

U. S. Securities and Exchange Commission

Final Report of the

TWENTY-THIRD
ANNUAL SEC

Government-Business Forum on Small Business Capital Formation

*September 20, 2004
Washington, D. C.*

23rd Annual SEC Government-Business Forum
on Small Business Capital Formation

FINAL REPORT

2004

The SEC hosts the annual Government-Business Forum on Small Business Capital Formation, but does not seek to endorse or edit any of the Forum's recommendations. The recommendations are solely the responsibility of the Forum participants from outside the SEC, who were responsible for developing, voting upon and prioritizing them. The recommendations do not necessarily reflect the views of the SEC, its Commissioners or any of the SEC's staff members.

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INTRODUCTION

Background

As mandated by the Small Business Investment Incentive Act of 1980, the U.S. Securities and Exchange Commission hosts an annual forum that focuses on the capital formation concerns of small business. Called the “SEC Government-Business Forum on Small Business Capital Formation,” this gathering has assembled every year since 1982. A major purpose of the Forum is to provide a platform for small business to highlight impediments in the capital-raising process and address whether they can be reduced. Each Forum seeks to develop recommendations for governmental and private actions to improve the environment for small business capital formation, consistent with other public policy goals, such as investor protection. Prior Forums have published numerous recommendations in the areas of taxation, securities and financial services regulation and state and federal assistance, many of which have been implemented.

The Commission hosted the 2004 Forum, its 23rd, at its headquarters at 450 Fifth Street, N.W., Washington D.C., on Monday, September 20, 2004. This was the first Forum held at the SEC’s headquarters.

Planning and Organization

The SEC’s Division of Corporation Finance, through its Office of Small Business Policy, organized a Planning Committee to provide advice and assistance in organizing the 2004 Forum. Consistent with the Forum’s statutory mandate, the Planning Committee’s membership included representatives of federal and state government agencies as well as business and professional organizations concerned with small business capital formation. The members of the 2004 Forum Planning Committee are listed on pages 4 and 5.

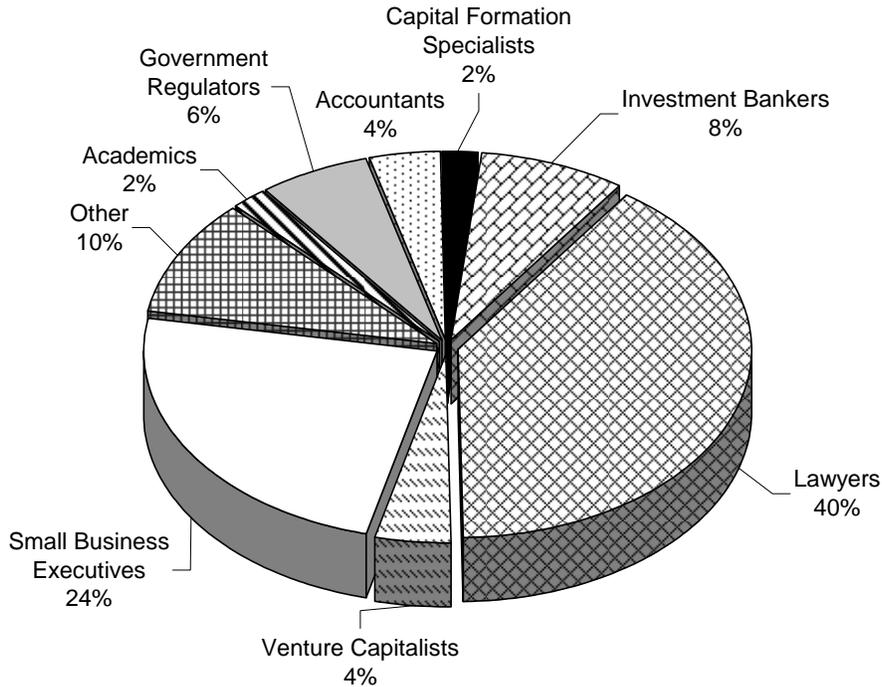
The Planning Committee recommended that this year’s Forum be held in Washington, D.C. and that it remain focused on securities regulation and taxation, as has been the case in recent years. The Planning Committee members also assisted in preparing the agenda and in recruiting speakers and moderators.

Participants

The SEC’s Office of Small Business Policy worked with members of the Planning Committee to identify participants for the 2004 Forum. Invitations were sent to participants in previous Forums and to members of various business and professional groups and committees concerned with small business capital formation. The SEC also issued a press release announcing the time, date and place of the Forum. Attendance exceeded that of recent years, with 144 participants registering to attend the 2004 Forum, including 27 speakers, moderators and SEC staff who participated in the morning roundtable discussions and the afternoon question and answer panel. The following chart

shows the occupations of the Forum participants attending the final general session of the Forum.

Occupations of Forum Participants*



Proceedings

The agenda for the 2004 Forum is reprinted starting at page 7. SEC Commissioner Roel C. Campos provided opening remarks to launch the Forum. The format for the remainder of the Forum included two consecutive roundtable discussions in the morning, an early afternoon question and answer panel with senior SEC staff, afternoon breakout groups and a final general session at the end of the day. Commissioner Campos and SEC Commissioners Paul S. Atkins, Cynthia A. Glassman and Harvey J. Goldschmid attended portions of the roundtable discussions. These discussions, the question and answer panel and interactions among the Forum participants were designed to stimulate recommendations for governmental and private action to

* The information in this chart is based on answers provided to a survey question to which 50 participants attending the final general session of the Forum responded. The survey was conducted by means of an electronic audience response system using hand-held voting devices. Respondents were asked to select one of the nine categories listed in the chart to describe their occupation. Respondents could select only one occupation. For example, participants who were classified as “Government Regulators” were not counted as also being lawyers or accountants. “Government Regulator” includes employees of the federal and state governments, Canadian provincial securities regulators, the Public Company Accounting Oversight Board, the Financial Accounting Standards Board and securities self-regulatory organizations; it does not include SEC employees, who were excluded for purposes of calculating the percentages in the chart.

facilitate small business capital formation. Six breakout groups of approximately 20 participants each met to develop specific recommendations. Two breakout groups were tasked with discussing angel investing and venture capital issues. Three breakout groups discussed smaller public company issues. A final breakout group discussed tax issues. Some participants circulated among a number of breakout groups. All the breakout groups, other than the tax breakout group, submitted their recommendations for consideration at the final general session.

At the final general session, an SEC staff member read each of the 42 securities law recommendations submitted by the five breakout groups that discussed securities law issues and asked the participants to vote. The participants then voted on each of the securities law recommendations and prioritized them using an electronic audience response system with hand-held voting devices. SEC participants were asked to refrain from voting. The tax breakout group did not present its recommendations at the final general session, but provided them after the Forum.

Webcast and Transcript

The opening remarks of Commissioner Campos and the two morning roundtable sessions of the Forum were simulcast over the Internet through the SEC's website at www.sec.gov. The webcast has been archived and is available for listening on the SEC's website under "News & Public Statements–Webcasts" at <http://www.connectlive.com/events/secforum>. A written transcript of the webcast is also available on the SEC website at <http://www.sec.gov/news/otherwebcasts.shtml>.

PLANNING COMMITTEE

Chairman:

Gerald J. Laporte
Chief, Office of Small Business Policy
Division of Corporation Finance
U.S. Securities and Exchange Commission

Government/Regulatory Representatives

Anthony G. Barone
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NASD Regulation, Inc.

Barry Wides
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Community Development Division
Office of the Comptroller of the
Currency

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Representing National Venture Capital Association

Giovanni Coratolo
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Representing American Bar Association Business Law Section Committee on Small Business

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Representing American Bar Association Business Law Section Committee on Small Business

Bob Shepler
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Financial Executives International
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Gregory C. Yadley
Shumaker, Loop & Kendrick
Tampa, Florida
Representing American Bar Association Federal Regulation of Securities Committee, Subcommittee on Small Business Issuers

FORUM SEC STAFF

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Agenda

Monday, September 20, 2004

9:00 a.m. Introductory Remarks

Gerald J. Laporte, Chief, Office of Small Business Policy
SEC Division of Corporation Finance

9:05 a.m. Opening Remarks

SEC Commissioner Roel C. Campos

**9:15 a.m. First Roundtable Discussion – Developments in Auditing Rules and
Their Impact on Smaller Public Companies**

Moderators:

Alan L. Beller, Director, SEC Division of Corporation Finance
Andrew D. Bailey, SEC Deputy Chief Accountant

Participants:

SEC Commissioner(s)
William E. Balhoff, Director, Postlethwaite & Netterville, Baton Rouge,
La.
George J. Batavick, Board Member, FASB, Norwalk, Conn.
Douglas R. Carmichael, Chief Auditor and Director of Professional
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Mark Jensen, Partner & National Director, Venture Capital Services,
Deloitte, San Jose, Calif.
Lawrence R. Moreau, Board Member, IntermixMedia, Inc., Los Angeles,
Calif.
Bruce Webb, McGladrey & Pullen LLP, Des Moines, Iowa

10:45 a.m. Break

**11:00 a.m. Second Roundtable Discussion – Current Challenges to Smaller
Companies Under Disclosure and Corporate Governance Rules**

Moderators:

Alan L. Beller, Director, SEC Division of Corporation Finance
Marc Morgenstern, Managing Partner, Kahn Kleinman, Cleveland, Ohio

Participants:

SEC Commissioner(s)
Steven E. Bochner, Wilson, Sonsini, Goodrich & Rosati, Palo Alto, Calif.
James A. Brigagliano, Assistant Director, Trading Practices, SEC Division
of Market Regulation

Brian A. Bussey, Assistant Chief Counsel, SEC Division of Market Regulation
Denise Voigt Crawford, Securities Commissioner, Texas State Securities Board, Austin, Tex.
Stanley Keller, Palmer & Dodge, LLP, Boston, Mass.
Richard M. Leisner, Trenam Kemker, Tampa, Fla.
Hugh H. Makens, Warner, Norcross & Judd, LLP, Grand Rapids, Mich.
Herbert S. Wander, Katten Muchin Zavis Rosenman, Chicago, Ill.

12:30 p.m. Lunch

1:15 p.m. Post-Luncheon Program: Question and Answer Session with SEC Senior Staff Members

Moderator:

Martin P. Dunn, Deputy Director, Division of Corporation Finance

Panelists:

Brian A. Bussey, Assistant Chief Counsel, Division of Market Regulation
Gerald J. Laporte, Chief, Office of Small Business Policy, Division of Corporation Finance

Elizabeth G. Osterman, Assistant Chief Counsel, Division of Investment Management

John D. Reynolds, Assistant Director, Division of Corporation Finance

2:00 p.m. Breakout Group Meetings

- **Smaller Public Companies Breakout Group(s)**
- **Venture Capital and Angel Investing Breakout Group(s)**
- **Tax Breakout Group**

3:30 p.m. Break

3:45 p.m. Continuation of Breakout Group Meetings

- **Smaller Public Companies Breakout Group(s)**
- **Venture Capital and Angel Investing Breakout Group(s)**
- **Tax Breakout Group**

4:45 p.m. Final General Session

6:00 p.m. Networking Cocktail Hour (at nearby Hotel Monaco)

RECOMMENDATIONS*

Set forth below are the recommendations of the 2004 Government-Business Forum on Small Business Capital Formation. The taxation recommendations follow the securities regulation recommendations.

Securities Regulation Recommendations

The participants voted on 42 securities regulation recommendations submitted by five breakout groups. Two breakout groups primarily discussed angel investing and venture capital; three breakout groups primarily discussed smaller public companies. Of the 42 recommendations, 16 substantially overlap and involve essentially the same six proposals. Not surprisingly, the 16 overlapping recommendations also were the most favored; they received the highest mean scores in the priority ranking voting. Accordingly, in order to avoid repeating essentially the same proposals, we grouped together all recommendations having a similar thrust into six topics, and set forth below only the recommendation with the highest mean score in each topic group. We called these the “Top Six Securities Regulation Recommendations.” Each of these top six recommendations has a footnote that lists the other recommendations from the original 42 recommendations that overlap with it.

By following this procedure, we reduced the number of recommendations from 42 to 26. Recommendations numbered 7 through 26 are the lower-ranked recommendations, and are set forth below under the caption “Remaining 20 Securities Regulation Recommendations.” All the recommendations in this latter list received lower mean scores in the priority voting than the six top-listed recommendations. No recommendation in this latter list was deemed to substantially overlap with any other recommendation.

Accordingly, the following 26 securities regulation recommendations are presented in the order of priority established by the Forum participants voting by means of an electronic audience response system. An explanation of the manner of establishing the priority rankings of the recommendations and the calculation of the “mean” score is presented after these recommendations, beginning on page 15.

Top Six Securities Regulation Recommendations

1. **Finders.** The Commission should adopt the recommendations contained in Recommendation No. 1 from the 2003 Annual Forum to resolve various issues

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related to the use of and payment of “finders” in capital formation transactions. [Mean = 4.72] ¹

2. **Deferral of Section 404 of SOX.** Compliance with Section 404 of SOX [the Sarbanes-Oxley Act of 2002, dealing with internal control over financial reporting] should be extended at least two years for non-accelerated filers. During that two-year period, Section 404 of SOX should be subject to ongoing monitoring for its costs and benefits by the SEC. [Mean = 4.50] ²

¹ Five recommendations voted upon at the Forum concerned “finders.” The recommendation set forth in the text as number one received the highest approval rating, with a mean score of 4.72. The other four recommendations concerning “finders” are set forth immediately below, with their original priority rankings and mean scores:

Recommendation No. 2

Re-recommend Recommendation No. 1 of the 2003 Forum (Facilitation of an Appropriate Role of Finders in the Capital Raising Process). [Mean = 4.55]

Recommendation No. 7

The conference reaffirms last year’s recommendation and definition of finders. The SEC, state securities regulators and NASD should establish categories of finders and establish appropriate levels of exemption, registration, or qualification. The SEC, state securities regulators and NASD should consider the proposals and recommendations concerning finders that were made by the American Bar Association Business Law Section. [Mean = 4.26]

Recommendation No. 10

That the SEC, within the next 12 months, issue a concept release on “finders.” [Mean = 4.22]

Recommendation No. 24

Adopt a no-action position on finders in any state that has a specific finder rule or statute. [Mean = 3.58]

² Three recommendations requested deferral of implementation of Section 404 of SOX “management assessment of internal controls.” The recommendation with the highest mean score of the three is set forth in the text. The other two recommendations, including their original priority rankings and mean scores, were:

Recommendation No. 5

Recommend that the Commission implement a further deferral of Section 404 of SOX for registrants reporting under Regulation S-B until fiscal years ending on or after December 15, 2007, to better evaluate the impact of Section 404, including any further modifications to Section 404, and to give smaller businesses with smaller resources the opportunity to learn from the experience of companies traded on national exchanges and to allow their consultants to obtain qualified staff. Further, management should be required to report on the progress of Section 404 implementation during the FY2006 reporting cycle in the registrant’s 1934 Act filings in a manner similar to the previous Y2K disclosures. [Mean = 4.36]

Recommendation No. 14

The implementation of Section 404 of SOX should be delayed for all non-accelerated filers until July 15, 2006. [Mean = 4.05]

3. **Status Report on Forum Recommendations.** At least 30 days prior to each subsequent SEC Small Business Forum, a summary of status and actions taken relating to the recommendations made at the previous annual forum should be posted on the SEC website and provided to conference participants. [Mean = 4.36]³
4. **Higher SEC priority to small business.** That the SEC give higher priority to the needs of small business. [Mean = 4.26]⁴

³ Three recommendations requested that Commission staff prepare a progress report summarizing the status of recommendations of the previous year's Forum. The recommendation with the highest mean score of the three is set forth in the text. The other two recommendations, including their original priority rankings and mean scores, were:

Recommendation No. 8

The SEC Office of Small Business Policy should appoint a committee of Forum participants including a liaison from each group to work with the SEC and the SBA in following up on the progress of implementing the recommendations made at the Forum. To that end, the SEC should be required to provide a response and/or feedback from the SEC for each year's recommendation, including whether the suggestions are embraced or rejected, and further require the SEC to provide an action plan to implement change relating to the suggestions. [Mean = 4.25]

Recommendation No. 16

Suggestions for improvement of the Forum:

- (a) The Presentation Panel and the Planning Committee should be more diverse and include persons who represent companies with less than \$10,000,000 in revenue and who are SB-2 filers.
- (b) The Forum should authorize the Planning Committee to designate a follow up subcommittee of the Planning Committee to work with the SEC staff to report in six months to attendees the progress made in implementing the recommendations. [Mean 3.93]

⁴ Four recommendations requested that the Commission give higher priority to the needs of small business, including the designation of a SEC Commissioner as a liaison to the small business community. The recommendation with the highest mean score of the four is set forth in the text. The other three recommendations all request that the Commission designate a small business liaison Commissioner. The other three recommendations, including their original priority rankings and mean scores, were:

Recommendation No. 9

The SEC should appoint a sitting Commissioner to serve as its designated representative to the small business community. [Mean = 4.24]

Recommendation No. 12

That the SEC Chairman designate a small business liaison Commissioner, who may be the same Commissioner as the NASAA liaison Commissioner. [Mean = 4.05]

Recommendation No. 18

Renew support of last year's recommendations, and ask the SEC to redouble its efforts to implement last year's recommendations, including:

Recommendation No. 1 (Finders Proposal);

Recommendation No. 5 (SEC Commissioner to act as liaison); and

Recommendation No. 6 (quotation in the pink sheets the same as OTCBB for the purpose of enabling issuers to use the current market price as the sales price in a selling shareholder Form SB-2). [Mean = 3.71]

5. **Increase small business exemptions.** The SEC should issue a concept release on small business capital formation with a view to improving the utility of small business securities registration exemptions and to increasing the limits for the use of Regulation S-B, Regulation A, Rule 504, Rule 505 and Rule 701. [Mean = 4.20]⁵
6. **SOX Section 404 guidelines for small businesses.** The SEC should assure that the framework for assessment of internal control over financial reporting in small companies is addressed, regardless of whether it is addressed by the Committee of Sponsoring Organizations of the Treadway Commission (“COSO”) or by the PCAOB. [Mean = 4.05]⁶

⁵ Five recommendations requested that the Commission increase the dollar ceilings of its exemptions for small businesses. The recommendation with the highest mean score of the five is set forth in the text. The other four recommendations, including their original priority rankings and mean scores, were:

Recommendation No. 22

Recommend that the Commission examine increasing the limitation on funds raised under Regulation A from \$5,000,000 to \$10,000,000 and adjust the requirement for the provision of audited financial statements for offerings in excess of \$5,000,000. [Mean = 3.63]

Recommendation No. 23

The SEC should form a task force to develop a simple, inexpensive, and streamlined regulatory system for “micro-capital” or seed offerings of \$1 million or less. [Mean = 3.61]

Recommendation No. 25

The conference reaffirms last year’s recommendations concerning reform of Regulation A (Recommendation No. 8 of the 2003 Forum). [Mean = 3.56]

Recommendation No. 34

Recommend that the Commission undertake an active and immediate review of the various thresholds related to the definitions of:

- “Small Business Issuer” – to eliminate the non-affiliate market cap test and increase the annual gross revenue test to be equal to or in excess of \$50,000,000;
- “Accelerated Filer” – to increase the qualifying limit to \$150,000,000 for the non-affiliate public float;
- ceiling limits of Rules 504 and 505 – to increase the offering size limitation on Rule 504 to \$2,500,000 and Rule 505 to \$10,000,000 (\$5,000,000 on financial information); and
- for the mandatory reporting requirements under Section 12(g) – to raise the asset test threshold from \$10,000,000 to \$20,000,000 - \$25,000,000. [Mean = 3.14]

⁶ Two recommendations requested that the Commission work to provide guidance for smaller businesses to help them design and implement appropriate internal controls of financial reporting under Section 404 of SOX. The recommendation with the highest approval rating is set forth in the text. The other recommendation, including its original priority ranking and mean score, was:

Recommendation No. 15

Recommend that the Commission direct the PCAOB to issue an interpretation to Accounting Standard No. 2 to provide a set of structured guidelines for smaller businesses to design and

Remaining 20 Securities Regulation Recommendations

7. Permit general solicitation in Rule 506 offerings to accredited investors. [Mean = 3.78]
8. The Commission should adopt a safe harbor provision and coordinate with the PCAOB to implement same that provides that a reporting company seeking the accounting expertise of its auditor for sophisticated accounting issues in advance of publishing financial statements does not constitute a material weakness of financial controls of the inquirer. [Mean = 3.69]
9. The SEC should look into the NASD's review of intrastate and small business offerings with a view to expediting the review process. [Mean = 3.68]
10. The SEC should issue an interpretive release to clarify the requirements of Rule 15c2-11 to streamline the NASD review process. [Mean = 3.66]
11. The "testing the waters" provision of Regulation A should be expanded and adopted by the SEC and state securities regulators to be applicable to all proposed securities offerings, interstate or intrastate, exempt or non-exempt. Companies should be permitted to test the waters to determine potential investor interest in any proposed securities offering without incurring the expense of preparing an actual offering document. [Mean = 3.52]
12. The Commission should reinstate the proposed provision in Regulation SHO that prohibited a selling shareholder from withdrawing his/her profits from the trade until after delivery of the underlying sold shares. [Mean = 3.34]
13. The SEC should require all SROs and any clearinghouse for an SRO that receives securities into the accounts of security holders to disclose the fact that the SRO, or the clearinghouse for the SRO, has the ability to loan the securities in the accounts and to allow the security holders the option to opt out of allowing the securities to be loaned out. [Mean = 3.30]
14. The two-day format should be reinstated by the Forum. [Mean = 3.30]
15. The SEC should encourage development of Securities Investor Protection Corporation ("SIPC") type funds and reduction of liability for broker-dealers engaging in capital raising transactions for smaller companies. [Mean = 3.26]
16. In order to create a uniform regulatory framework for small business capital formation, the Forum recommends that Congress enact legislation preempting

implement the appropriate internal control systems to be proportionate with the needs and sizes of the respective small businesses. [Mean = 4.00]

- state regulation, except for enforcement of anti-fraud provisions, of any small business securities offerings of \$5 million or less. [Mean = 3.24]
17. The SEC should work with the National Securities Markets Improvement Act of 1996 to expedite and coordinate the review for 1933 Act registration statements for non-covered securities. [Mean = 3.17]
 18. All Form S-2 qualified companies should be eligible to use Form S-3 (*i.e.*, there should be no market cap or exchange/NASDAQ listing requirements). [Mean = 3.15]
 19. The SEC should issue an interpretive release on Section 17(b) of the Securities Act of 1933 to clarify to whom it applies and what disclosure it requires. [Mean = 3.09]
 20. To protect the public, the SEC should compile and make available to the public via its website a Financial Fraud Database containing data from all of its Securities Violators Bulletins and Litigation & Action Proceedings Bulletins since 1934. In addition, the database should include data on all federal, state and SRO enforcement actions concerning civil and criminal prosecutions and regulatory violations involving banking, consumer fraud, commodities, insurance, real estate, and other forms of financial fraud, and all information concerning registrants included in the NASD CRD database. [Mean = 3.00]
 21. The SEC should review public disclosure obligations for non-reporting issuers. [Mean = 2.95]
 22. The Commission should review and modify the SOX prohibitions on market research activities to allow research to be performed without the “Chinese Wall” for registrants filing under Regulation S-B and where the underwriting firm has a limited number of employees/staff (*i.e.*, say under 10) and the underwriter has raised less than \$25,000,000 for any single registrant in any one rolling 12-month period. Further, disclosure under Regulation FD should be required for any information learned during the analyst review process as it relates to research or financing. [Mean = 2.90]
 23. Permit shareholders with more than 50% ownership to serve on committees so long as independent directors constitute a majority of the committee. [Mean = 2.81]
 24. Extend Reg. SHO to apply to all publicly traded companies including non-reporting companies. [Mean = 2.71]
 25. Promulgate a rule under Section 402 of SOX that provides exemptions for certain transactions between a company and its officers, such as, for example, cashless exercises, pre-IPO loans, relocation loans and advancement of expenses in

connection with indemnification obligations, subject to appropriate conditions and ceilings. [Mean = 2.71]

26. The SEC should establish a separate regulatory scheme for small business issuers that operate for a stated period of time on a cash-flow deficit basis. [Mean = 2.13]

* * * * *

The recommendations above are presented in the order of priority established by means of an electronic audience response system during the final general session of the Forum. The voting participants used hand-held electronic devices to record their preferences. Approximately 50 participants voted on 42 securities regulation recommendations submitted by five breakout groups addressing securities law matters.

At the session, an SEC staff member read each of the 42 reported recommendations from the podium. After reading a recommendation, he asked the voting participants to press button 1, 2, 3, 4, or 5 on their voting devices, to reflect whether the participant was:

1. *Against the recommendation*
2. *Mildly in favor of the recommendation*
3. *Moderately in favor of the recommendation*
4. *Strongly in favor of the recommendation*
5. *Very strongly in favor of the recommendation*

The votes were tallied electronically. Each recommendation was assigned a “mean” score.⁷ The closer the mean score is to 5.0 (i.e., the maximum score), the more strongly favored was the recommendation; the lower the score (i.e., closer to 1.0), the less favored was the recommendation. The mean scores ranged from a high of 4.72 to a low of 2.13, and are presented in parentheses following each recommendation.

⁷ For each recommendation, the “mean” score was calculated as follows. We first determined the number of votes received for each possible voting selection (i.e., selections 1 “against the recommendation” through 5 “very strongly in favor of the recommendation”). We then multiplied the number of votes each selection received by that selection number (i.e., 1 through 5) to determine the “voting points per selection.” We then added up the total voting points that each selection received and divided this aggregate number by the total number of votes received for that particular recommendation. For example, the recommendation receiving the highest mean score of 4.72 concerned “finders.” This mean score was calculated as follows:

Key Pad Button Selection:	1	2	3	4	5
Multiplied by (No. of votes received per Key Pad Button Selection):	× 0	× 1	× 2	× 5	× 35
Total Aggregate Voting Points:	203 =	0 +	2 +	6 +	20 + 175
Total Aggregate Voting Points:	203				
÷ (No. of participants voting):	43				
“Mean” Score =	4.72				

The voting results listed above did not take into account the votes of the regulators present and voting at the Forum. SEC staff did not vote. There were three non-SEC regulators voting. For a copy of the voting results that includes the voting of the three non-SEC regulators, please contact the SEC Office of Small Business Policy.

Taxation Recommendations

The tax breakout group developed and prioritized the following recommendations.

Group Suggestions for Legislative Change to Enhance Small Business Capital Formation

Monetization of Small Business NOLs. Currently, Internal Revenue Code Section 1244 allows a preferential write-off of an initial investment in a small business. This benefit only saves *failures* after the fact. What is often needed is an extra infusion of capital to help small business *succeed*. We recommend that Congress investigate ways to monetize qualified small businesses' net operating losses ("NOLs"). For example, allow a small business to sell its NOLs to another company. Congress may want to consider thresholds and limits on the dollar amount of NOLs that could be so sold.

Small Business – New Jobs Incentive Act. Allow a 10% credit for a "qualified investment" in a "qualified small business." The credit would be available to carry forward only. A qualified investment would have a yearly limit for the purchase of an equity investment of no more than \$1 million per investor. A qualified small business may include a C corporation, S corporation, LLC or another legal entity structure. In keeping with the desire to promote "patient capital," the investment must be for a period of at least three years, or the credit would be subject to reasonable recapture. In addition, the small business must be in an active trade or business and would not include investment companies or personal service corporations. Further, the credit could be used to offset both the regular tax liability or the alternative minimum tax liability. The credit would reduce the investor's basis in the original investment.

The Alternative Minimum Tax. The alternative minimum tax ("AMT") is an impediment to investment in our country, because it introduces further complexity and reduces rates of returns in small business investing. The preferential rate or treatment of capital gains or investment incentives should not be subject to the AMT.

Tax Simplification. The current tax code is so burdensome and complex that it has become an impediment to the successful functioning of small business as an engine of economic growth to the overall economy. Over the course of the last 90 years, the Internal Revenue Code and attendant regulations have evolved in such a way that, due to their complexity, they now deter investments in domestic businesses. The environment of a complex tax code has spawned tax shelters. We believe that our system of taxation should be simplified, and this simplification should be designed in light of the global nature of business today.

Section 179 and Section 168(k) – Accelerated Deductions. The ability to write off fixed asset capital costs in the current year or over a short depreciable life is an important factor affecting small businesses' access to capital. By reducing taxes via these accelerated deductions, small and emerging businesses can retain capital for future growth and expansion. Bonus depreciation and/or expanded Section 179 deductions are

projected to sunset over the next few years and should be permanently enacted into the Code to insure a stable capital recovery period that small businesses can rely on to make the necessary capital expenditures to grow their businesses. Where tax revenue constraints make permanent enactment unfeasible, we recommend these provisions be renewed and not allowed to sunset.

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