks involved. I know that if we don't balance the changes to the private market regime with careful investor protection, we may risk the financial stability of most likely retirees and hardworking Americans, many of whom are small business owners themselves.

So I hope you will get this balanced right. And I sincerely thank you again for providing us with your valuable time and your considerable talents. And welcome to Bill. And thank you.

MS. GARRETT: Thank you very much, Commissioners. We appreciate the remarks. And thank you for being here today.

COVID-19 UPDATES, OBSERVATIONS, AND DISCUSSION

MS. GARRETT: Our first agenda item is COVID-19 Updates, Observations and Discussion. As mentioned by the Commissioners, on Monday of this week, as a result of COVID-19, the Commission announced that it is providing temporary, conditional relief for companies using Regulation Crowdfunding. This relief responds to many of the crowdfunding issues that our Committee discussed during the April 2 meeting, and to other feedback received by the SEC small business advocacy team through their outreach. I would like to thank the Commission and the SEC Staff for their prompt response in providing this relief to small businesses.

SEC's Division of Corporate Finance took the lead in drafting the relief, and we are pleased to have Jennifer Zapralka, the chief of the Office of Small Business Policy within that division, here with us today to provide an overview of the temporary relief and answer any questions from the Committee.

Jennifer.

MS. ZAPRALKA: Hi, Carla. Thank you so much for having me. And thank you all for your input. As everyone has noted, we did really take it into consideration as we were putting this temporary relief together. We're very pleased that we got it done in -- what was very fast for us. I know it probably isn't fast for people who work in the private sector, but we really did scramble to get it out there as quickly as we possibly could.

The relief is summarized on this slide.

(Slide.)

MS. ZAPRALKA: I will just run very quickly through the main components of it. The temporary rule -- they don't change the essential framework of Regulation Crowdfunding. What we were focusing on here was addressing areas of friction in the hope that it would have immediate impact for small businesses that are seeking to raise money right away.

So the main things were, first, that the Commission is allowing companies that don't have financial statements ready to file to go ahead and get their offering posted on the intermediary or funding portal's website without those financial statements included. This is the -- under the normal rules, the offering document would have to be entirely complete before it can be posted. So the relief lets companies informally engage investor interest in an offering before they go through the effort and expense either preparing financial statements or going through the necessary review before they can get things started.

The important point here as a protection is that no investment commitment can be accepted until the company provides the full financial statements that are required for the offering.

In keeping along the lines with the financial statement requirements, we've -- the Commission has provided some relief for companies raising up to $250,000 in a 12-month period. Under the existing rules, a company that's seeking to raise up to $107,000 is required to provide certain tax information and certified financial statements that are certified by the chief operating officer or the chief executive officer. And a company that right now, under the permanent rule, that's looking to raise between

$107,000 and $535,000 has to provide financials that are reviewed by an independent accountant.

We've changed the line for that, that under the relief a company that's raising between $107,000 and $250,000 can provide the certified financial statements instead of the reviewed financial statements. Should make things move more quickly for companies raising in that tier.

And then third or lastly, there's a package of changes around the process, mainly around the timing requirements of the rule. So instead of requiring the offering to be open for at least 21 days before the sales can be made, we're permitting eligible companies to make sales as soon as they receive binding investment commitments that cover the target offering amount.

Investors can -- we changed their cancellation requirements, so that investors can cancel their commitments for up to 48 hours after they're made for any reason. But after that, unless there is a material change, the company would be able to start closing on the offering. And this would be a way for companies to feel comfortable doing rolling closings and start receiving the funds more quickly than would be possible under the existing rule.

There are two important investor protections built into this temporary relief. There are enhanced eligibility requirements on top of the existing Reg Crowdfunding requirements that would require that the issuer be organized and operating for at least six months before they start the offering under the relief. And also a company that has done a Reg Crowdfunding offering in the past couldn't use these rules if it had been noncompliant in the prior offering.

I also want to note there are very clear disclosure requirements that are laid out in a table in the relief, to try to make it, you know, very obvious what needs to be said. We want to make sure that investors fully understand that the company that's relying on these rules is doing so and that the offering is happening on an expedited basis, and what that means with respect to the timing and the offering requirements.

MS. GARRETT: Thank you very much, Jennifer. We really appreciate that.

We are now going to open up the floor to the Committee members who might have questions.

Sara Hanks, I believe that you have a question for Jennifer?

MS. HANKS: Yeah. The question is on the use of the term "initiated." So as I read that, that would be new filings that happened May 4 and afterwards and would not apply to being able to amend filings, Form C filings that had been filed earlier.

MS. ZAPRALKA: That is correct, yes.

MS. HANKS: Okay.

MS. ZAPRALKA: I follow your question. Yes, that is correct. This is meant to apply to new offerings beginning from May 4 and onward until August 31.

MS. HANKS: Okay, thanks.

MS. ZAPRALKA: Thank you, Sara.

MS. GARRETT: Youngro, did you have a question or some feedback on this?

MR. LEE: Yes, I just want to provide feedback that we've actually received from small businesses this week. And first of all, really, really appreciate the SEC doing this. I was personally stunned, in a positive way, that this action was taken in such a quick order, because I understand SEC traditionally has not provided emergency actions like this.

So as I talked about in our last gathering, small businesses, as you all know, had obviously been dramatically hit. Just to be a little more detailed, even in the last -- I guess it's been a month or so since we talked. There have, in fact, been an increasing number of small business failures that we've seen in our network directly. I'm sure it's the same case for every major city out there.

The bigger issue, I think, now is everybody is trying to get PPP and EIDL. And I know the Fed announced different programs. But as you guys are seeing from the media, those programs are not as effective as potentially people thought they would be, especially for restaurants and different kinds of businesses that, frankly, had to lay people off. And it's very difficult to meet the 75 percent hiring requirement or payroll requirement under the PPP.

So the feedback we've been getting from a lot of small businesses, we need working capital, we need different sources of capital. And if we have to basically spend all our money in payroll and which we can't even get workers to show back up, you know, that's a very difficult issue.

So in short, I am sure there will be other ways to talk about this in this session, but the feedback has been very positive from small businesses that think this could help. Obviously, time will tell. Again, it's still not a magic bullet. It is going to take people weeks to put together up. But the fact that especially businesses can go over the 107,000 is a very, very positive development. For practical purposes, businesses with revenues from, let's say, 500,000 to $2 million, you know, something less than $100,000 really doesn't do much in terms of, you know, navigating this period, especially if it lasts longer than another, you know, month or two of downturn.

So I do, in short, really appreciate the efforts of the SEC and Staff for taking the initiative, understanding the dynamics and the urgency of this action.

And we'll see what the world kind of evolves to. But I can definitely say the feedback we've gotten from small businesses who are really applying for this program with us, and I'm sure with other platforms as well, to take advantage of the time requirements until August, and so I am very cautiously very optimistic that this will make some difference to some businesses and that will be, obviously, a good thing.

MS. GARRETT: Thank you very much, Youngro. That's very positive news to hear.

Does anybody else have any comments or feedback that they'd like to share on this crowdfunding relief that the SEC put into place this week?

MS. MILLER: Carla, this is Martha Miller. I just wanted to say it's been wonderful to get to work collaboratively with Corp Fin and with each of the Commissioners on this. And it's not every day that, as a regulatory agency, you have people reach out to say thank you when you do things. And it is wonderful when that happens. And the number of people that took it upon themselves to see the relief when it came out and wanted to reach out and just say this makes a huge difference, it really drives home the -- wanted to say thank you and appreciate everything that the entire team put in to make this happen.

MS. GARRETT: Thank you, Martha.

Okay, just to move on, continuing with the COVID 19 situation, our April 2 Committee meeting provided a lot of insights into the issues affecting the small businesses during this crisis.

Bill Manger, our new Committee member from SBA, would you be interested in providing us a brief update on the SBA's PPP program and, you know, anything else that you might want to share?

MR. MANGER: Hi, good afternoon. Thank you for letting me join your meeting here today. I appreciate it very much. And thank you for the generous welcome to the Committee. I certainly appreciate that.

And we've got a lot going on, obviously, over at the SBA. And I wanted to fill you a little bit in on that, but also to tell you about what we do just regularly at the SBA.

Some of you are probably familiar with it. But for those that are not, we offer several services. And aside from loan guarantee programs, we also have assistance for government contracting, business development, entrepreneurial development, and then also we have an Office of Disaster Assistance that helps small businesses and homeowners and renters when there is a disaster declared. So those are the main programs that the agency has.

I am now the chief of staff of the agency, but I also head up the Office of Capital Access, which is the loan-making arm. And many of you maybe are familiar with our main loan programs. 7(a) is our flagship program. We did about $25 billion last year in that program alone. And again, it's where we work with banks and nonbank lenders to make loans that have a guarantee from the federal government. Normally, the guarantee is 75 percent of that loan. We also have our 504 loan program which is really for fixed asset acquisition, so property, plant and equipment.

And so -- I wasn't going to get quite to those slides yet but we will get to those in two seconds.

And that program did about 5 billion in lending last year. And again, it's mostly used for real estate or heavy machinery or equipment that a small business wants to purchase. And that program has done extremely well this year because you can get a loan at a fixed interest rate for up to 25 years. We used to have a term of 20 years was the maximum. Early on in this administration, we extended that another 60 months, so now it is actually up to 25 years.

Finally, our smallest loan program is our microloan program. And this is administered through not-for-profit lending intermediaries that we license to participate in this program. And it works in this way. We lend money to the not-for-profit and the not-for-profit in turn lends to small businesses. And these are loans up to $50,000. Many of these not-for-profits are located in inner cities and they really target underserved markets in those areas.

But now let me just talk a little bit about the Paycheck Protection Program. I'm sure that's what everyone is most interested in and that's what everyone has been hearing about for the last month or so here.

But again, the President signed into law the Paycheck Protection -- the CARES Act. And that created, on March 27, this program that we stood up in one week. So on April 3, we were taking the first applications for loans. And again, this program worked very similarly to our 7(a) program in that, again, banks and nonbank lenders are actually making the loans to the small businesses with a guarantee from the Small Business Administration. In this case, the guarantee is 100 percent. So there is really no risk to the lender with these loans.

The other important factor of this program is that, after eight weeks, the borrower may ask for forgiveness for the portion of the loan that went to payroll, utilities or rent or, in certain circumstances, interest payments on mortgages. So again, it was to cover the basic operational expenses for that business for eight weeks.

So right now, the main reason why it's called the Paycheck Protection Program is it is there to make payroll possible to these small businesses that, in many instances, are closed right now, so that they can make sure they can pay their employees. Many of these small businesses, as you know, the employees that they have work for them are actually their friends. They've had these people maybe work with them for years. And they want to make sure that they can keep these people on payroll. So the program was structured so that, again, the majority of the money on these loans -- and these are only two-year loans at 1 percent interest rate -- the majority of these loans, at least 75 percent, is going towards these payroll expenses as well as, again, utilities or rent or mortgage interest payments.

So it is very important that this program was made available so that, again, these businesses could pay their employees immediately and get money in their pockets for their families so that they would be able to stay employed and again continue to be, you know, an employed citizen with the small business with which they had been working, in many cases for years. But again in, you know, whatever case, that they could just keep on payroll. So that's really the way it was structured.

And in that first tranche of money, which went very quickly, just to give you a perspective, we were able to make available almost $349 billion dollars. And we did that in less than two weeks. So we say that in less than 14 days, we did what this agency normally would take 14 years to do. So it really was incredible, really. The team here at the agency, as well as the banks that all stood up to make these loans, it was really incredible what we were able to do in a very short amount of time.

As you all know, that first tranche of funding was exhausted in those two weeks and so Congress went back and authorized another $310 billion for the program. And this time, they actually segregated two buckets out for smaller lenders. And so the smaller lenders they segregated out were lenders in the $10- to $50 billion asset class and then also lenders with less than $10 billion in assets. And they wanted to make sure that small lenders were also getting a piece of the pie here. Because another reason why some of these lenders are participating is, they are actually being paid by the agency to make these loans. It's a graduated fee schedule on the size of the loan. So the largest loans, again, are getting a 1 percent fee. But the smallest loans are actually getting a 5 percent interest payment -- or fee, sorry, a fee to the lender for making these loans.

So obviously, what we have seen has been quite interesting. In the first tranche, a lot of the larger lenders came in and they were making larger loans to what I would call small to mid-size businesses. And in the second tranche, we've seen that actually they've really focused much more on the smaller lenders.

And now we can go to the slides and I'll show you some of the numbers.

(Slide.)

MR. MANGER: So these are from April 27, when the second tranche started, through yesterday, which was obviously May 7.

Next slide.

(Slide.)

MR. MANGER: So you can see how the different asset classes have been able to make loans and dollars available to small businesses. So the largest banks are there at the top, greater than $50 billion in assets. Approved loans, almost 1.2 million loans. Approved dollars, almost $100 billion. I mean, it's amazing. And this was again from April 27 through May 7.

The medium size we're calling the 10 billion to 50 billion in assets. They did 353,250 loans for just over $28 billion. But what's really interesting then is that in the smallest category, the under 10 billion in assets, we still did almost one million loans for almost $60 billion. So it shows you that the smaller lenders really were getting out a lot of loans. And as you can see there at the bottom, the number of participating lenders now is 5,425. We have never had that many lenders participating in our program. In a normal cycle, we would maybe have 1,700, 1,800 lenders participating in our program. To have 5,425 lenders participating in the program is just tremendous.

We have had a lot of, obviously, new lenders who have come to us, been granted access and permission to make these loans. And so that is really what has been able to provide us with the breadth of the lending that we've been able to get out to these small businesses.

Let's go to the next slide, please.

(Slide.)

MR. MANGER: Because I think this is important.

So all told, since inception of the program, over 4.1 million small businesses have received a loan through the agency's program with the help of the lenders. You know, that is just staggering, quite amazing. But again, here is the interesting point. In EPP1, which I'm calling round one, the first tranche of money, the average loan size, as I said, was larger, it was over $200,000. What we're seeing in the second round is the average size has come way down. It's under $75,000. So that is a tremendous difference.

And what it's indicative of is the way the program was structured, just again so you all understand, the way you calculate the size of the loan that you are eligible for is you take your average payroll, monthly payroll, and you multiply that by 2.5 times. So that's how you get to -- basically, it's covering two months of payroll. And you either get that or up to $10 million, whichever is the lesser.

So what you're seeing though is that, again, businesses that came in in the first round were eligible for larger loans because they were larger businesses with larger payrolls. And what we're seeing now is that the loans coming in are smaller because they are actually smaller businesses with smaller payrolls that are being served in this second round. Which we think is a very good sign to make sure that the smallest of the businesses are accessing the capital that they need so that they can continue to make payments to their employees.

I mean, many of these, you know, businesses have, you know, three employees. So it's very important to them that they are able to continue to pay those, especially when the business is closed.

And I see that I have a question here. Am I supposed to answer that question now or how does it work?

MS. GARRETT: Why don't we save the questions, if it's okay, until the end? Thanks.

MR. MANGER: That's great. Honestly, I don't have that much more to say, except just to tell you that in the other programs, there were other parts of the CARES Act that covered other parts of our regular programs. So, for example, in the 7(a), 504 and microloan programs that I began my little remarks by, those programs all benefitted from six months of interest, principal and fees paid by the government. So any loan that was in existence when this -- when the law was signed into being in March, they would have six months of the interest, principal and fees paid for by the government.

In addition, loans made in the regular programs for the next six months, so through basically September, also would have that same benefit. They would have interest, principal and fees paid for by the government. So actually, we have seen a slight increase in the 7(a) loans because of this benefit. Businesses want to take advantage of the fact that they're not going to be liable for any expenses on those loans for the first six months.

And I finally wanted to add one component of our 7(a) program, we have what we call our express program, which relies to a great degree on the lenders who are making these loans with really little -- less rules and regulations, really, on the part of the SBA. And the law, the CARES Act, also increased that threshold of $350,000 all the way up to a million dollars through the end of this calendar year. And why that's a benefit to small businesses is the Express Program is really used many times by small businesses as a revolving line of credit. And so again, Congress thought that again, during this period, instead of just having a $350,000 loan as a revolving line of credit, they thought it would be more beneficial to small businesses during this period, this year, to be able to go out to a million dollars and have a million dollar line of credit, revolving line of credit, so they could use it as needed. So again, that threshold was increased up to a million dollars.

Now, the one caveat with that program is, the Express Program actually only has a guarantee of 50 percent. So the bank is on the hook still for 50 percent of that loan. But again, as I said at the beginning of this, the requirements that the SBA imposes upon lenders who utilize this program are less -- less stringent than what we have in our normal program and, hence, why we have a lower guarantee percentage amount.

So that's really what's been going on at the agency. If you add in that our disaster program, our Economic Injury Disaster Loan Program, which is also operating right now, this is the first time in the history of the agency that all 50 states and all territories, including the District of Columbia, have actually declared disasters. That has never happened before in the entire, you know, since 1953, the existence of the agency, have we ever had the entire country all be a declared disaster area at once. So this has been quite a lot of pressure on that program. And we got an additional $50 billion from Congress two weeks ago for that program specifically, so that we could make economic injury disaster loans to small businesses. That program is a 30-year term. The interest rate is 3 and three quarters percent, for nonprofits it's 2 and three quarters percent. But it also comes, and this is the first time that the program ever had this before, Congress actually created an up-front grant. So the small business can apply, when they apply for this loan, to get up to $10,000 in a grant immediately, prior to the loan. And we have calculated that you get $1,000 per employee in that grant program, up to $10,000. So you would get up to $10,000 if you had 10 employees under that grant program. And that has been funded in the first and second tranche to the tune of $20 billion.

So there is an awful lot of money. If you add up all of the monies that the Small Business Administration has received, not only for the programs but also administrative and other expenses, the Small Business Administration, that really is relatively a small agency, has received $1.2

trillion in the last six weeks. So it has just -- I mean, I feel like it's Pentagon money, right?

So we are dealing with a huge new influx and a huge responsibility to make sure we get this money out to small businesses as efficiently and effectively as we can.

So those are my prepared remarks. And I'm happy to take a few questions. But I do have to say that we are still quite busy over here, so I won't be able to stay on the phone or on the video for the whole time. I am going to have to go very shortly.

But anyway, I can, you know, maybe take one question and then I might have to go.

MS. GARRETT: Thank you, Bill. Just real quick, before we get to a question, I wanted to thank your office for everything that you're doing right now. And also personally, I just wanted to let you know that I am the owner and the CEO of a small business in Oklahoma. We sell books to schools. And we were able to apply for the PPP program in the first tranche and we were able to get the loan very, very easily and quickly from our community bank in Oklahoma. And as a result, we haven't had to lay off any of our employees. So we've been able to retain them all, despite the fact that we don't have any, really, sales right now.

MR. MANGER: Excellent.

MS. GARRETT: Yeah, personally, thank you very much. No glitches at all. The whole process was seamless. And our employees are very, very thankful, as am I.

MR. MANGER: Glad to hear that.

MS. GARRETT: Does anybody have a question that they'd like to pose to Bill?

MS. PATODIA: Hi there, this is Poorvi. I did have a question.

First of all, I just wanted to say -- also reiterate Carla's comments. It really has been amazing to just see how much -- what kind of impact the SBA has been able to have within this environment. Thank you for that.

One of the things that I heard within my network of entrepreneurs and CEOs was I think a lot of entrepreneurs didn't realize that their choice of bank may impact -- a choice that they have made a while ago, may impact their ability to access PPP funding today. And I'm just curious to get a sense for what drove some of the discrepancies within the different size of banks and their ability to be able to make PPP loans?

MR. MANGER: Yeah, honestly, it was up to the banks when they wanted to come in and start participating in the program. And really, it was a lot of their own internal -- you know, we couldn't dictate to the banks, you know, how they were to operate. You know, we gave them the parameters of the program and then they came in and decided how they wanted to, you know, reach out to the communities and make their loans.

So again, it was really -- again, it depended on the banks as to how they had their own internal business decisions and how they wanted to make the loans available to small businesses. But, yeah, we did not have any restrictions that we placed on them or anything like that. We just gave the general parameters and left them up to make the loans.

MS. PATODIA: Got it. Thank you.

MR. MANGER: All right, I hate to say it, but I think I'm going to have to run. Because I do have a few more phone calls that I have to make this afternoon.

But thank you very much for letting me join. And thank you in welcoming me to the Committee. And I hope the next time, I'll have more time to spend with you.

MS. GARRETT: Great. Thank you very much, Bill. We appreciate everything you're doing. Have a good day.

MR. MANGER: Thank you very much. Okay. Bye-bye.

MS. GARRETT: And so Committee members, we have time now to open up the floor for us to discuss any additional updates or new observations on the COVID-19 situation and its effect on small businesses, continuing off from where we left on April 2.

If you would like to provide, you know, a comment or feedback or say anything, if you can let me know or put it in the chat.

Jason, I see you have a comment.

MR. SEATS: All right, first in line.

So it's actually a comment about the PPP, and it's a little unfortunate that Mr. Manger didn't have more time. But in our portfolio, and I think this is somewhat reflective of venture-backed businesses across the board, the -- so the program is great. I think it was a fantastic use of capital. It has certainly helped tons and tons of small businesses.

For venture-backed companies, the effect of the program is that, in aggregate, there was a significant amount of time and energy spent in understanding the criteria and the eligibility and the appropriateness. And there were multiple waves of that. And where, I'd say, in the vast majority of cases, the net result was that the capital would not be appropriate.

And so while it is a benefit to many, for the companies that couldn't access because they didn't meet necessity requirements, they also sort of paid a time and resource tax in terms of understanding that.

And I know rolling this stuff out quickly is difficult, and it was very complex. But, you know, at least in the venture world, you know, the 800-page documentation of what -- you know, how this works and whatever, there was a whole lot of churn on that. I mean, we spent time on the affiliate rule and then once we got past that, it was all about necessity.

And I think it's shaken out that it's -- the right people are getting the capital, which is great. But I guess my general request would be like thinking through how to get to simpler clarity on filtering out who should be looking to those programs would be helpful.

MS. GARRETT: Does anybody else have any other updates? I will say that I've had some venture-backed clients that were very small and that did have VCs that were less than 50 percent owners and were able to apply and get funds through the program, through law firms helping them. And they needed the money.

MR. SEATS: Sure, yeah. I mean the phenomenon I think is really interesting is how many I know of who applied, were approved, accessed the capital and then returned the capital. Which is like the most expensive transaction for everyone, including the government, right?

MS. GARRETT: Yes. Sara, you have a question?

MS. HANKS: Yeah, it's not with respect to the PPP but with respect to the issue that Commissioner Peirce raised earlier about relief for Regulation A to be able to make more communications. Which, as many of you know, is very, very close to my heart.

I wonder if anybody on the Commission side could give any commentary about whether that might be considered in a hopefully in another relief package for exempt offerings?

MS. ZAPRALKA: So this is Jennifer. I have no idea. You know, it's an interesting idea. I think we will certainly take it under advisement and go think about it in the division. But, yeah, I can't say what the Commission would do with that.

MS. HANKS: Thanks.

MS. GARRETT: Sara, did you have any feedback that you would like to provide on that?

MS. HANKS: One of the reasons I raised it is that one of our clients very much feels that, with people at home, the ability to reach potential investors through those traditional, if you like, means, television, being able to advertise on TV, first qualification in Reg A offering, they feel that it would really help. And especially since everybody is at home watching TV.

MS. GARRETT: Okay, thank you. Does any other Committee member have any input that they would like to share with the Commission on that?

(No audible response.)

MS. GARRETT: Okay. I will point out I don't have any other questions. But Catherine, do you want to just state on the webcast what you stated on the chats?

MS. MOTT: Yes, the only thing I was a little slow in typing -- the only thing I was going to add is between our venture fund and our angel group, 14 of our companies received PPP money, although 29 of them did apply. We're trying to understand a little bit what were the things that were in common with those who received money.

And the one thing we found was that they all had a relationship with a banker. We found that our early, early stage companies that didn't have large deposits, didn't have a business banker relationship were pretty much left out. So if anything, this is a lesson that we shared with our founders and their CEOs, is that you need to have a relationship with a bank, day one. Let this be a lesson. So just make sure you're developing that business relationship.

MS. GARRETT: Thank you.

MS. PATODIA: Catherine, this is Poorvi. Just to just add onto that, that was kind of what I was getting at with my question, I think, is just not really -- for whatever reason, you know, I didn't realize that. My company, we were actually able to get a PPP loan in the first tranche that we navigated through. But in large part, it's because we did have an existing banking relationship. But also because I have a CFO that is really on top of things and was all over all the regulations as they were coming out.

But, yeah, I mean, I know plenty of founders who just didn't -- you know, they had relationships with great banks but, for whatever reason, their banks just didn't have their act together. And by then, it's really too late to make any kind of change. So I thought that was really unfortunate.

I also thought it was really interesting. The other thing that prompted my question was I don't know if you guys noticed but on the slide that Bill shared, I thought it was interesting that the mid-size lender had the fewest amount of loans, number of loans that they administered. And I thought that was a really curious pattern, an unexpected pattern. So I didn't know what was -- if there was something structural about mid-size lenders that was driving that kind of disparity.

MS. MOTT: That's a good question.

MS. GARRETT: Jeff, did you have a question?

MR. SOLOMON: I did. Actually, I had a question for Catherine and actually for anybody who has received PPP money. Was the relationship that you had with the bank, was it a borrower relationship with the bank or a depositor relationship with the bank, or both?

MS. MOTT: It was a mixed bag. So one of the things with one of our companies in Chicago -- with a very large bank. I think it was Chase. And we're waiting and waiting and waiting and didn't hear anything. So the CEO had a relationship with a smaller banker as a friend, wasn't even a deposit relationship, but had a relationship; they were friends. And he said, apply with our bank and open up a deposit relationship, so to speak. And she was able to get the money.

So when I say "relationship," it depends. Some were -- had a personal relationship. So, you know, in that instance, it was a personal respect. In others it was, depository. In two cases, I would say, it was previous lending. And that was it.

MS. GARRETT: And for mine, Jeff, the ones I dealt with, they both actually had credit facilities and deposit accounts.

MR. SOLOMON: Yeah. I think what will be interesting to see, and again, I just -- at some point, it would be interesting to see this. I'm not sure if it's this Committee's purview. But my sense, and hearing from people anecdotally, is that banks who had to prioritize, were prioritizing their own lending relationships first. So if you -- if a bunch of people had come in, some of whom had lending relationships with the bank and some of whom had just depository relationships, the banks were preferencing the people that they had extended credit to.

Now, you know, it makes a lot of sense for them to do that. Because, obviously, this loan is going to come in and basically credit protect the bank. So again, limited funds, you've got to play triage, you're going to play triage to people you already extended credit to because that credit enhances your own position.

And I'm wondering -- again, this is just for discussion. But, Poorvi, it may answer your question as to why you're seeing a tiering in the size of institutions that had this because, in many instances, people have the credit relationship, that may have been the primary driver for, you know, how those banks ultimately ended up getting those applications in earlier.

MS. GARRETT: Okay, thank you.

Can everybody make sure their phones are muted? I'm just getting a little bit of an echo. Okay.

I guess nobody else has anything else to say about the COVID-19 situation right now. I think the SBA obviously has done, you know, an amazing job, and so has the Commission, with the crowdfunding relief. So those are some steps in the right direction. Hopefully, we can all get through this sooner rather than later.

SEC PROPOSAL: FACILITATING CAPITAL FORMATION AND EXPANDING INVESTMENT OPPORTUNITIES BY IMPROVING ACCESS TO CAPITAL IN PRIVATE MARKETS

MS. GARRETT: So I am going to move on to our second agenda item for today, which is the SEC capital formation proposal. We do have about -- you know, we have until 4:00. We have a lot of content to get through.

Because it would be timely for us today to be able to make some recommendations to the Commission, based on the fact that we won't meet again until August. And the rulemaking or the comment period for this proposal will be finished in June. So let me just start this off.

In November and December at our meetings, this Committee dedicated a lot of time to discussing the harmonization concept release, which the Commission published last summer, to solicit public feedback on ways to improve the exempt offering framework. Today, we will be discussing the capital formation proposal, which was published on March 4.

To recap from our prior meetings, this Committee has adopted specific recommendations that we have delivered to the Commission in response to the harmonization concept release, including recommending the following: First, we had general principles of harmonization, prioritizing simplicity and clarity for small businesses and their investors, maintaining the well-functioning elements of the exempt offering framework, like Rule 506(b) of Regulation D, and revising the integration doctrine so that exemptions can be better utilized. These were our recommendations and they were generally incorporated into the capital formation proposal.

Another of our recommendations was specific to changes in Regulation Crowdfunding, including streamlining and tiering the compliance obligations for reporting and financial statements, raising the yearly offering limit from $1.07 million, removing limits on how much accredited investors invest in Reg CF offerings, changing investment limits to apply on a per investment basis, calculating investment limits for Reg CF offerings based upon the greater rather than the lesser of income or net worth, allowing investments through special purpose vehicles in Reg CF offerings, and allowing greater flexibility in portal compensation.

So those were our previous recommendations with respect to crowdfunding. And many of these have been incorporated into the capital formation proposal which we'll discuss in just a bit.

And finally, another one of our Committee's specific recommendations was changes to the accredited investor definition, which were taken into consideration with the SEC's separate proposal to amend the accredited investor definition, which was released in December of 2019.

So I would like to thank the rule writing teams on the SEC Staff, as well as the Commissioners, for fully considering the recommendations and the feedback of this Committee in these proposals.

Julie, I will now turn this over to you to provide some slides on the background of the capital formation proposal.

MS. DAVIS: Thanks, Carla. We've got the slides up on the screen. And soon, if they're not already, they'll be available on the website for those watching on SEC.gov. They should be linked below the video. And they will also remain forever on the Committee's webpage with the meeting materials. So hopefully, these will help us get through what is obviously a very long proposal. But it can be chunked into subtopics that should make it easier to discuss and that's what the slides are going to do.

I will go ahead and do just a quick promo for a video that we have on the Office of the Small Business Advocate website that does summarize the proposal. This is part of our series of videos that we really enjoyed making, to try to help folks -- you know, the securities laws are complicated. And we really want to hear from more small businesses and their investors. And I know a lot of them don't take the time to write a comment letter. We totally get that. But we want to try to demystify the process and make it easy and explain to people that if you want to just send an email with one comment, that is helpful.

And so we have tried to make this series of videos and we've enjoyed doing it and we've gotten some really good feedback on them. And so there is one on our website, which we encourage you to check out, on this particular proposal. And you'll see others on other proposals that we think have a special -- to smaller businesses. So take a look at those at www.sec.gov/oasb.

(Slide.)

MS. DAVIS: So going onto the first slide, I guess it's Slide 9, this is an overview chart of the capital formation proposal. We'll not go into it in detail here, but just to let folks know that it's there, if you're working on your comment letters or have people in your circles who are working on comment letters, just want to point out that it's a pretty good resource. This is also on the Office of the Small Business Advocate's website. And we've tried to highlight where the main changes are. It's obviously, by no means, a substitute for reading the full release. I have to give that disclaimer. It should be obvious. But it's an overview chart to help you try to figure out, you know, what is most -- what areas are of most interest to me and my business or to my investments and to focus on those. So we hope that these summary materials help folks as they're trying to figure out where they want to comment.

(Slide.)

MS. DAVIS: On the next slide is just an overview of something that this Committee has certainly talked about many, many times, which is the fact that, you know, there are a lot of exemptions out there. But obviously, 506(b) of Regulation D dwarfs all the others in terms of usage and dollars raised. But also, as this Committee has discussed many times, that we hear from a lot of businesses that having options other than 506(b) are really valuable, whether it be because you don't have access to a network of accredited investors, or because you want to raise money on the internet, which is obviously, especially in this time, we're hearing a lot more of folks interested in doing that.

These may not be as widely used but they -- we do hear from a lot of folks that their existence and the availability of different options is helpful.

So we just kind of wanted to give this lay of the land of the overview and the amounts raised. This is data using data from 2019.

(Slide.)

MS. DAVIS: Moving to the next slide, well, that's just a disclaimer, which we have to give, which I gave.

But now, I think I will turn it over to Jennifer Zapralka from the Corporation Finance Office of the Small Business Policy, as they are the office that has just done tons and tons of work on this proposal, and it's beautifully written, as their stuff always is, in my totally biased opinion. And she can walk us through each -- I think the plan we made with Carla and Jeff is to tee up each of these subtopics by letting Jennifer give a quick overview of the summary of each, and then the Committee can just launch right into discussing merits and personal experiences.

MS. GARRETT: Yeah, so real quick, Julie, I was thinking that maybe we give the summary and talk about one. Is that good?

MS. DAVIS: That's great with me.

MS. GARRETT: Great. So, Jennifer, just one second, we'll turn to you. We have broken this up into five subtopics, just to facilitate the discussion. And so, you know, what we would do with each subtopic is Jennifer could go through the slide and the proposed changes to the rule and then we as a Committee can talk about that and raise other issues with respect to that subtopic. And then, what I'm hoping is that, after we finish our discussion, if we do have any consensus, we can vote on a recommendation to give to the Commission on that subtopic and then we'll move on to the next one.

So the first subtopic is what's on the screen, Increases to Annual Offering Limits under Regulation Crowdfunding of Rule 504 of Regulation D and Regulation A.

Jennifer.

MS. ZAPRALKA: Thank you so much, Carla.

Before I dive into this slide, I think Chairman Clayton is on the line now. So would you like to hold off on doing this slide until the chairman gets a chance to speak to the Committee? Or --

MS. GARRETT: Yes, that would be great.

Welcome, Chairman Clayton.

CHAIRMAN CLAYTON: Hey, Carla, how you doing?

MS. GARRETT: Good, thank you. Thank you for joining us.

CHAIRMAN CLAYTON: It's great. Sorry that I'm joining late. I'm going to stick around for a little while, but I'll just make a few brief remarks.

I bet that I'm echoing what you've already heard. But I want to thank this Committee for the most recent prior meeting, in addition to our other meetings. You spurred us into action around crowdfunding and I think it was just exactly the way these kinds of committees should work.

Then I want to thank Commissioner Peirce, as well as Commissioner Lee and Commissioner Roisman for supporting that recommendation, pushing it forward. Commissioner Peirce was particularly instrumental in doing so. I had to do very little because it was all done so well. And we got our crowdfunding what I would call relief enhancements out the door. And I really hope that it does help some of our small businesses get through this tough time.

Of course, we couldn't have done it without the tireless work of the folks in Corp Fin who, as you can see from the work today, they get to the number of an issue right away, present it, and they make it easy to make decisions.

So with that, I want to thank the Committee. There are tangible benefits of your work in many places, including most recently in this difficult time. So Carla, you and your members on the Committee here are just doing a fantastic job. Thank you.

MS. GARRETT: Thank you very much, Jay. We appreciate that.

Jennifer, did you want to --

MS. ZAPRALKA: Thank you, Carla. And I want to thank the Committee, you know, said a few times already about the concept release and the very helpful feedback and recommendations that you gave us on that, which was the first step in our -- we were looking at the whole framework. We really appreciated those recommendations. And we did incorporate many of them, as Carla mentioned, into the proposal.

We heard besides the Committee input, we heard a variety of perspectives on the changes that would best serve the interests of companies that are seeking to use the exemptions, and the investors in those companies. And it was a big -- a heavy lift to sort of take it all in and decide what we were going to do with this proposal.

A theme that came up often and was consistent with what the Committee has expressed to us is that many elements of the current structure work pretty well as they are. And so a major restructuring was not what we were trying to do in this proposal. It's more that we were trying to put out here a set of proposed amendments that would generally retain the current structure but reduce the friction point that companies face, to make the capital raising process work more effectively, more efficiently. That was the goal of this release.

I am not going to spend a lot of time on this. That's my only windup, because now we want to talk about each of the things and we're going to have limited time.

The first one, and this is a very accessible set of changes to discuss with the Committee, is increases to the annual offering limits for Regulation Crowdfunding. It's currently at $107 million. It started at a million; we adjust for inflation. That's why it's an odd number. You proposed to take that up to 5 million. For Rule 504 of Regulation D, it's currently 5 million; that was proposed to take that up to 10 million per year.

Tier One of Regulation A, we have not proposed to change, that's still at $20 million. But for Tier 2, which is the larger tier that has ongoing reporting obligations and preemption date registration requirements, it's currently 50 million and we proposed to take it up to $75 million.

The goal in raising these limits, we think, is if you try to make these offerings more cost effective and attractive to a broader group of issuers who may want to use them, potentially attracting more issuers with a higher growth potential, higher capital need and, you know, possibly even making it more attractive intermediaries who could help sort of create a robust market in these securities.

So that is the overview of this one and I look forward to your discussion. Thank you.

MS. GARRETT: Thank you, Jennifer. And Sara Hanks, would you like to kind of kick this off with respect to maybe some of your thoughts about these increases? And then we'll open up the floor to everybody on the Committee to discuss.

MS. HANKS: Sure. You know, Julie had asked me if I could say a couple words on how much money do small companies need. And I said, yes, of course, I can do that. And then I started looking at our own record and looking at the comment letters and looking at the filings made and I'm thinking, ah, I don't understand -- the question is actually a bit weirder than that. Because when you ask how much do small companies need, the follow-on question is, how much do small companies need for what? And I think, you know, when you're asking are these appropriate levels, the answer is sort of going to be, it depends what you want this exemption to do. Do you want the exemption to serve as an entry level to capital raising so that you can raise seed funds and then you will need something else to move on? Or is it intended to be broader, are you trying to attract more companies?

And as I was going through pondering this as a sort of philosophical question, I looked at all the commentary that is coming in. And there is a lot of commentary in favor of, yes, we want you to put up the limit, especially on Regulation CF. But supplications are not really a substitute for hard data. And it would be really good if we could get a bit more -- there's not a lot of reasoning. There's, yes, I would like more money, but not, I would like more money because I need to move to the next stage of my development as a company.

And so what we found always in our experience, you know, when we work with companies from the founded last Tuesday type companies using Reg CF or Reg A, all the way up to the limits of Reg A, our experience suggests that however much money is offered, the companies would like that because they can probably find a purpose for it. But they would like it not just to start up and launch and get to minimum viable product, but then to develop further.

So it very much depends. This is where I'm coming up -- I can't come up with any magic numbers here at all. Because it's always going to depend on the stage of development of the company and what you want that exemption to do, and the type of company.

So if you look at Regulation CF, there's a sort of assumption that these would be seed-stage companies. And most of the companies we've worked with can get to their minimum viable product at less than a million dollars. However, if you are talking about a biotech company, they absolutely can't, and they need something way, way bigger than that.

And so it's going to depend. Early stage software development companies, you know, smaller numbers are much easier for them; biotech companies, much, much higher; hardware companies, somewhere sort of in the middle.

And so the results with respect to Reg CF is if you put the limit up to $5 million, and I have other comments on that, which we can save for later, but you're taking the company beyond seed stage. It's going to go -- you know, when you ask what is this exemption for, this exemption is something for beyond seed stage. And then if you look at Regulation A, 75 million was proposed. There was a lot of commentary in the beginning that 100 million might be more suitable. And certainly again, looking at biotech companies who can just absorb as much money as they possibly can to get to anywhere close to revenues, that would be far more suitable for them. And I know, especially in COVID times, there's a lot of companies developing a lot of therapeutics, testing, et cetera, who would love to be able to raise more than 75 million.

And the final thing I wanted to say about a higher limit for Reg A is, to the extent that you care about the gatekeepers in this community, the intermediaries, if you put the limit up to 100 million, you are much more likely to attract a wider range of reputable intermediaries who can bring the companies to market.

But that doesn't answer the question Julie asked, which is, how much money do small companies need, and I realize I've totally failed to answer that question.

MS. GARRETT: Okay, well, then I'll pose this question to the Committee. What are other people's thoughts in terms of whether they're in favor of increasing the annual offering limits, you know, generally? And did they go far enough? Did they go too far?

Does anybody else have any thoughts on that? Jeff?

MR. SOLOMON: Hi. I'm not sure you guys can see me. But you also know what I look like anyway, so I'm not sure that's relevant.

So, you know, I think Sara, your assessment is right. I think I can only speak really to the higher end of the range, which is generally speaking where we play. Certainly, the Regulation A, we've tried on numerous occasions to try to advise companies around Regulation A offerings. And I think the challenge with Regulation A, honestly, is not a size issue as much as it is that age-old issue that nobody likes to eat at the kids' table where, you know, when you advise a company that they should maybe seek to use Reg A, they're like, well, why can't I go regular way? It's like, you know, there's a taint to it that I think is not well regarded.

So maybe that could be a sizing thing. You know, it could be if you're able to raise money with slightly more -- you know, under Reg A, more companies may choose to do so with relaxed registration. And I think, certainly, at the margin, the $75 million on the Reg A tier one companies is helpful.

Also, I just think it's a sizing thing and allocation. Again, I can speak as an intermediary. If you're going to raise money under Reg A, you only have a limited amount of time. And so if you want to focus on companies to optimize your time and your fee-earning potential as an intermediary, the more you can raise, the better it is. You're more likely to spend time on things that are slightly larger than smaller as an intermediary, just because, you know, it's a time utilization and revenue per minute spent or per hour spent calculation.

So I think, on the whole, it's actually a really good idea. I'm hopeful that with Reg A that, you know, that we'll get more issuers to avail themselves of that. I certainly think, you know, Sara highlights the biotech folks. I would say there's probably of them that should do Reg A rather than do regular way IPOs or private placements in another form. And I think you'll see more of that. At 50, they probably just wouldn't spend time on it; at 75, they might.

MS. GARRETT: Thank you, Jeff.

Catherine.

MS. MOTT: I think most of my comments -- but I do want to say something, and it was kind of echoing about what Jeff just said. And that is, I think some people have been reluctant to go down the path of Reg A if it's only 50 million. Why not -- I'd say, let's see what happens here now that we've bumped things up. Just like we did in previous rule changes, we watched how the market responded. So I understand Sara's comment about how difficult this is to predict. But I think we'll see -- I think we'll see the market respond to it in a positive way. That's just my gut feel, particularly as she mentioned earlier with biotech companies.

MS. GARRETT: Okay, thank you.

Also, I just want to point out that we have as a Committee, we did recommend that the crowdfunding limit be raised. And so that is one of the recommendations that we've made before that's been taken into account in this proposal.

Youngro, would you like to speak?

MR. LEE: Yeah, just one brief comment. And it's more of a philosophical point that cuts across all the items that's on the agenda. I think when SEC made these proposals, I can definitely say from the industry, no matter what, this is great. I mean, obviously, there is never going to be a perfect solution. But any kind of incremental growth or incremental improvements to gather more data, in our opinion, is always good.

However, I think these changes are actually -- I don't know what the right word is, but it's different when you consider the reality of COVID, right? Everything is going to be different. And kind of the two philosophical points that I want to share to the Committee so that when you guys do look at -- or really anybody else to look at the proposed rules and make comments. Number one is, the traditional financial and banking system as we know it today, I wonder if we all thing that that system as is is serving our communities and our economies properly right now, especially if you think about small businesses.

Related to the second point is, I think it really, this time, it really separates and it really shows the difference between the haves and have nots, right, that applies to us as individuals, people who have second homes and different places they go to, versus those of us that are stuck in specific, small, tight quarters. As well as institutions, we talked about PPP and how certain businesses are really large with really good relationships were able to access those much faster than businesses who might not have that access.

So if you think about these kinds of fundamental issues, my view is these changes we're talking about is generally empowering in a structured way a transition from a more centralized process of fundraising and investments to a more decentralized. But we're not just letting it go willynilly; we're trying to provide structure for this to happen, which is reality.

And all that is to say I think, to the extent we can, I believe it is better for us to err on the side of being more flexible, right, versus more restrictive. Because I think who knows what will happen 10, 20 years from now. But this environment right now, I think everybody is basically predicting recession for at least another, you know, one or two years.

To have this option, to be able to, as a matter of coincidence but a positive one, to have this opportunity to make these laws more flexible so that businesses, not just startups, not just big companies but really small businesses that otherwise don't have options, to be able to use these laws to get out of recession in whatever way that makes sense for each business in their local community, I think could be very, very powerful. So I just want to add the COVID context to anything that we're thinking about from a legal perspective.

MS. GARRETT: Thank you, Youngro. I think those are important observations to make.

Jason.

MR. SEATS: Thanks. So my question, you know, looking -- I don't remember what slide number it is, but the slide that just shows the relative amount of capital that's raised by each of these different exemptions, which is really always interesting to me to look at and it makes me think about if there's a viewpoint on the regulatory side about which exemption is for what type of company or for what use case. Because I think, in terms of trying to figure out how to iterate and improve on these, you have to picture a use case to solve for, which I think is a little bit of what some of the other -- you know, Sara's feedback. Like, you have to ask like, you know, to what end? Like, what are you trying to solve for?

My question is, is there a way for us to get some additional visibility into the composition of those numbers, the types of companies, the scale of the businesses, the industries? Like any factors that we could use to help think about the patterns.

Like, is Reg A -- should we be thinking of biotech when we think of Reg A? I don't know. Right? Like, it's sort of a -- it's an open question. Like, how do we -- how do we get one level deeper of picturing who these are for so that we can iterate on them towards the use case?

MS. ZAPRALKA: This is Jennifer. I'd need to pull it up. I know we have some data on -- in the Reg A report that came out at the same time as this proposal on Regulation A lookback. We do have information on the industry types that are using Reg A because they are -- you know, they're filed with us, so they have their SIP codes and we do track that information. So that's in the report. I can find it while this conversation continues.

On crowdfunding, that's a little bit harder for us to track it, because of just the way the form is set up for what's easy for us to grab data on. So we have some idea and we have some industry information. Everyone says that crowdfunding is a lot of restaurants and breweries and leisure. And it's more consumer products. Reg A does have more of the technology companies in it, I think. But I would need to pull up the information.

MR. SEATS: And to be clear, I don't even know -- I mean, for sure, industry is super valuable. I don't know what all of the parameters that it might be helpful to know are. Could it be if they're urban versus rural? Could it be employee count? You know, enterprise value? The actual size of the transactions? And I know some of the data you may have and others you might not. I don't know.

Just, when I look at that chart, I have a hard time picturing who's using these deeply.

MR. YADLEY: Carla, I have a --

MS. GARRETT: Greg, was that you?

MR. YADLEY: Yes, yes. I think these are very good proposals. Thank you for making them --

MS. GARRETT: Can everybody put their phones on mute, please, except for Greg? Thanks?

MR. YADLEY: I think the Regulation Crowdfunding makes the most sense because a million dollars is such a small amount. I think the 504 and the Regulation A --

MS. GARRETT: I have lost Greg. Have others?

MS. DAVIS: Yeah, I lost him as well.

MS. GARRETT: Okay.

MS. DAVIS: Hopefully, he can rejoin.

MS. GARRETT: While we're waiting for Greg to rejoin, Melanie, you had a question or a comment?

MS. LUBIN: I had a comment relating back to the information and how to, you know, get a use case and things like that. I can tell you we get thousands, without exaggeration, just in the state of Maryland, filings in the Reg D space and other exemptions.

Part of the real challenge with this, and the SEC pointed this out in their release, is that there's no real data about these deals. There's no aggregated data. There is no prefiling requirement so we can see what are people trying to sell and what couldn't they sell. Because you never find out, there's never sales reports, there isn't ongoing reporting.

So one of the things that NASAA, the securities administrators' association, has been advocating and is going to put in our comments is that we really need more data, before you're just kind of guessing at what's an effective way to change the regulation. And the SEC has said that there isn't data. We've -- you know, we've commented for years that there isn't data.

So some of the earlier proposals, like maybe there should be a prefiling requirement so if you want to make changes, you really can decide that this is where there's a problem and this is the problem we're trying to solve for. But right now, it's essentially shooting in the dark.

So there have been changes to this over the years, there have been all kinds of things done. There's always requests for more things and there hasn't been a comprehensive look at what's there because the data isn't aggregated in a way you can take a look at it to make informed regulatory decisions.

So one of the things we've been advocating for is, you know, let's set this system up so you can make informed decisions by getting a better idea of everything that's going on, as opposed to just finding out that things were sold after they were sold.

MS. GARRETT: Okay, thank you, Melanie. And I think we have Greg back on the line now.

MR. YADLEY: Yeah. Thank you. I apologize.

Regulation Crowdfunding, the million dollar gap was just so small, it makes it very difficult to get people interested, as Jeff said, intermediaries. Although you have to have intermediaries there. But simply the professionals that help them.

I think it's less clear with Rule 504 and Regulation A, going back to the slide we were just talking about with Jason's question. Rule 504, we just raised the limit from a million to 5 million. I don't know that there would be any effect, but that's also not an area where we see a lot of abuse.

With Regulation A, whether it's the kids' table or not, you're talking about a different class of issuer that needs more than $20 million. So $75 million gets you into a situation where it's a biotech company or a company that has an acquisition strategy that requirements a lot of capital, that that issuer can stay not part of private equity and not yet ready for IPO, and use what Regulation A was intended for, which was sort of an in between, not exactly a public offering, not exactly a private placement. And I don't see any real downside in doing that.

As everyone else, we'd like to have more data so we could make reasoned decisions. But in areas where people are requesting a little more flexibility and we have no evidence to indicate that there would be any increased abuses. By that, I think these are modest changes in that regard, and I support them. Thanks.

MS. GARRETT: Thank you, Greg.

I'll just echo what Greg and Youngro both have said, too. I also personally support these increases. You know, as Youngro mentioned, we're not sure what kind of state we're going to be in for the next few years with small businesses and giving small businesses the flexibility to raise more money, where, you know, I don't see much harm in terms of investor protection with raising these limits. So that's my personal view.

If people would like, are people -- is there anybody that's opposed to the Committee, you know, recommending these increased offering limits? If so, if you can just let us know.

Sara?

MS. HANKS: Yeah, I just wanted to add, one of the things that we see with Regulation CF is noncompliance with firms' investor protection rules across the board. So I would love it if, in connection with any increase, there would be an effort, either enforcement or I don't know how the SEC might do it, but we have to address noncompliance. And if you put the amount up to 5 million, it's going to get worse. I mean, look at the number of companies -- in the proposing release, one of the statements is, well, we can put the amount up because investor protection is included by the fact that there is ongoing reporting.

Most companies with ongoing reporting obligations are not meeting those obligations. So any increase in the limit should be coupled with enforcement of the rules as they exist. And this is consistent with what I had raised in our previous conversations on this.

MS. GARRETT: Okay. Well, thank you for that. And, you know, that's also -- that can be something that we also add maybe at the end, too, is just, you know, with respect to crowdfunding, you know, whether there's -- enforcement is actually occurring.

I don't see any other hands waving. So at this time, what I'm going to do so that we can move on to the next subtopic, is I am going to propose a recommendation and have the Committee vote on it, whether this Committee supports increasing the annual offering limits, allowing companies to raise up to 5 million using Regulation Crowdfunding, 10 million using 504 Regulation D, and 75 million using Regulation A tier two.

So for those people that are in favor, if you can say aye or raise your hand.

(Chorus of ayes.)

MS. GARRETT: Okay, Julie did you -- how about for people that are opposed? Anybody opposed?

(No audible response.)

MS. GARRETT: Okay, thank you very much for that.

We will move on to our second topic. The second subtopic is general solicitation, demo days and test-the-water communications. Jennifer, did you want to run through that first?

MS. ZAPRALKA: Yeah, sure, I can do that. Thank you.

So this is two proposals on this slide. They're in the general solicitation and offering communication sort of bucket. They are two separate things, so I will run through them both and you guys can discuss it as you choose.

Stepping back a little bit, I think you all know this, the Securities Act defines, and the Commission has historically termed the term "offer" to be a very broad thing. There is not a strict definition of what it means to have general solicitation or general advertising, but Reg D has some examples of how you get general solicitation. That includes, you know, ads in newspapers, magazines, broadcast ads, seminars where attendees have been invited by general solicitation or general advertising. Those are sort of your standards. And then there's always a lot of questions around what it means.

But the demo days thing has come up several times. I think we've talked about it in this Committee and in prior committees. Demo days are events that are organized by a group like an angel association or a university that invites companies to come and present their businesses to potential investors.

We understand that, in many cases, or we've heard this from lots of sources, that it might not be practical for the organizer of the event to limit participation in a way that gives the issuer comfort that they are not engaging in general solicitation if they are talking about their securities offering at the event.

So this proposal would facilitate demo day type events if it were adopted by allowing -- it takes some communications out of the idea of general solicitation overall, an exemption for that. So an issuer would not have been deemed to have engaged in general solicitation if the communications are made at an event that's organized by a specified list of entities, colleges, higher ed, local governments, non-profits, angel groups, incubators, accelerators. And then there are certain conditions that would need to be satisfied to meet the exemption. These include limits on the scope of activities that the sponsoring organization can undertake and limits on the information that the issuer is allowed to present at the event to keep it, you know, pretty bare bones from the limited idea that you can say you are raising funds, you can talk about what your use of proceeds is, but it's not a full-blown road show type of thing. That's the first one.

The other one on this slide here, the testing the waters, I think you all know. Some testing the waters is already permitted in registered offerings and in Regulation A offerings. The proposal has -- there's two proposals here. One is a generic solicitation of interest proposal, where any issuer could, prior to figuring out what sort of exempt offering they want to do, they're thinking about Reg D, they're thinking about crowdfunding, they're thinking about Reg A, before they make that decision and know exactly what legends they should be putting on things, they could do a generic testing the waters to gauge interest in whether anyone, you know, would be interested in buying their securities. And it would help them to structure the offering. You know, they could have a general conversation and say, if I did a crowdfunding, would you be interested? If I did a Reg A, would you be interested? So it gives them flexibility there.

And then also, we've proposed to let Reg Crowdfunding issuers do testing the waters in a set of rules that mirrors the way it works for Reg A right now. So that would be before you file, before you post your offering with the portal, you could test the waters with certain legend requirements. And those documents would be filed later, same way it works in Regulation A.

I'm happy to take questions if you want more details, but that's the outline. Thanks.

MS. GARRETT: Thank you very much, Jennifer.

And Catherine Mott, did you want to kick us off a little bit on talking about this, the current Committee's perspective?

MS. MOTT: Yes, thank you, Carla. And also thank you to the SEC Staff and to this Committee, that we're addressing this much-needed change.

I probably am going to sound a bit like a broken record as I talk about demo days and a little bit about when we talk if I could also comment on test-the-waters rules.

Since the advent of 506(c), there is much confusion around the definition of general solicitation. So the rule for general solicitations, we remember, they were written at a time before the internet and, most importantly, before 506(c). And then for 50 years plus, I mean, entrepreneurs have relied upon venture fairs and pitch competitions, things like that that are often really related to demo days to attract venture investors.

Because of 506(c), many entrepreneurs have been getting mixed messages and mixed interpretations from their attorneys to avoid getting tripped up and defaulting to an offering, like a 506(b) offering defaulting to 506(c), including advice not to mention their business models, which is a very important component for investors to determine whether they're going to even further inquire. Entrepreneurs, when they leave out this vital information, they are pitching with one arm behind their back, and this is a deterrent to accessing the capital from professional sources that help these companies scale, create jobs and grow the U.S. economy.

So this modernization of the definition is really, really needed and I am highly supportive and I'm very grateful.

Also, this lends itself, I think, really well, Carla, to the discussion around the test-the-waters rule. Startups and young companies, by their nature, are capital constrained. Expanding that test-the-waters rule provides them flexibility to explore the optimal avenue for raising capital before spending multiple thousands of dollars on legal fees. We're talking if not five figures, we're talking five and six figures.

As in demo days, young companies are in the market assessing avenues for raising much-needed capital to grow and expand. Having conversations with potential investors will help these companies, number one, assess the viability of raising capital. I mean, before you spend a dollar, you want to assess the viability.

And then, secondly, how do you structure the offer? Again, you don't want to spend any money structuring something when it's not going to be received well by the market, so before they incur thousands of dollars in legal costs.

It will also help young companies -- the rules, by the way, will remind young companies that they are not exempt from antifraud provisions and are still subject to liability, so investor protection remains.

As you all know, you've heard me say it a number of times here, I am a champion for the flyover states, where entrepreneurs don't have the benefit of speaking to a plethora of venture capitalists. And anything that young companies do in these underserved markets to become more effective at sourcing much-needed capital, I believe is a welcome addition. So I am very supportive of test-the-waters rules as well. And I am also very grateful.

MS. GARRETT: Okay, great. Thank you very much, Catherine.

Jeff, would you like to speak?

MR. SOLOMON: Yes. So first of all, I think that's great context, actually, from Catherine. And I'll echo by saying that test the waters probably could be the most important aspect of what the JOBS Act did for larger companies for emerging growth companies. And as a former investor and somebody who has spent a fair amount of time on the other side of the offering process, when I was soliciting Congress to include test the waters in the JOBS Act, one of the things I used to say to them is, you know, the way the offering process worked in IPOs conspired against me as a small investor, as a smaller investor, in that I never really got the chance to meet the company before the offering process because the company never would come and talk to me before they had an effective registration statement, in fear of gun jumping.

And so, as a result, I would get a very limited amount of time with the company during the offering process. And in many instances, I would be forced to make a decision on whether or not I wanted to be involved in the offering, you know, with a relatively short timetable. And so, like I say, I used to spend more time picking out my shirt in the morning than I did deciding whether or not I was going to be involved in an IPO. And that didn't really feel like investing; it felt more like going to the craps table.

And so here, I think the dynamic is a little bit different. But there are some elements of it that are similar. And that is, investors make decisions on a continuum, generally speaking. It's not really -- investors don't make decisions in discrete moments in time unless there is specifically an offering. And they are better at making those decisions when they have the time to spend with the company outside the context of an offering.

And so anything we can be doing to enable or foster a dialogue between an issuer and an investor at any level to help that investor to garner more information to make a well informed decision at the moment the company is going to do an offering is a benefit. The rules around that, the rules of engagement around that to ensure investor protections are really critical. But anything we can be doing to foster that dialogue will help smaller companies to be able to build that much-needed connectedness to their future owners. And it will also help them to make some serious decisions around expenses like Catherine laid out.

So I am a big proponent of test the waters, I have been for a very long time. It has been amazing, literally, at fostering the incredible number of companies. Particularly, again, we do a lot in biotechnology companies, extremely complicated companies to understand. All the conversations we're having with investors way before the offering are -- it is the thing; it is unlocking the wallets for those investors to make investment decisions at the time of the offering.

So again, I am a huge proponent of it. We've got great case studies of how it's worked in the JOBS Act and I would be very much an advocate both for investors and for companies to promote this.

MS. GARRETT: Thank you very much, Jeff, for that perspective.

Do other people have some perspectives on these two items?

(No audible response.)

MS. GARRETT: I'll go ahead and add a few perspectives of my own. The one thing I wanted to point out that Catherine pointed out is that these test the waters, they still are subject to the investor protections and the antifraud protections. And so I thought that was an important point to note. And I think it's useful to be able for the companies, obviously, to go out and see which exemption they might want to use. And I think the clarity around demo days, I would imagine, for the people that do those that are on this Committee, that you would be relieved with that type of exemption.

Does anybody have any concerns about the proposal?

MS. HANKS: Can you hear me?

MS. GARRETT: Yes.

MS. HANKS: Not really concerns but I also was thrilled to see this. As anyone who has read our comment letter knows now, our preference would have been to just stop regulating offers altogether. Because making an offer to somebody who can't accept it, what is the problem there?

And so this actually gets as close as possible to that. And, as you say, the investor protection is all built in at the point of sale. So I just wanted to throw that one in.

MS. GARRETT: Thank you, Sara.

Jason, did you want to point out something?

MR. SEATS: Yeah, I was just reacting to the comment on the impact on demo days. And obviously, that's a big component of Techstars' ecosystem, is we have lots of demo days across the country. And the pretext of those events, investors come to the events to find investments. The startups are participating in them to find investors. But when you're not free to talk about the potential of fundraising, it's a very constrained sort of presentation on a stage. And so it's sort of a no brainer in my mind to -- and happy to see this, and it will definitely be a help.

And I'd say we take the same position as Sara, which is, you know, it would be nice to loosen the restrictions even more. But this is certainly a huge -- huge benefit.

MS. GARRETT: Okay, thank you.

Any other comments on this before we put this up for a vote?

(No audible response.)

MS. GARRETT: Okay, then what I'm going to propose is that the Committee supports the new Rule 148, which is creating a new -- I think somebody might need to put their microphone on mute real quick -- creating an exemption from general solicitation for demo days and similar pitch events, subject to the rules put forth in the proposal. That would be the first recommendation.

The second one would be creating new ways for companies to test the waters, to gauge market interest prior to incurring offering expenses through generic solicitation of interest materials, to test the waters for an exempt offer prior to determining which exemption it will use for the sale, and allowing test the waters for Regulation Crowdfunding so that issues could test the waters prior to filing an offering document with the SEC.

All in favor of that proposal, say aye or raise your hand.

(Chorus of ayes.)

MS. GARRETT: Okay, anybody opposed to that?

(No audible response.)

MS. GARRETT: Okay, great. Thank you. Then that one is another one of our recommendations that we have for today.

Which will move us on to our third subtopic, which is financial disclosure requirements for nonaccredited investors. Jennifer, would you like to walk us through this?

MS. ZAPRALKA: Yes, thank you. I won't go into all the details on this one because it's kind of complicated. But I think we've talked about this before in the Committee, that the statistics around the number of 506(b) offerings that involve nonaccredited investors are very, very low. So just as a reminder, under 506(b) private placement, an issuer can raise unlimited funds from unlimited numbers of accredited investors, but you're limited to only 35 nonaccredited investors. And if any nonaccredited investors are participating in the offering, there are specific information requirements for what needs to be provided to those nonaccredited investors in the offering.

And so we are not proposing to change the nonfinancial requirements. We still have to -- issuers still provide the same sort of business descriptions that are required now. But the financial statement requirements tend to be referred to us as one of the reasons why so few nonaccredited investors are invited into these transactions. I think the average is around 6 percent of the 506(b) offerings actually have a nonaccredited investor participating in them. It's very, very low. The financial statements that are required are similar to what's required in a registered offering. Even at the lowest level of money being raised, if you're including a nonaccredited investor, you need to have an audited balance sheet. And if you're raising higher amounts, you can have full audited financial statements required.

So what the Commission has proposed here is to align the financial statement requirements in these offerings with Regulation A, based on how much is being raised. So in essence, if an issuer is raising up to $20 million, they get to look to the tier one Regulation A financial statement requirements. And if it's above 20, they get to look to the tier two requirements, so that would be a lesser burden, particularly in the up to $20 million amount where audited financials would not be required. I can go into more detail if anyone has questions. But that's the gist of it.

MS. GARRETT: Okay, thank you, Jennifer.

Greg Yadley, would you like to talk about this from the Committee's perspective?

MR. YADLEY: Sure. I think this is a very reasonable proposal to make. Going back to some things we've talked about today, I think Sara kicked it off with her first comments about what's behind the question. When we ask the question, it's not really an abstract question.

So we're talking about private placements and the real sweet spot exemption from registration. So who's raising this money? And obviously, there are a million kinds of companies and people. But certainly the earliest stage companies, which are the ones that we all recognize have the most difficulty raising funds, these are the inventors, the thought people who have come up with something and lived their ideas. And they are eternally optimists, that's in their DNA.

These startup companies have limited everything, including personnel resources. So what happens is they don't sit down on day one and plan their offering. They are inventing. They get to the point where they're stretched very thin and they realize they need more money. And they're the ones that are going to have to do the offering. And they're out of time, they're out of money and they have nobody to help.

So what acts as an impediment at that point is anything that takes more time and costs money. So financial statement requirements, by their very nature, require third party professionals subject to rigorous rules to come in and provide financial information. Again, in startup contexts particularly, but many early-stage companies, they're not making any money and they don't have much money. So the financial statements are of less utility than an operating later-stage company.

So I think this makes a lot of sense. The only cautions I would have is that there is greater potential for fraud, certainly, where there is less rigor to the financial statement disclosure requirement. But it's also still 506(b), where no general solicitation is permitted, so there ought to be some relationship between the issuer and the investor. And people are investing based on who's asking for the money and what their idea is, much more so than the historical record of months or years of a loss situation.

Thank you.

MS. GARRETT: Thank you, Greg.

Does anybody else on the Committee want to discuss or have feedback on this one particular issue?

(No audible response.)

MS. GARRETT: Personally, I agree with everything that Greg said. I think that aligning these rules will simplify things and also be very good for small businesses that are trying to conserve money.

If nobody has any other comments on this issue, then we can go ahead and -- Catherine, did you have anything to say?

MS. MOTT: No, I was just saying the context that Greg laid out was perfect. So well done. Well done. That's all.

MS. GARRETT: Thank you.

Okay, so the recommendation would be that the Committee supports harmonizing what disclosures are provided to investors, including aligning the nonaccredited investor disclosure requirements in a Rule 506(b) offering with those disclosure requirements in a Regulation A offering.

So all in favor of that recommendation?

(Chorus of ayes.)

MS. GARRETT: Anybody opposed to that?

(No audible response.)

MS. GARRETT: Okay, great. Thank you very much for adopting that recommendation. We can move on to our next.

The fourth subtopic is, probably a bit more meaty, is crowdfunding. And that's the changes were to the accredited investor investment limits, special purpose vehicles and eligible securities.

Jennifer, can you kick us off on that one?

MS. ZAPRALKA: Sure. So do you want to run through all of those crowdfunding topics at once? Because there's three slides on it. But you can call me off if you want me to stop.

First, on the investment limits, you had -- the Committee had a recommendation on the concept release, I'm pretty sure. So it's something we've been hearing for a long time, that the current rules don't line up with the way Regulation A works, and people have found it to be quite limiting. Currently, the limit for all investor in Reg Crowdfunding are based on the lesser of an income or net worth standard. It's also tied to how much -- your level of income or net worth, for which percentage you're allowed to invest at.

Under this proposal, we would line it up with the way it works for tier two of Regulation A, which would be to lift any limits altogether on accredited investors. And for nonaccredited investors, we would still impose limits but it would, instead of being based on the lesser of your income or net worth, it would be based on the greater of your income or net worth. So that is truly a harmonizing proposal.

(Slide.)

MS. ZAPRALKA: On the next slide, we talk about eligible issuers. And that includes the very hot topic of the special purpose vehicles in Regulation Crowdfunding. We've heard the call for allowing this to happen. The proposal was come up with in a way that we think we can make it work. I'm looking forward to the discussion on this because I think we definitely want to hear some feedback on whether what is proposed will actually meet the need that people are asking for. Because, you know, we've heard the idea that we need -- issuers want a cleaner cap table, which this would do. But we want to hear feedback on whether this meets, you know, everything that people are looking for.

And on Regulation A, on the eligible issuer front, this is more of a cleanup change. Since we did the rule a couple years ago to allow reporting companies to use Regulation A, we wanted to make sure that the eligibility criteria there that currently exclude -- if you've done a Regulation A offering in the past and you have not filed your required report, that takes you out of the ability to do another Reg A offering, only a two-year lookback. But we wanted to just bring this up to date, where we also look to whether it's a reporting company, a '34 Act reporting company is actually current in their Exchange Act reporting as eligibility criteria.

And then thirdly, on eligible securities, we've been hearing for a long time that there are concerns around the use of sort of nontraditional securities in Regulation Crowdfunding, particularly faced with something that comes up repeatedly, Regulation A does have limits on the securities that can be sold, while Crowdfunding does not. And so this proposal would be to align those two exemptions to kind of go with more plain vanilla type securities in Regulation Crowdfunding.

MS. GARRETT: Thank you very much, Jennifer, for that overview.

And, Youngro, would you like to kick off the discussion from the Committee's point of view?

MR. LEE: Yes, and really appreciate again the attention that SEC has taken to explain these matters. Just as a preface, these are actually very complicated issues. And so you can't kind of take anything by itself. You have to kind of visit all the implications of it.

But I will say, from an industry perspective and having worked with, you know, thousands of potential companies and launched, you know, a hundred plus offerings, we've seen a lot. And these are, on the whole, we believe good changes. And especially if the principle that SEC seems to be taking is, at minimum, right, we all know there is no perfect solution again, but if we're generally trying to align as much as possible Regarding Crowdfunding, you know, specifics to Reg A specifics, so at minimum there's no confusion or less confusion from both the company perspective and the investor perspective, I think that is a good thing, even if there might be some residual issues with that.

Having said that, I do want to -- I'd love to get the Committee's view. But I do want to specifically point at a few different things that are triggered by these potential changes.

So on accredited investors, it's definitely -- it always -- it never made sense to limit accredited investors' kind of investment levels just because it's Regulation Crowdfunding when there's no limits for them in anything else. But if we're going to do that, the one issue that SEC should clarify, in our view, is how are you going to verify the accredited investors? Is that going to be a self-representation similar to 506(b), or the kind of what people are doing very conservatively, if they're doing it right, on 506(c)? So for example, it would actually literally individuals who are claiming to be accredited investors for purposes of 506(c) offerings to provide their W-2s and tax returns, and we manually verify it. And the requirement, for example, is three months of verification.

So there are situations where, at a time of kind of offering when you verify somebody's accredited investor status, by the time the deal closes, it's been more than three months, so we've got to get their verification again. And you can kind of imagine the mess that creates. And a lot of investors who are accredited investors are upset, frankly, that why do they have to provide more documents to verify to invest in a smaller amount than they otherwise would in a 506(b) offering. So that's one issue there in terms of how you actually verify the accredited investors.

On the issue of SPVs, definitely great. I think common sense, it does simplify. Especially if you are viewing companies as potentially using Regulation Crowdfunding as a lead-in to, you know, larger series A to series B type of raises. The one issue there then also is basically the extent of it, so not just the use of SPVs but as you guys know, in order for the manager or the sponsor of the SPVs to take carried interest, you're only limited to a set not only of accredited investors but actually qualified investors, which is even a higher threshold than accredited investor status.

I do think it's important to allow the sponsors of these units, in practical situation it will be the intermediaries, to have the incentive to build the right structures. In which case, maybe some attention should be focused on what kind of compensation can the sponsor or manager of the SPVs take? Because that's also very restricted under the current rules as it states. And obviously, this creates different kinds of issues.

The final point is eligible securities. Again, if the general principle is let's just be consistent, right, across the exemptions, I think that's a fair statement to make.

However, the one point that I would like to make specifically, and would love to get the feedback, is if you consistently make the rules between Regulation Crowdfunding and Regulation A, you know, to be similar, what we're really kind of -- the real question is who is going to use these things? And so I think there's an assumption when we talk about Regulation Crowdfunding that it's being used by startups, it's being used by early stage companies. But I would actually propose to think differently. What we're really talking about is Main Street businesses are only going to be using Regulation Crowdfunding, right? With the $5 limit, no restaurant, no reasonable business is going to be raising $70 million. So Regulation A is really the growth companies, biotech, all these different companies. But if we're really talking about what we know as Main Street businesses, they're not necessarily startups. Right? It could be a very successful restaurant that makes $2 million a year, or a movie theater or what have you.

So then the question really is, what kind of eligible securities would Main Street businesses utilize versus high-growth companies? And they're actually very different, as you can imagine. So I do think there's some value in allowing some flexibility in the kind of securities that can be utilized in Regulation Crowdfunding. Mainly because the type of businesses that are utilizing Regulation Crowdfunding is fundamentally different than the ones that are trying to get $80 million.

One kind of idea -- my final point is one idea to kind of address these things is there has been the idea of micro offerings, under $250,000. I believe it's Comment 64 in the SEC Review, and you guys can take a look.

It's very simple. It's under a certain amount, like let's say $250,000, like let's make it easy. Because clearly, the businesses that are looking for a smaller amount of money is very, very different than the businesses that are looking for a larger type of money. So if we had some idea of whether it's 250 or 500,000 or whatever it is, if there is an idea of a micro offering exemption in which you loosen the standards a little bit because every business has a different situation. And the way to kind of enforce the legitimacy of that or at least protect the interests of the investors, not just with respect to this issue but across the AI issue, SPV issue, I think it has to go down to the intermediary. Right? Instead of trying to control every single participant, really empower but also -- I think this was Sara's point -- make sure you enforce. And because you can't enforce every single deal, every single investor, make sure the intermediary who has the authority to do it is doing it in the right way.

And I think if you kind of focus on the intermediaries, such as a registered broker-dealer or registered funding portal, to affect or to make sure they do a good job on these additional flexibilities, that is a way that -- again, you can't make it perfect, but I think it would make a lot of improvement, especially with the proposals the SEC has already made.

So I know I talked a lot. But I'll stop there because these are very complicated issues. But hopefully that was helpful.

MS. GARRETT: I think that was very helpful, Youngro. I appreciate that.

Does anybody have -- I haven't gotten any chats. Does anybody have anything to add right now? Jeff, did you?

(No audible response.)

MS. GARRETT: I guess I had some questions. You know, one of the things that Jennifer mentioned was getting this group's kind of feedback on the special purpose vehicles and how they've structured those in the proposal. Maybe, Youngro, if you -- you know, what were your thoughts on that, since she did specifically ask for that kind of advice, feedback?

MR. LEE: I mean, personally, as I mentioned, I believe this is fundamentally and common sense a good idea, because it simplifies kind of the concerns that a lot of investors have about Regulation Crowdfunding. And so I'd love to hear from maybe the VC or the larger investment firms' representatives on the call.

To me, if you at least simplify that process, one, it will allow the bigger firms to invest in firms that have already used Regulation Crowdfunding. But what I personally hope is that the bigger firms will, in fact, themselves utilize Regulation Crowdfunding. Right? So I don't see --

not to make assumptions why organizations like Techstars or other -- you know, Y Combinator or even Catherine's networks, these angel networks, to be able to manage the pooled vehicles themselves, to utilize Regulation Crowdfunding to directly add value to the companies they want to support. And that's kind of where the issue comes in.

What I mentioned is it does incur additional costs, right? It is not easy. You trigger investment fund rules. There are other issues that are implicated by the use of SPVs. So at least having a consistent rule on what that actually means and how do they cover costs, if you really want to make it economical for the investors, the industry's view has always been align the interests by having the managers take carried interest. But there are limitations on that.

So if an SPV is used for the purpose of a Regulation Crowdfunding, how can we incentivize a proper use of it, and the right individuals and the right firms to take advantage of this, versus somebody who would otherwise never be able to do it, thinking they have a chance --

MR. SOLOMON: Carla, I can add, just for a second, because I think again, any time you can aggregate funds and those funds can be aggregated by somebody who is doing incremental work around the investment, you stand a higher probability of actually having the company be funded. I know it's -- let me try to say it a little more articulately. I am becoming a big believer that the challenge we have in many instances for a lot of companies is getting the capital provider to pay attention to the issuer when the issuer needs them to pay attention. Right?

So fundamentally, you know, companies always need to raise money. The question -- and there's always capital providers out there. So how do you get a capital provider to pay attention at a time when there is something to be done? And one of the ways that happens in the world is that an intermediary steps up. And in this particular case, it can be somebody who creates a special purpose vehicle and says, we're going to make this investment, you have a limited investor group, you have a limited amount of time to decide whether or not you want to be involved. And that tension is what causes capital providers, small and large, to stop doing what they're doing and say, I have to focus on this now. And that's why there are discrete offering processes.

So, you know, in Regulation Crowdfunding, one of the big challenges, Youngro and those of you who have done this before, my perception is it's a little bit like herding cats, right? You have to -- if you can imagine, if you put out a note to everybody and say, okay, we're going to close this funding and nobody responds to that, it's a little bit like having a drum roll without a cymbal crash, right?

When you have the ability to have a sophisticated investor form a special purpose vehicle, all of a sudden, that person becomes the aggregator of a bunch of little people, little investors, who then get around the table to decide to anchor an investment. And this increases the probability that everybody else comes in. Because, as we all know in these offerings, the most difficult part of getting an offering done is to get your lead investor. Once there's a lead investor, all of the other smaller investors then -- it's like lighting a candle. Everybody else, you know, like the moths to the flame, come when you have that lead investor -- using crowdfunding, another tool to aggregate eyeballs or create urgency around an offering. And that's why I'd be in favor of it.

But again, I don't do very many of these, if any. And so if I've said something here, Youngro and others, that is not accurate, you know, please modify it or correct me.

MS. GARRETT: Thank you, Jeff.

And Catherine, I believe you had a comment?

MS. MOTT: Yes, we have experience with these SPVs. One, as a venture investor, if you have SPVs investing alongside of you, you appreciate that, rather than have a very messy cap table, in other words.

What happens, particularly in follow-on rounds for companies when they're particularly larger, the last thing a VC wants is to go in and get approval when they need 65 percent approval or 70 percent approval to issue a new round, and then have to deal with all of the different names on a cap table. But having an SPV that is responsible for that makes that decision to invest easier, particularly if it's a known intermediary.

If it's an unknown intermediary, it can be a little challenging. What I mean by that is, obviously, if anything happens to that intermediary, that individual -- particularly if it's an individual who is driving that aggregate process, if anything happens to him or her, is there some kind of, you know, in-the-event-of-death provision that someone else becomes the authorized signatory? I mean, things like that, that needs to be in place. The tax returns have to be filed for this and K-1s issued.

So, you know, there are fees that have to be paid with this, Youngro. They have operating expenses to be in compliance with the Tax Code and other things. So my -- we worked with that. It has not been an issue for us. Angel groups do this, by the way, many angel groups do this. Again, for the same reason. The reason angel groups do this is because they want to be -- they want to show up as one line item on the cap table and not be a deterrent to follow-on capital later on who sees a very, very messy cap table and has to get all these approvals.

Those are my thoughts. You're right, I think you're onto something Youngro. I mean, there's real value in this. I think the important thing is that what you and Sara and others do is you provide that intermediary, that trusted intermediary.

MS. GARRETT: Thank you, Catherine.

Greg Dean.

MR. DEAN: Youngro, I just want to go back to little bits of what you said about the funding portals themselves and the broker-dealers who operate those funding portals. I know there has been some discussion here previously that the requirements on the funding portals on the broker-dealers can be somewhat -- I'd say in terms of the oversight of those is nice. But also the responsibilities of the funding portals to look out for the issuers that are issuing on the funding portals themselves.

The point that you also made with regard to the SPVs is that there may be additional duties that the broker-dealer may be taking on to look at the SPVs in addition to the issuers themselves. I just wanted to find out if that's what you were intending.

MR. LEE: Yes, so my view for the SPV was, in principle, it's a good idea. Right? But like anything in principle, a lot of things are a good idea but it's actually difficult to implement it.

So the SPV issue is -- it is helpful, but it also takes more work and effort to implement. So if we are able to implement SPVs for the purpose of Regulation Crowdfunding, which I agree with, my comment really was, if the SEC can also look at the related issues of how do we incentivize the proper management of those SPVs and likewise de-incentivize negative kind of incentives. And specifically, the main point really is, as the rules stand, any SPVs, in order to properly align the manager and the underlying capital provider is carried interest. That's how the private equity funds work. But as the rule is defined today, you cannot charge carried interest on nonaccredited investors, you can only do it for not even accredited qualified investors.

So if you don't have that, I think what might happen is basically the manager charges a flat fee, let's just say they're going to charge 10 percent of everything just to manage the vehicles, which I think we all agree would probably not be in the best interests of the investors if the manager gets, you know, their fee regardless of what happens to the ultimate outcome.

MR. DEAN: Okay, thank you. That's very helpful.

Thank you.

MS. GARRETT: And Youngro, another one of the items that you mentioned was the types of securities that are issued. And the proposed rule aligns the Reg Crowdfunding with what Reg A now allows, which is a pretty broad list of securities. Just wondering if you or anybody else had any other thoughts on that?

MR. LEE: Yeah, I think it's a -- you know, securities lawyers can always figure out how to make these things work. But, for example, I think this was covered anyway because it's a kind of equity, but one of the products that's been really working well for Main Street businesses -- again, this is cash flow oriented small businesses and not gold companies, is revenue-sharing securities, which basically businesses have a flexibility to pay as they go, depending on the growth or the decrease of the revenues. That's obviously not a traditional financing structure in the high-growth space and I can't imagine that structure working well with alike a $70 million raise on the Reg A.

But, for example, a lot of small businesses, especially in smaller amounts, could in fact utilize it. If somebody really needs just $100,000 of short-term debt, that might be in the business interest to structure it in a unique way that's not, you know, triggering an equity sale and therefore all kinds of different issues that come with an equity. Anytime you sell equity, there's more legal costs in short, versus debt.

So that's kind of an example. Obviously, there's a lot of different ways. But in short, I agree with the idea of making the rules as simple as possible across Regulation Crowdfunding and Regulation A, the difference really just being the offering limits. And we're basically saying if you want to raise more than $5 million, you have to comply with more rules, which is absolutely good.

But if you really think about it at a higher level, the Main Street businesses are the ones that are utilizing Regulation Crowdfunding almost all the time, and never Regulation A. I think we need to take into account that the needs of the small businesses, Main Street businesses, actually are very different than traditional kind of investor-backed groups. And therefore, a little more flexibility on the eligible securities.

And kind of the way I was -- it may be oversimplifying, but to make it acceptable to kind of still stay within the realm of let's be consistent, was the idea of micro operating exemption. Where, at least if it's operating under $250,000, especially if it's, let's say, debt versus equity, just having a very different exemption -- not exemption, but less disclosure requirements so that we're not subjecting the small business that wants to raise $100,000 to the same rules as a company who wants to raise, you know, $5 million.

MS. GARRETT: Okay, so that's one of the things we had talked about in some of our previous meetings, was, you know, we had recommended at one point that the Commission streamline and tier the compliance obligations, you know, for the reporting and financial statements. And I think that's something that didn't make it into this proposal. Is that something that other people are, you know, interested in reiterating again, our recommendation of that?

If I heard you correctly, Youngro, you are, if that's right?

MR. LEE: Yes, and I apologize for taking up so much time. I'm obviously very passionate about these topics. So hopefully this is helpful for you guys to consider when you look at the proposed rules.

MS. GARRETT: No, I think it's very helpful. Thank you very much.

Does anybody else have things to add with respect to possibly what our recommendations might be under this subtopic?

MR. SOLOMON: Yeah, I actually have a question. Do we have -- this is more of a point of order, really. Do we have the ability to make those kind -- well, obviously, we can make the recommendation. But do -- is this something that Youngro is talking about, does that fall under the purview for the SEC? Or would there have to be some sort of a legislative change in order to make that kind of thing available?

MR. LEE: No, micro offerings, I have actually commented before in the SEC proposed rules. So really anybody, especially the public, small businesses that are listening, and this is -- because I've been getting feedback from small business owners who have been reaching out -- my main point is, everybody really does have a voice. It's just very hard for the small business owners to share those views. And so I think it is on us -- I hate to use the word "morally," but like somebody has to step up for small businesses. And I just think if we had an exemption for small businesses that are raising smaller amounts of money, that makes it a lot easier. Just like what the SEC did with temporary relief, it will really help a lot of small businesses in ways that the current rules may not.

MS. GARRETT: Okay, anybody else have any thoughts on this?

(No audible response.)

MS. GARRETT: Okay, then I'm going to see if I can -- and Youngro, maybe you can help me here if I've missed some stuff. But the Committee has already approved -- made a recommendation in the past. And so therefore we would probably support again improving the utility of Regulation Crowdfunding by first increasing how much some individuals can invest, where accredited investors would have no limits on the amount they can invest set forth in the proposed rule. And as Youngro said, maybe we encourage the SEC to clarify how the verification process of accredited investors will work in this setting.

And the second one that we've also made a recommendation on in the past is that nonaccredited investors have limits based on the greater and not the lesser of an income or net worth standard.

Why don't we just go through that in general. All in favor of that one, say aye or wave their hand.

(Chorus of ayes.)

MS. GARRETT: Anybody opposed?

(No audible response.)

MS. GARRETT: Okay, thank you.

The second one with respect to the crowdfunding would be allowing investors to pool their funds together in special purpose vehicles to invest in Reg CF offerings. Does anybody have any supplemental items that they would like to add to the SPV recommendation?

(No audible response.)

MS. GARRETT: No? Okay.

Then all in favor of that recommendation, say aye.

(Chorus of ayes.)

MS. GARRETT: Anybody opposed?

(No audible response.)

MS. GARRETT: Okay. The next item is aligning the eligible securities that may be issued under Regulation Crowdfunding offerings with Regulation A.

Jessica, would you mind not sharing the screen quite yet, if that's okay?

And then the last one would be possibly looking into having the Commission look into a micro offering, which Youngro has proposed, with fewer reporting and financial restrictions.

Does anybody have anything to add to those recommendations?

(No audible response.)

MS. GARRETT: Okay. All in favor of those?

(Chorus of ayes.)

MS. GARRETT: Anybody opposed?

(No audible response.)

MS. GARRETT: Okay, thank you. That was -- thank you, Youngro, for all your information on that and I'm glad that we were able to make some recommendations with respect to Regulation Crowdfunding.

Our fifth and last subtopic that we're going to talk about is integration. And after we finish this one, we'll have some time left over at the end that we could talk about other items that are in the proposal, or possibly items that did not make it to the proposal. But this is the last of the five subtopics.

Jennifer, did you want to talk about the integration proposal?

MS. ZAPRALKA: Sure, thank you. Amazingly efficient. You have saved probably the hardest topic for last, so I won't go into all the details. There's enough in just the integration section of this proposal that we could have done this for the whole meeting.

But just the very brief overview, the integration rules are how one determines whether separate sales of securities are part of one offering. And this is important because if you have two offerings close in time to each other and they are integrated together, then you need to look to see whether you've actually satisfied the exemption for the combined offering, or whether it causes an issue for registration for the combined offering. So the question is quite important as you're sort of planning out your fundraising.

But current Securities Act integration framework is kind of complicated. We look to a five-factor test in many circumstances. Since 2007, we've applied a more general principle in exempt offerings, where you look to see whether each offering complies with the terms of the exemption that it was conducted under.

What we're trying to do here in the proposal is to make this easier to work with by having one single integration framework in any proposed rule that would provide for a general principle of integration which is up on the slide, the facts and circumstances test. There would be no integration if the issuer establishes that each offering either complies with an exemption from registration or is registered. And that's important here, too, is that this general principle covers not only more than one exempt offering to see if they're integrated but also looks at the registered space as well. There are a couple sub-principles that we've put in the rule for how to apply that when you have exempt offerings near in time to each other.

(Slide.)

MS. ZAPRALKA: And then on the next slide, in addition to that general principle, there are four proposed, nonexclusive safe harbors that the issuer would not have to conduct any further analysis if you first look at these safe harbors and you say, okay, I'm in this -- I'm in this bucket. And that's the no integration for offerings made more than 30 calendar days between each other, which is a shortening from the existing six-month period that tends to be applied in most circumstances. The safe harbor number two covers offers and sales in compliance with Rule 701 under an employee benefits plan or in compliance with Regulation S. This is codifying provisions that already exist in those rules. Safe harbor three covers registered offerings that are made subsequent to a private offering, so an offering for which there is no general solicitation; an offering where you did have general solicitation but it was made only to qualified institutional buyers or institutional accredited investors; or, just to make sure that we're clear, within 30 days, it was more than 30 days. It's sort of a repetition of safe harbor one, because we wanted to make sure that no one got confused as to how this applies. And then the fourth is no integration of an exempt offering for which general solicitation is permitted, so that's 506(c), Reg A, Crowdfunding, if it's made after a completed offering of any other type. You don't have to wait 30 days for that one.

So that's the basic framework. It's a very long portion of the release. It is quite complicated. But we would love to get your thoughts on how you think this works generally.

MS. GARRETT: Great. Thank you very much, Jennifer. Personally, I did read that portion of the release and it was very well done and thoughtful. And, you know, I appreciated all the different analysis that went into it. And as a securities lawyer, providing more clarity on integration and more safe harbors is especially appreciated.

Brian, did you have a comment you'd like to talk about?

MR. LEVEY: Yes. Kudos to the Staff and to the Commission for proposing that integration framework that's in the proposal. To me, the more the Commission can do to facilitate, clarify the move from private to public offers and the more it does to encourage the use of registration statements, the better. So nice work there.

I think there's one opportunity to explicitly address an integration-related item, especially in light of the COVID-19 pandemic, namely, you know, would a privately issued convertible note that converts under its terms into restricted stock on an IPO or direct listing be integrated with a public offering? Right now, it's my understanding that practitioners or some practitioners feel there's a need to wait one year prior to an IPO for those notes to convert to avoid integration uncertainties. But this position seems a little inconsistent with concurrent private placements that occur at the same time as the IPO, which are very common.

And then I think there's also the notion that convertible notes seem to be functionally equivalent to preferred stock rights that contain rapture provisions determined by the pricing or even the timing of an IPO itself, which are also customary.

So to me, in wake of the pandemic, these convertible notes have been and I think are likely to continue to be much more commonplace as later stage private companies in particular, whose valuations have also been hit hard by the financial uncertainties caused by the pandemic, use convertible notes as a critical financing bridge to an IPO so they can avoid a valuation down round.

So any more clarity the Staff of the Commission can provide with respect to these convertible instruments I think would help facilitate capital raising for these companies in particular. Thank you.

MS. GARRETT: Thank you, Brian. I think that's a good point, a good note to add.

Do other people have comments on the integration proposal?

(No audible response.)

MS. GARRETT: Any questions for Jennifer? Jeff?

MR. SOLOMON: Yeah, I'll just reiterate again, I think Brian brings up a very good and specific point on that last, you know, element. What we've seen here, and this is a great framework. But because it's a facts and circumstances test in many instances, it just depends on your law firm, and you have to make a business risk if you're a small business on integration. And, you know, sometimes, I've seen small companies who are almost always -- they're in constant fundraising mode. And they literally opinion shop to the firm that will give them the closest or cleanest opinion that they're not going to be in violation of integration. Which kind of seems silly to me that we leave it so open to interpretation.

Anything we can do here to tighten it up with some incremental specificity is going to be helpful. Because it's just -- it's extra time and energy on the part of companies who are just really literally opinion shopping.

And for the underwriter, if these companies ultimately do get to a point where they are going to do a public offering, you know, now, all of a sudden, you've got an extra -- you've got an extra counsel in there, which is underwriter's counsel, that has to basically concur that everything that had been done up until the point of this is okay.

So to me, this is a great start. So I'm totally in favor. But I actually think we should be, you know, I think that if we can't do it as part of this particular harmonization rule, I think any rulemaking in this area that gives much more specificity of what is applicable should be pursued. Because it just, you know, again, no offense to all the lawyers in the room or on the phone, it's like a -- it's always very squishy to me when it gets into facts and circumstances determinations.

Anyone can feel free to -- please feel free to disagree with me if you think that's wrong or -- you know, that's just my experience.

MS. GARRETT: Sara.

MS. HANKS: Yeah, I'm not going to exactly disagree with you, but just sort of partially. Part of the problem with the whole -- the more specific you get, the more everybody gets wedded -- it's what we saw with the accreditation standards. Once you set out safe harbors, which are those sort of specific application, very cautious lawyers get wedded to those and anything outside of the specific application or the safe harbors or the examples, they get terrified of doing anything and they won't do anything. Even if whatever you're doing is in accordance with the general principle.

And so one of the comments that I would make about the whole integration thing is you've kind of got three levels. You've got the general principle and then specific application and then safe harbors. I think people are going to get completely confused between specific applications and the safe harbors. And so you might want to sort of squish them together, but really bang home the fact that if there is a general principle, as there is with accreditation verification, as there is with Rule 901 of Regulation S, you are allowed to rely on that. People just sort of wander away from -- there's a reason why the guys at the SEC put out, you know, statements of general principle. So that's my two cents worth.

MS. GARRETT: Those are very useful. And I do agree with you, with respect to the 506(c) example. That sometimes, if you set forth too many safe harbors, people won't go outside of it, especially conservative lawyers.

Anybody else have thoughts on the integration?

(No audible response.)

MS. GARRETT: Okay, so let me see if I have captured what I have heard, is that our Committee would support the proposal in reducing the complexities across the offering framework by adopting an integration framework that consistently defines and clarifies integration, including by a new general principle and through the four proposed nonexclusive safe harbors. And in addition, taking into account Brian's comment, the Committee recommends that the Commission add more clarity around integration with respect to convertible notes and subsequent public offerings.

Does anybody have anything to add to those recommendations?

(No audible response.)

MS. GARRETT: Okay. Everybody in favor, say aye, raise your hand.

(Show of hands.)

MS. GARRETT: Anybody opposed?

(No audible response.)

MS. GARRETT: Okay, great. Well, thank you very much.

We have now gotten through our five subtopics. And I would like to open up the floor to the Committee for people to talk about maybe there are items that did not make it into the proposal or that the proposal didn't go far enough, or the proposal went too far, or anything else from the harmonization release that possibly we haven't addressed today.

If you'd like to discuss anything, if you can either raise your hand or send me a chat.

Okay, Sara.

MS. HANKS: Okay. The one thing I would like to hear from the Staff, if anyone can give any guidance, one of the things that the Chairman has mentioned several times is the ability of nonaccredited investors to be able to invest in a wider range of early stage companies in some form of pooled investment vehicle. And he's mentioned it a couple of times. Other staffers have mentioned it. It's not in the proposing release. Might we ever see something like that? And could I just encourage you, if you were inclined to propose something like that, I think the community would love to hear it.

MS. ZAPRALKA: Hi, it's Jennifer. So, yes, you're right, it's not in the proposal release. We did need to sort of figure out how much we could do all in one go with this proposal. And so, as I mentioned at the beginning, this one is pretty focused on process and friction points and that sort of thing.

I know that the Chairman is still very interested in the topic that you're raising. And, you know, I hope we see something soon. But I can't speak to when or what it might be. But thank you.

MS. GARRETT: Does anybody else on the Committee want to talk about that particular item, which I know we've talked about before, with respect to pooled investment vehicles for retail investors?

(No audible response.)

MS. GARRETT: Does anybody have other items that they'd like to talk about?

MS. HANKS: Me again.

MS. GARRETT: Okay, Sara.

MS. HANKS: Just to sort of go back to the advertising point, since it was the thing that Commissioner

Peirce mentioned, and I raised earlier. There are so many tech methods of delivering offering circulars, and also making sure that they are delivered and making sure even that somebody has read the offering circular, that I just wanted to raise that. Since it was in the concept release and we were thrilled to see it in the concept release and a little disappointed that it wasn't in the proposing release. And maybe it will come up somewhere.

But just urging that, since we do have clients who would love to do that, and all of the elements of investor protection, which is absolutely, for sure, knowing that the offering circular has been delivered, we can do that, technology can do that. So I would like to urge that.

MS. GARRETT: Thank you, Sara, for that.

Anyone else? Greg?

MR. YADLEY: Yeah, I thought maybe Sara would mention this, too. One of the things that we have discussed previously, and the prior advisory Committee talked about was the intermediaries, the finders issue. Particularly these days, where companies are going to become even more desperate for money and we are loosening up so many ways for people to be able to raise money, there is still a disconnect between issuers who need a little bit of money and accredited investors who are willing to invest, but how do they find one another. And as has been mentioned by several people today, including Jeff, when we were talking about raising the limits for exempt offerings, it's unrealistic to think that broker-dealers are going to become involved in a million dollar offering or a $500,000 offering if there's just not the ability for them to learn about the company, do the due diligence and get a fee that justifies all of that.

So I was just wondering if, Jennifer, there was any update on any activities? And I know part of this issue is that, because finders fall within arguably the definition of broker, we're talking about two divisions at the Commission who might have overlapping jurisdiction.

But at least from the capital raising perspective, can you give us any update or any reason for optimism that this is an issue that we can all work together on to try and get some relief?

MS. ZAPRALKA: So I don't think that I can say anything specific. I can let you know that this hasn't fallen off our radar. It's definitely -- just because the Committee hasn't made a recommendation on it in a little while doesn't mean that we are not thinking about it. But I don't think I can get ahead of anybody and, you know, speculate on what might happen there. But thank you, Greg.

MR. YADLEY: Thank you, Jennifer.

MR. SOLOMON: But, Carla, we certainly can --

Carla, we can make a recommendation to the Staff that they explore this. I mean, that's part of our job, right?

MS. GARRETT: Yes, we can make a recommendation to the Staff of what I've heard is about the finders, that they explore the finders, they explore the use of pooled investment vehicles. And anything else that other people would like to add?

MR. SOLOMON: Well, I would certainly -- I would wrap finders into that, too. So again, it's part of this idea of getting intermediaries focused on it.

I would also say, from a Commission standpoint, intermediaries are highly regulated, so it's actually a way for the Commission to serve both the needs of investor protection as well as capital formation. So holding intermediaries responsible for upholding the rules, it makes it a lot easier for the SEC to ultimately monitor and screen out bad actors. So I would include finders, intermediaries and pooled investment vehicles and their role in fostering capital formation for smaller companies.

MR. LEE: I agree with that as well.

MS. GARRETT: I'm sorry. Who said I agree with that as well?

MR. LEE: This is Youngro. I agree with that, especially for the smaller deals. As everybody said before, it is difficult to get let's just say traditional investors interested. So, I mean, just as an anecdotal example, I'm based in Houston. We've opened a lot of Houston small businesses. Obviously, there is a lot of capital in Houston and it's just impossible to get the, you know, $100 million clients interested in a $100,000 offering.

But there are people who will. And as long as we can monitor it, and we're happy to report that as necessary with SEC and FINRA, whatever the regulations are, I think the point of empowering intermediaries more flexibly to work with more people to help with small business capital formation would be a big value add.

MS. GARRETT: Thank you, Youngro.

Greg Dean.

MR. DEAN: Yeah, and I just want to reiterate what Youngro and Jeff just said. Both are full-blown broker-dealers, which is really helpful. And they have some real world realities of this in capital formation.

I know at FINRA under the '34 Act, we also did our streamlined broker-dealer rulebook, Capital Acquisition Broker or CAB rules, and we also put out a request last year to kind of figure out how we can improve that system itself. So in capital formation, the capital markets is one of our fastest growing areas in the broker-dealer area.

So I know there's a lot of interest in this. I know it doesn't cover what Sara and others are trying to think in the finders area. But I do think that there is some movement here. But I'll go back to Jennifer under the '33 Act, and as part of their proposals, we're waiting to see what the SEC does in this area as well.

MS. GARRETT: Thank you, Greg.

Do other people have items to add?

(No audible response.)

MS. GARRETT: Okay. Would you guys, based on this feedback, would you guys like it if the Committee adopted a recommendation that encouraged the Commission to take action on pooled investment vehicles and on finders and intermediaries -- sorry for the pronunciation of that. But would you guys be in favor of that?

MR. YADLEY: This is Greg. I would, and would refer us back to the two prior recommendations of the Advisory Committee on Small and Emerging Businesses and the final report of the earlier Small Business Advisory Committee back in 2008, which have all been pretty consistent, as well as the recommendations of the Small Business Forum over the last decade plus.

MS. GARRETT: Yes, that's right. Thank you very much for that.

Okay, then I will just propose a recommendation that we encourage the Commission to take action on, one, pooled investment vehicles and, two, on finders and intermediaries. And all in favor of that recommendation?

(Show of hands.)

MS. GARRETT: And is anybody opposed?

(No audible response.)

MS. GARRETT: Okay, thank you for that.

Are there any other topics people would like to address today, or are we going to wrap up early?

Yes, Melanie.

MS. LUBIN: So I just wanted to make a couple of general comments about the proposal on behalf of NASAA. Okay, thank you. First of all, thank you for having us and the opportunity to make the comments.

At the outset, we don't disagree that a review of the various offering exemptions is an appropriate area of review for the Staff. However, what's abundantly clear, and I mentioned this a little bit before, you know, from the concept release on harmonization of securities offerings, on the proposal to modify the accredited investor exemption, and the most recent rule proposal, is that the SEC actually lacked significant data about key aspects of the private markets. In fact, most of the information we think we know about the private markets is just that, what we think we know.

For instance, in the concept release on

harmonization, the SEC acknowledges that even the dollars raised are estimated, and that's because neither the SEC nor the state regulators have detailed information about who invests, how much, and pursuant to what terms in deals that are conducted in the private markets.

Regulators should possess the necessary data to oversee the markets they police and that data should form the basis of rulemaking. The investing public expects and deserves no less.

We would respectfully suggest that the investors we as regulators are charged with protecting would benefit from SEC efforts designed to promote transparency and oversight of these markets. The place to start is not with rules designed to expand these opaque markets but with efforts to better understand them. For instance, the SEC should move forward in adopting the modest revisions to Reg D and Form D that were proposed in 2013.

In closing, again, thank you for the opportunity to share NASAA's concerns with the SEC's proposed rulemaking in this area and we look forward to commenting further.

MS. GARRETT: Thank you very much, Melanie.

MS. GARRETT: Okay. Based on that, I think that will be our wrap to our Friday afternoon May meeting.

Our next scheduled meeting is on August 4, and I am sure that will be TBD on how we will meet.

I hope everybody stays safe and well, and I really thank everybody for their participation and all of their input in this meeting and on this Committee. So thank you.

And I hereby move to adjourn the meeting.

(Whereupon, at 3:51 p.m., the meeting was adjourned.)

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PROOFREADER'S CERTIFICATE

In the Matter of: SEC SMALL BUSINESS CAPITAL FORMATION ADVISORY COMMITTEE MEETING

File No: OS-0508

Date: Friday, May 8, 2020

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.

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(Proofreader's Name) (Date)

REPORTER'S CERTIFICATE

I, Beth Roots, reporter, hereby certify that the foregoing transcript is a complete, true and accurate transcript of the matter indicated, held on __5/8/2020___________, at Washington, D.C., in the matter of:

SEC SMALL BUSINESS CAPITAL FORMATION ADVISORY COMMITTEE MEETING

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

Date: 5/15/2020

Official Reporter: Beth Roots