SEC Government-Business

Forum on Small Business Capital Formation

FINAL REPORT

November 17, 2011
Washington, DC

2011 SEC Government-Business Forum on
Small Business Capital Formation

FINAL REPORT

Published March 2012

The SEC conducts the Government-Business Forum on Small Business Capital Formation annually. The recommendations contained in this Report are solely the responsibility of Forum participants from outside the SEC, who were responsible for developing them. The recommendations are not endorsed or modified by the SEC and do not necessarily reflect the views of the SEC, its Commissioners or any of the SEC's staff members.

TABLE OF CONTENTS

SUMMARY OF PROCEEDINGS

Background

As mandated by the Small Business Investment Incentive Act of 1980, the U.S. Securities and Exchange Commission conducts an annual forum that focuses on small business capital formation.[1] 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 to highlight perceived unnecessary impediments to small business capital formation and address whether they can be eliminated or reduced. Each forum seeks to develop recommendations for government and private action to improve the environment for small business capital formation, consistent with other public policy goals, including investor protection.

The 2011 Forum, the 30th, was convened at the SEC's headquarters at 100 F Street, N.E., Washington, D.C., on Thursday, November 17, 2011. The program included both panel discussions and breakout groups, all of which were accessible to those who attended the sessions in person in Washington, D.C., as well as those who chose to participate through a morning Internet webcast and afternoon telephone conference calls.

Planning and Organization

Consistent with the SEC's statutory mandate in the Small Business Investment Incentive Act of 1980, the SEC's Office of Small Business Policy (in its Division of Corporation Finance) invited other federal government agencies, the North American Securities Administrators Association ("NASAA," the organization representing state securities regulators), and leading small business and professional organizations concerned with small business capital formation to participate in planning the 2011 Forum. The individuals who participated in planning the Forum, and their professional affiliations, are listed on pages four through six.

The planning group recommended that this year's Forum again be held in Washington, D.C. The members of the planning group also assisted in preparing the agenda and in recruiting speakers.

Participants

The SEC's Office of Small Business Policy worked with members of the planning group to identify potential panel participants for the 2011 Forum. Invitations to attend the Forum were sent to participants in previous forums and to members of various business and professional organizations concerned with small business capital formation.

[1] The SEC is required to conduct the forum annually and to prepare this report under 15 U.S.C. 80c-1 (codifying section 503 of Pub. L. No. 96-477, 94 Stat. 2275 (1980)).

The SEC issued two press releases to inform the public about the time, date and location of the Forum.

The morning panel discussions were video webcast on the SEC website. The afternoon breakout group sessions were not webcast, but were accessible by conference telephone call to pre-registrants.

Approximately 100 attendees were physically present for the Forum proceedings in Washington, plus approximately 26 panelists, moderators and SEC staff. The live webcast of the Forum panel discussions was accessed approximately 548 times by viewers. A written transcript of the Forum proceedings has been publicly posted on the SEC website.

Proceedings

The agenda for the 2011 Forum is reprinted starting at page eight. All five SEC Commissioners gave remarks during the Forum's morning proceedings, beginning with the opening remarks of SEC Chairman Mary L. Schapiro, which are reproduced starting on page 11. The remarks of the other Commissioners are reproduced in this Final Report in the order in which they were delivered. Commissioner Luis A. Aguilar's remarks are reproduced starting on page 15; Commissioner Elisse B. Walter's remarks are reproduced starting on page 18; Commissioner Daniel M. Gallagher's remarks are reproduced starting on page 22; and Commissioner Troy A. Paredes' remarks are reproduced starting on page 26. Between the remarks of the SEC Commissioners, panel discussions were conducted on certain capital formation issues for private companies and on issues relating to initial public offerings and securities regulation involving smaller public companies. Both of these panels were co-moderated by Stephen M. Graham, Co-Chair of the SEC's recently organized Advisory Committee on Small and Emerging Companies, and members of the SEC staff.

The afternoon proceedings included breakout group meetings open to all pre-registered participants, who took part either in person or by telephone conference call. Two breakout groups met, one on non-public and limited offering issues (including private placement broker-dealer issues), which was moderated by Brian T. Borders, and another on securities regulation of smaller public companies, which was moderated by Ann Yvonne Walker.

The discussions of the two breakout groups resulted in 25 draft recommendations. The moderators of the two breakout groups presented their respective groups' recommendations at a final assembly of all the Forum participants as the last matter of business on November 17, 2011.

After the Forum, the moderators of the two breakout groups continued to work with their group participants to refine each group's recommendations. A final list of 25 recommendations resulting from these discussions was circulated by e-mail to all participants in the two breakout groups, asking them to specify whether, in their view, the

SEC should give high, lower or no priority to each recommendation. This poll resulted in the prioritized list of 25 recommendations presented starting at page 29.

Records of Proceedings and Previous Forum Materials

The video recording of the Forum's morning proceedings, including the remarks of the SEC Commissioners and the two panel discussions, is on the SEC's website at http://www.sec.gov/news/otherwebcasts/2011/gbforum111711.shtml. A written transcript of the proceedings is also available on the SEC's website at http://www.sec.gov/info/smallbus/sbforumtrans-111711.pdf.

The Forum program, including the biographies of the Forum panelists and moderators, is available on the SEC's website at http://www.sec.gov/info/smallbus/2011gbforumprogram.pdf.

The final reports and other materials relating to previous forums, since the Forum in 1993, may be found on the SEC's website at http://www.sec.gov/info/smallbus/sbforum.shtml.

PLANNING GROUP

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

Government/Regulatory Representatives

A. Heath Abshure
Securities Commissioner
Securities Department
Little Rock, Arkansas
Corporate Finance Committee Chair, North American Securities Administrators Association, Inc.

Gabriela Aguero
Coordinating Analyst
Public Offering Review
Corporate Financing Department
Financial Industry Regulatory Authority
Rockville, Maryland

Ammar Askari
Community Development Expert
Community Affairs
Office of the Comptroller of the Currency
Washington, D.C.

Anthony G. Barone
Special Counsel
Office of Small Business Policy
Division of Corporation Finance
U.S. Securities and Exchange Commission
Washington, D.C.

Mauri L. Osheroff
Associate Director
Division of Corporation Finance
U.S. Securities and Exchange Commission
Washington, D.C.

Steven A. Sharpe
Assistant Director
Division of Research and Statistics
Board of Governors of the Federal Reserve System
Washington, D.C.

Mary J. Sjoquist
Director
Office of Outreach and Small Business Liaison
Public Company Accounting Oversight Board
Washington, D.C.

Dillon J. Taylor
Assistant Chief Counsel
Office of Advocacy
U.S. Small Business Administration
Washington, D.C.

Representatives of Business and Professional Organizations

Brian T. Borders
Borders Law Group
Washington, D.C.
Representing National Venture Capital Association

Michael J. Choate
Shefsky & Froelich Ltd.
Chicago, Illinois
Representing Legal Committee of the Investment Program Association

Christina Crooks
Manager, Government Affairs, Financial Policy
Financial Executives International
Washington, D.C.

Deborah S. Froling
Arent Fox
Washington, D.C.
Member of the Board of Directors of the Real Estate Investment Securities Association

Kevin M. Hogan
Executive Director
Investment Program Association
New York, New York

Marianne Hudson
Executive Director
Angel Capital Association
Overland Park, Kansas

Andrew Huff
Office Manager and Legislative Assistant
National Association of Small Business Investment Companies
Washington, D.C.

John J. Huntz
Executive Director
Head of Venture Capital
Arcapita, Inc.
Atlanta, Georgia
Chairman and Founder of Atlanta Venture Forum

James Kendrick
Vice President, Accounting & Capital Policy
Independent Community Bankers of America
Washington, D.C.

Karen Kerrigan
President & CEO
Small Business & Entrepreneurship Council (SBE Council), and
Founder, WE Inc. (Women Entrepreneurs)
Oakton, Virginia

Kelly Lewis
President & CEO
TechQuest Pennsylvania
The Technology Council of Central Pennsylvania
The Harrisburg Train Station
Harrisburg, Pennsylvania

Shelly Mui-Lipnik
Director of Capital Formation & Financial Services Policy
Emerging Companies & Business Development
Biotechnology Industry Organization
Washington, D.C.

A. John Murphy
Wickersham & Murphy
Palo Alto, California
Representing American Bar Association's Federal Regulation of Securities Committee

Cristeena Naser
Senior Counsel
Center for Securities, Trust & Investment and
Associate General Counsel
American Bankers Association
Washington, D.C.

Brett T. Palmer
President
National Association of Small Business
Investment Companies
Washington, D.C.

E.J. Reedy
Manager
Research and Policy
Kauffman Foundation

Andrew J. Sherman
Jones Day
Washington, D.C. and
Adjunct Professor of Business and
Capital Formation Strategy
Smith School of Business
University of Maryland
College Park, Maryland
General Counsel to Entrepreneurs' Organization and Small and Emerging Contractors Advisory Forum

Darla C. Stuckey
Senior Vice President
Policy & Advocacy
Society of Corporate Secretaries and
Governance Professionals
New York, New York

Kevin Wells
Senior Manager
Center for Capital Markets
Competitiveness
U.S. Chamber of Commerce
Washington, D.C.

Gregory C. Yadley
Shumaker, Loop & Kendrick, LLP
Tampa, Florida
Representing American Bar Association's Committee on Middle Market and Small Business

FORUM SEC STAFF

Mauri L. Osheroff
Associate Director (Regulatory Policy)
Division of Corporation Finance

Office of Small Business Policy
Division of Corporation Finance

Gerald J. Laporte, Chief

Karen C. Wiedemann, Attorney Fellow

Anthony G. Barone, Special Counsel

Johanna Vega Losert, Special Counsel

Brian J. Pivonka, Student Intern

AGENDA

2011 SEC Government-Business Forum on Small Business Capital Formation
Washington, D.C.
November 17, 2011

9:00 a.m. **Call to Order**
Gerald J. Laporte, Chief, Office of Small Business Policy,
SEC Division of Corporation Finance

Introduction
Meredith B. Cross, Director, SEC Division of Corporation Finance

Opening Remarks
SEC Chairman Mary L. Schapiro

Remarks
SEC Commissioner Luis A. Aguilar

9:30 a.m. **Panel Discussion: Current Capital Formation Issues for Private Companies**

Moderators:

Stephen M. Graham, Partner, Fenwick & West, LLP, Seattle, Washington
Lona Nallengara, Deputy Director, SEC Division of Corporation Finance

Panelists:

A. Heath Abshure, Arkansas Securities Commissioner
Prof. C. Steven Bradford, University of Nebraska-Lincoln College of Law
Yoichiro (Yokum) Taku, Partner, Wilson Sonsini Goodrich & Rosati, Palo Alto, California
Gregory C. Yadley, Partner, Shumaker, Loop & Kendrick, LLP, Tampa, Florida

10:30 a.m. **Remarks**
SEC Commissioner Elisse B. Walter

10:45 a.m. **Break**

11:00 a.m. **Remarks**
SEC Commissioner Daniel M. Gallagher

11:15 a.m. **Panel Discussion: Initial Public Offerings and Securities Regulation Involving Smaller Public Companies**

Moderators:

Meredith B. Cross, Director, SEC Division of Corporation Finance
Stephen M. Graham, Partner, Fenwick & West, LLP, Seattle, Washington

Panelists:

Prof. John C. Coffee, Jr., Columbia University Law School, New York, New York
Kathleen Weiss Hanley, Deputy Director and Deputy Chief Economist SEC Division of Risk, Strategy, and Financial Innovation
John D. Hogoboom, Partner, Lowenstein Sandler, PC, Roseland, New Jersey
David Weild, Senior Advisor, Capital Markets, Grant Thornton, LLP, and Chairman and CEO, Capital Markets Advisory Partners, New York, New York
Gregory L. Wright, Chief Executive Officer, ThinkEquity, LLC

12:45 p.m. **Remarks**
SEC Commissioner Troy A. Paredes

1:00 pm. **Lunch Break**

2:00 p.m. **Breakout Groups to Develop Recommendations**

- **Non-Public and Limited Offerings (Including Private Placement Broker-Dealer Issues) Breakout Group**

  Moderator:

  Brian T. Borders, Borders Law Group, Washington, DC

- **Securities Regulation of Smaller Public Companies Breakout Group**

  Moderator:

  Ann Yvonne Walker, Partner, Wilson Sonsini Goodrich & Rosati, Palo Alto, California

3:15 p.m. **Break**

3:30 p.m. **Breakout Groups to Develop Recommendations *(continued)***

4:30 p.m. **Plenary Session to Develop Next Steps**

Moderators:

Gerald J. Laporte, Chief, Office of Small Business Policy, SEC Division of Corporation Finance
Gregory C. Yadley, Partner, Shumaker, Loop & Kendrick, LLP, Tampa, Florida

5:00 p.m. **Networking Reception**

OPENING REMARKS OF
SEC CHAIRMAN MARY L. SCHAPIRO

SEC Government-Business Forum on Small Business Capital Formation

November 17, 2011

Good morning.

Thank you, Meredith, for that kind introduction. And thank you for all the work you and the Corp Fin team have done to make this Forum a success, and for helping ensure that the distinct needs of small businesses are front and center at the SEC.

Thanks, also, to all of you who are joining us today as participants in a series of discussions designed to help the SEC better understand one of the most pressing issues facing small businesses: raising the capital these businesses need to expand and grow. I know that your uniformly impressive level of expertise, in combination with the varied backgrounds you bring to this Forum, will ensure an interesting and illuminating day.

I would like to welcome all those who are attending here in Washington, viewing by webcast or listening through our teleconference.

And I'd also like to thank Gerry Laporte, Tony Barone and the other staff of the Office of Small Business Policy for their work in organizing this meeting, and for being the voice of small business within the SEC.

Small businesses are important to the SEC—you can get a sense of just how important by the fact that all five commissioners will be speaking today, something that rarely happens outside of Commission meetings.

And, of course, you can find particular concern with the needs and health of small businesses in all quarters today, as the nation works to energize the economic recovery and looks to the small businesses to spark growth in job creation.

As you know, studies suggest that small businesses have created 60 to 80 percent of net new American jobs over the last ten years.

But there is a footnote to that statistic: the most vigorous small business job creation comes from small businesses determined to get much larger. Job growth comes from emerging enterprises trying to grow out of their warehouse space and into a corporate campus or to jump from a single downtown location into retail sites nationwide. It comes from companies that need access to capital to make that jump.

Today's focus is on creating an environment in which those small businesses have that access, one in which they can compete successfully for a share of our country's investment capital.

Cost-effective access to capital for companies of all sizes plays a critical role in our national economy, and we believe that companies seeking access to capital should not be overburdened by unnecessary or superfluous regulations.

As we examine ways that the regulatory structure might better facilitate small business capital formation, though, it's important to keep in mind another critical facet of the SEC's mission: investor protection. We must balance the instinct to ease the rules governing capital access with our obligation to protect investors and markets.

This can be a challenge. Even necessary regulation can impose burdens that are disproportionately large for small businesses with limited resources.

As the daughter of a small businessperson, I am familiar with the unique challenges small businesses face. I know that instead of planning year-to-year or quarter-to-quarter, that sometimes it's day-to-day. And I recognize that challenges that a larger business would barely even notice can be significant drains on resources and time to an enterprise that needs to focus everything on making its place in a competitive market.

That is why, when Meredith and I have testified before Congress in recent months on different legislative proposals, we have emphasized the importance of achieving the proper balance.

It's also important to note that investor protection shouldn't just be a priority for investors and their advocates. Confidence in the fairness and honesty of our markets is critical to capital formation. Investors who understand that financial market participants are honest, that disclosures are accurate, and that markets offer a fair chance to earn a reasonable return are more likely to make needed capital available, and demand less in return for doing so.

And so, in this Forum and through other efforts, the SEC is seeking strategies for meeting regulatory goals while reducing the weight borne by small businesses.

Over the years, the SEC has taken a number of steps to reduce burdens smaller enterprises face in raising capital: relaxing restrictions on public communications and simplifying disclosure and reporting requirements, for example. But, given the speed with which the financial environment evolves, it is important that we respond when new issues are raised, and that the SEC be willing to re-examine existing regulation in light of changing circumstances.

That is why I have instructed our staff to take a fresh look at some of our offering rules, and to develop ideas for the Commission to consider that would—in a manner consistent with investor protection—reduce undue regulatory constraints on small business capital formation. Among the issues that we are considering are:

- The restrictions on communications in initial public offerings;

- Whether the general solicitation ban should be revisited in light of current technologies, and capital-raising trends;

- The number of shareholders that trigger public reporting, including questions surrounding the use of special purpose vehicles that hold securities for groups of investors; and

- The regulatory questions posed by new capital raising strategies, including crowdfunding.

In conducting this review, we are gathering data and seeking input from many sources, including small businesses, investor groups and the public at large.

In addition, two weeks ago, we convened the first meeting of the SEC's new Advisory Committee on Small and Emerging Companies. This initial meeting has produced a number of insights on these and other relevant issues, from committee members representing businesses, investors, academia and regulators.

As you can see, small business capital formation is an important priority for us.

The re-examination of existing regulations is also of a piece with a goal I set when I returned to the SEC as Chairman: to make sure that the agency was up to date, that the regulations we enforce reflect the current realities of the financial markets.

The role of those of you participating in today's discussions is important to this process. This process and the resulting regulatory decisions must be informed by the "real-world" experience of people who are building a business, raising capital and implementing regulation. Your work providing counsel and becoming a conduit through which others can contribute is vital to the success of our efforts.

Your experience will become a vehicle for better understanding, on our part, of the impact new regulatory arrangements or changes to existing rules might have. You will help us maintain safe, orderly and efficient markets that facilitate capital formation and help businesses grow, while burdening small businesses as little as possible.

For 77 years, the SEC has contributed to small business growth by supporting a capital marketplace in which confident investors invested money in growing businesses. We worked to create a culture of compliance that supported transparent markets marked by high liquidity, strong secondary market trading and investor protection.

We're proud of what we've done. But we recognize that markets and participants change—never faster than in the past two decades—and that regulation must change to reflect those new realities, as well.

With your help, we are working to build a regulatory structure that supports, rather than confines, small business growth, while leaving investors confident that their interests in fair and secure financial markets will be protected.

REMARKS OF
SEC COMMISSIONER LUIS A. AGUILAR

SEC Government-Business Forum on Small Business Capital Formation

November 17, 2011

Facilitating Small Business Capital Formation Does Not Need to Be at the Expense of Protecting Investors

Good morning. First, I would like to welcome all of the distinguished panelists, participants, and attendees to the SEC for today's Government-Business Forum on Small Business Capital Formation. Thank you for inviting me to speak and add my voice to today's dialogue. Second, I also add my thanks to the staff from the Division of Corporation Finance and the Office of Small Business Policy for their work to facilitate today's program. Third, before I start, I must remind you that my remarks represent my own views, and not necessarily those of the Commission, my fellow Commissioners, or members of the staff.

Small business is vital to any nation's economic well-being. I know everyone in this room has been closely following the economic crisis in Europe. I was struck by a recent news article discussing the tragic impact of the crisis on the people of Greece. Specifically, it was reported that "[s]mall shops, in many ways the lifeblood of the Greek economy, which relies on domestic demand, are closing by the day."[1] The European debt crisis reminds us that investors, consumers, entrepreneurs, lenders, underwriters, etc., make up the same economic system, the same market. In this interdependent system, it is essential for all market participants that the fundamentals of this system are strong, fair and transparent.

The principles of a strong, fair and transparent regulatory framework are the defining characteristics of the Federal securities laws. There is no doubt that the system of laws and regulations administered by the SEC has contributed to the United States having the most robust capital market in the world. A key component of the SEC's mission is to facilitate capital formation while at the same time protecting investors. Many studies have demonstrated how regulations fostering investor protections can promote capital formation.[2] For example, a 2003 study showed that the MD&A disclosure required in

[1] Landon Thomas Jr., Normal Life on Pause, and a Sense of Simmering Rage, N.Y. Times, November 7, 2011, at A5.

[2] See, e.g., Frank B. Cross and Robert A. Prentice, The Economic Value of Securities Regulation, 28 Cardozo L. Rev. 333 (2006). See also Luis A. Aguilar, Comm'r, U.S. Securities and Exchange Commission, Speech at the Council of Institutional Investors Spring Meeting: Facilitating Real Capital Formation (April 4, 2011) notes 24-26 (available at www.sec.gov/news/speech/2011/spch040411laa.htm#P64_30599); but cf id., note 20. For the effects of information asymmetry on capital formation, see George A. Akerlof, The Market for 'Lemons': Quality Uncertainty and the Market Mechanism, The Quarterly Journal of Economics (August 1970) (demonstrating that a lack of adequate information about the quality of an item being purchased can drive a

public company filings under the Exchange Act resulted in more accurate and informed share prices, which contributes to a better functioning real economy.[3] A 2006 study found that the Exchange Act amendments of 1964, which extended disclosure requirements to over-the-counter companies, created substantial value for the shareholders of such companies.[4] Such value creation is central to strong capital formation. We must not forget that investors are the capital providers that drive our capital markets—after all they are writing the checks that make capital formation possible.

And, we need to remember that capital formation is much more than just capital raising. True capital formation requires that funds raised be invested in productive assets. The more productive those assets are, the greater the capital formation facilitated by such investment.[5] Fair disclosure rules level the playing field and help provide investors with the information they need to make reasoned investment decisions. Accordingly, market safeguards that promote reliable disclosure engender the confidence investors need to invest their savings in debt, equity and other securities. The need for full and fair disclosure, so that investors can make investment decisions with the benefit of material information, is a founding principle of the Federal securities laws.[6]

---

market out of existence: "There may be potential buyers of good quality products and there may be potential sellers of such products in the appropriate price range; however, the presence of people who wish to pawn bad wares as good wares tends to drive out the legitimate business. The cost of dishonesty, therefore, lies not only in the amount by which the purchaser is cheated; the cost also must include the loss incurred from driving legitimate business out of existence.").

[3] Merritt B. Fox, Randall Morck, Bernard Yeung, and Artyom Durnev, Law, Share Price Accuracy, and Economic Performance: The Empirical Evidence, 102 Mich. L. Rev. 331 (2003). The conclusion that more accurate and informed share prices contribute to the real economy references Jeffrey Wurgler, Financial Markets and the Allocation of Capital, 58 J. Fin. Econ. 187 (2000) and Artyom Durnev et al., Value Enhancing Capital Budgeting and Firm-specific Stock Return Variation, 58 J. Fin. 64 (2004). Id. notes 86 and 87.

[4] Michael Greenstone, Paul Oyer, and Annette Vissing-Jorgensen, Mandated Disclosure, Stock Returns and the 1964 Securities Acts Amendments, Quarterly Journal of Economics, May 2006 (stating that the "results imply that the 1964 Amendments created…$3.2 to $6.2 billion [measured in 2005 dollars] of value for stockholders"). A summary version of the paper is available at http://www.stanford.edu/group/siepr/cgi-bin/siepr/?q=system/files/shared/pubs/papers/briefs/policybrief_jan06.pdf. See also Allen Ferrell, Mandated Disclosure and Stock Returns: Evidence from the Over-the-counter Market, 36 J. Legal Studies 1 (2007). An earlier draft is the John M. Olin Center for Law, Economics, and Business Discussion Paper No. 453 (December 2003) (available at http://www.law.harvard.edu/faculty/fferrell/pdfs/Ferrell-MandatedDisclosure2.pdf).

[5] See, e.g., Simon Kuznets, Capital in the American Economy: Its Formation and Financing (Princeton University Press 1961).

[6] See, e.g., Sonesta International Hotels Corp. v. Wellington Associates, 483 F.2d 247 (2nd Cir. 1973) (stating, with respect to Secs. 10(b), 13(d), 14(d), and 14(e) of the Securities Exchange Act of 1934, 15 U.S.C. Secs. 78j(b), 78m(d), 78n(d), and 78n(e) (1971), "[t]hese laws are founded on the principle that full and fair disclosure of all material facts must be made to investors so that they may have the benefit of the facts in making their investment decisions," citing Affiliated Ute Citizens v. United States, 406 U.S. 128, 151, 92 S. Ct. 1456, 31 L.Ed.2d 741 (1972), and 1968 U.S.Code Cong. & Adm.News p. 2813).

I look forward to today's dialogue, and to your thoughts as to how we can improve the economic environment for entrepreneurs and investors alike, because smart and workable regulation is a necessary component of a robust capital market and strong capital formation.

Thank you for your participation in today's Forum. You have my best wishes for a productive day.

REMARKS OF
SEC COMMISSIONER ELISSE B. WALTER

SEC Government-Business Forum on Small Business Capital Formation

November 17, 2011

Meredith, thank you so much for that kind introduction.

I'm so pleased to have the opportunity this morning to be here with you for the 2011 Government-Business Forum on Small Business Capital Formation. I want to thank everyone in our Division of Corporation Finance, and especially Gerry Laporte and the rest of our Office of Small Business Policy for organizing today's Forum and playing the leadership role in our small business initiatives.

My thanks too, go to our panelists – those who are here now and those who will follow – for participating in this important public-private dialogue on small business capital formation and especially for your commitment to enhancing the growth and vitality of our nation's small business community.

The information you share with us today ensures that we enhance our understanding of the needs of small businesses and their owners.

I hear, loud and clear, the views that these needs are not being met under our current regulatory structure.

I want you to know that the Commission, with the advice and guidance of our team of specialists in the Division of Corporation Finance, stands ready to write the next chapter in our agency's long-standing efforts to address the concerns of small business.

Your recommendations for facilitating small business capital formation, and in particular, the empirical data I hope you will share with us either today or after the Forum adjourns, will be an important contribution to our ongoing efforts to maintain the vitality of small businesses in the U.S. economy.

As I'm sure you have already heard, and will continue to hear throughout the day, there is no shortage of recommendations today from lawmakers and market participants on possible revisions to the Federal securities laws and rules in order to promote small business capital formation.

I, for one, whole-heartedly agree with the President's recent request that we review our rules in order to eliminate any unnecessary burdens. And, I know Meredith does, as well. I believe that there are many areas where our rules can and should be improved. But, should any proposed revision to our regulations veer toward sacrificing investor protection, I submit that such revision will surely come at a cost that no one in business can afford – the loss of investor confidence.

In the few minutes I have with you this morning, I of course cannot cover all of the potential legislative bills and recommendations for regulatory changes in depth. Instead, what I would like to do is to take us for a little trip down memory lane when many of these same issues were also at the forefront of our minds. Then, I'll share just a few thoughts I've had about the recent initiatives to address issues concerning small business both inside and outside our agency.

Of course, as you're going to hear repeatedly today, my remarks are my own and not those of the other Commissioners, the Commission or the staff.[1] And, as is appropriate, please know that my thoughts on all of these issues before us today are evolving.

As you now know from Meredith's introduction, if you didn't know before, I served as the Deputy Director in Corp Fin from 1986 through 1994. Shortly after I commenced work in the Division, my former boss and dear friend, Linda Quinn, delivered a speech some of you may be familiar with entitled "Redefining Public Offering or Distribution for Today."[2] In her remarks, she described the Division's efforts to re-evaluate the concept of what constitutes a distribution or public offering requiring registration under the Securities Act of 1933.

Here are some of the statistics she presented that day. In 1981, about $12 billion of securities were offered by issuers in private placements. Only four years later, in 1985, that number had gone up under Regulation D alone to $55 billion and that increase in private placement activity had resulted in the creation of a large secondary market for restricted securities. In 1983, annual trading volume in this market was estimated at $2 to 4 billion, and the trading volume for 1986 was anticipated to exceed $10 billion. Sound like big numbers?

But, when we got an update on some of today's private placement numbers earlier this month, during the meeting of our Advisory Committee on Small and Emerging Companies, our Chief Economist and Director of our Division of Risk Strategy and Financial Innovation, Craig Lewis, reported that in 2010, $905 billion was offered under Regulation D, with this figure representing the lower bound on the amount actually raised due to the fact that no closing filing is required when a company files a Reg D notice.

With respect to broader capital raising trends, Craig and his team confirmed that there has indeed been a shift from public to private capital raising over the past three years, due both to a decline in public issuances and to an increase in private issuances – with public issuances down by 11% from 2009 to 2010, while private issuances increased by 42% over the same period.

---

[1] The Securities and Exchange Commission, as a matter of policy, disclaims responsibility for any private publications or statements by any of its employees. The views expressed herein are those of the author and do not necessarily reflect the views of the Commission, other Commissioners, or the staff.

[2] Linda C. Quinn, Director Division of Corporation Finance, "Redefining 'Public Offering or Distribution' For Today," Address to Federal Regulation of Securities Committee Annual Fall Meeting (November 22, 1986), available at http://www.sec.gov/news/speech/1986/112286quinn.pdf.

I can only imagine what Linda would be saying if she were still with us today.

I know that many of you, particularly Meredith, share my feelings that it is with a very heavy heart that we go forward in our efforts to once again address issues related to public offerings and distributions without Linda's keen expertise, intellect, and vision. But Meredith herself is more than up to the task.

The underlying message of Linda's visionary efforts is an enduring one, and in the view of this Commissioner, should guide us as we analyze these issues today.

In her 1986 speech and throughout her tenure as the Corp Fin Division Director, Linda challenged us to ask, who are the persons who require the protections of the mandated disclosure of the registration process? And, how can we protect them without undue burdens and costs?

The challenge then, and it remains the challenge today, is for us to strike the right balance. And, I think it's a very important word for us to keep in mind as we move forward on these issues.

That is why I fully support our Chairman's decision to have Meredith and the Division take a careful look at our offering rules in order to develop ideas for the Commission to consider that may reduce regulatory burdens on small business capital formation. And, in doing so, we must remember to take into account marketplace and broader societal developments.

At the same time, however, we should keep in mind that these considerations raise distinct questions about when and whether a company should go public. On the one hand, I am a great believer in the transparency and oversight that a public offering brings to investors. On the other hand, there are clearly some companies that make the determination to go public prematurely and even some companies that should never go public.

If we can move forward with ideas that are consistent with our investor protection mandate, I believe we can address the needs of the small business community. Of course, I remain very much in listening mode at this stage, but some of my initial reactions to the ideas I've heard are as follows:

Review of Certain Offering Regulations

With respect to changes to our offering regulations, any change to the Section 12(g) registration requirements must address, as we were talking about just a moment ago, the fundamental difference that exists between what "held of record" means at a publicly-held company versus the counting that is done at a privately-held company.

Our restriction on general solicitation is one that bears looking at. It appears ripe for re-evaluation because of technological changes. What does general solicitation really mean in an era dominated by electronic communications? Is it still a realistic concept?

And, our rules on public offering communication should be very carefully studied to determine whether the liberalizations afforded larger public companies in 2005 should be extended to smaller public companies.

Crowdfunding

On the subject of crowdfunding, I personally think crowdfunding is a good idea, but it must have limits. If it's too big, it will become a haven for fraud and backfire, and I'm very concerned about the notion of a relatively high limit on a person's income during the year, which might allow them to take everything they earned and put it into extremely risky ventures. And, of course, I continue to believe that antifraud jurisdiction must extend to its furthest possible reaches.

Although I have not yet completed my analysis of all of the recent legislative efforts to address capital formation, I'm hopeful that Congress will avoid being too prescriptive with any legislation it may determine to enact. Of course, we all know that the devil is always in the details. So, if Congress determines that a legislative response is appropriate, I would very much like to see Congress instruct the SEC to use its expertise to define those details. I believe the Commission should, as we have in the past, continue to look for places where we can calibrate the risks of reducing regulatory burdens and the potential cost savings.

Although I can't predict for you today how our next chapter in addressing the needs of small business will read when it goes to press, I do believe that the Commission will build upon the platform established by this Forum today in a manner that addresses the needs of the small business community and is consistent with its investor protection mission.

As I've said many times since I returned to the Commission three and a half years ago, my door and telephone lines are always open. Please don't hesitate to visit or pick up the phone if there are any of these issues that you would like to discuss with me.

Thank you for the opportunity to speak with you this morning.

REMARKS OF
SEC COMMISSIONER DANIEL M. GALLAGHER

SEC Government-Business Forum on Small Business Capital Formation

November 17, 2011

Thank you, Meredith, for your kind introduction. Thanks also to you and to Gerry Laporte and his staff in the Office for Small Business Policy for organizing this Forum and assembling such a fantastic panel of folks to talk through the critical issues that face small businesses in trying to raise capital. Most importantly, I want to thank our panelists for giving their time today to lend their insights into these issues.

This is only my eighth day on the job, and I am incredibly excited to take on my new role as a Commissioner of the Securities and Exchange Commission. I am happy to tell Gerry that, in all my time as a Commissioner, this is the best event that I have ever attended.

At the risk of sounding pedantic, I think it is worth noting up front the Commission's mission: to protect investors, ensure fair, orderly and transparent markets and promote capital formation. As the world economy continues to struggle to emerge from the doldrums of the last three years, and as U.S. regulators work to implement the Congressional response to the financial crisis of 2008 embodied in the Dodd-Frank Act, the Commission faces important questions about how to balance the sometimes competing priorities of investor protection and capital formation.

So I cannot think of a more timely opportunity to discuss these issues than at today's Forum, which brings together this group of owners, executives, advisers, investors and advocates for small businesses. Small businesses are truly the lifeblood of the American economy, yet they face a number of challenges in raising capital that may not be shared by their larger counterparts.

I know I am not the first person to recognize and I doubt that I am even the first person at this Forum today to state that, if the American economy is to become vibrant once again, small business must be the driver that creates the jobs and economic growth that will lead the way.

A few brief statistics back this up. According to sources cited by the Small Business Administration, small firms—generally, firms having fewer than 500 employees:

- Employ about half of all U.S. private sector employees;
- Pay 43% of total U.S. private payroll;
- Have generated 65% of net new U.S. jobs over the past 17 years; and
- Create more than half of the U.S. private gross domestic product.

If small businesses are to fulfill their role as the engines of economic and job growth, however, all regulators—and not least the SEC—must give them sufficient flexibility to

raise capital, operate their businesses, innovate, take risks and otherwise take advantage of opportunities as they arise in the economy. This imperative is particularly true in light of the competition for capital and customers from international firms in places like India and China, which face far less restrictive regulations.

It is widely believed that the increased costs of being public as a result of the Sarbanes-Oxley Act and the Dodd-Frank Act have made it less attractive for smaller and growth-stage companies in the United States to be public, resulting in fewer IPOs and more companies considering going private. Some of these costs, like the unanticipated high costs associated with the auditor attestation requirements of Section 404(b) of the Sarbanes-Oxley Act, are so significant and readily traced to a particular regulation that they attract significant attention, which fortunately can provide the impetus for some regulatory relief.

Others, however, are more incremental and less susceptible to easy measurement. Nevertheless, in part because the accumulation of a number of small requirements can ultimately result in meaningful burdens, these requirements can be just as costly to companies and, as a result, can have nearly as significant an effect on the willingness of companies to undertake a public offering. Some good examples of these requirements are the ever-expanding federally-mandated corporate governance requirements—such as director, audit committee and compensation committee independence requirements and mandated say-on-pay votes—as well as required disclosures of information that has little practical usefulness to real investors.

These costs and burdens can be difficult for any public company to bear, but clearly small companies, with their more limited human and financial legal resources, are often disproportionately affected.

For many of the rulemakings required by Dodd-Frank, the Commission may have little discretion. As we continue to implement the requirements of the Dodd-Frank Act, we should be very cognizant of the risks of chasing IPO candidates into private or offshore capital-raising transactions and look for opportunities to minimize burdens of being public, while remaining true to our mission of protecting investors. In addition to existing statutory requirements to consider the costs and benefits of our rules, some of the provisions of Dodd-Frank specifically charge the Commission with considering whether the required rules would have a disproportionate effect on smaller companies, and grant the Commission explicit authority to exempt smaller issuers. Furthermore, the Commission should use its general exemptive authority under the Exchange Act where appropriate.

It would be easy to minimize the consequences of smaller and emerging companies choosing not to undertake public offerings in the United States. Like the “dog that didn’t bark,” however, the economic significance of companies systematically deciding to defer IPOs, to forego U.S. IPOs altogether in favor of raising capital in private transactions or in foreign markets, and of venture capitalists seeking “M&A” exits rather than public offering exits from early-stage investments, should not be ignored.

To the extent that regulations tend to push issuers and investors away from U.S. public offerings:

- Ordinary American investors will have fewer opportunities to seek higher returns by investing in growth stage companies;
- Issuers raising capital, and early round investors seeking an exit, will receive less for shares sold in private transactions because private investors are not willing to pay as much for illiquid investments. This lower return on investment, in turn, dissuades entrepreneurs and investors from pursuing these ventures in the first place, depriving our economy of entrepreneurship and innovation; and
- Investors in these private transactions will be deprived of many of the protections afforded by the Commission's robust disclosure and other rules.

Furthermore, just as we should avoid chasing issuers away from the U.S. public markets, we must also be careful not to insert ourselves into private transactions in inappropriate ways that hinder, discourage or penalize private deals. Private transactions can be a particularly important financing tool for smaller and growth-stage businesses that have not yet tapped the public markets. Clearly, private transactions can provide a number of benefits for both issuers and investors—in particular the ability to close a deal quickly and to agree upon whatever terms the parties deem most appropriate under the circumstances.

Nevertheless, there clearly is some role for federal regulation even of private transactions. Most notably, the anti-fraud provisions of the federal securities laws have always applied to securities transactions, whether registered or not.

Indeed, as my predecessor Kathleen Casey noted, the emergence of trading platforms for shares of private companies is largely an outgrowth of the phenomenon of private, growing companies delaying going public for as long as possible, driven in part by the high cost of being public. As Commissioner Casey and others have also noted, however, while these markets provide much sought-after liquidity for private company investors, they also raise a number of questions about whether investors that purchase shares on these markets require the protections afforded by the federal securities laws.

In addition, our regulations set forth detailed criteria for private transactions to be exempt from the registration requirements of the Securities Act. These criteria are intended to limit private transactions to instances where the need for the protections of the federal securities laws and regulations is diminished, such as where investors are sophisticated or have sufficient resources to fend for themselves.

The Dodd-Frank Act restricts or requires the Commission to adopt rules that restrict private placements in some measure. These provisions include the exclusion of "bad actors" from reliance on Rule 506 under Regulation D and the elimination, for purposes of determining whether a natural person is an "accredited investor," of the value of a person's primary residence from the calculation of his or her net worth. The Commission

proposed rules relating to these provisions before I started, and I am reviewing these proposals and the public comments on these releases with great interest as I consider what rules I believe we should ultimately adopt.

In addition to carefully considering the impact of any new regulations that we adopt, we should, where appropriate, also consider whether there are existing regulations that are unduly restrictive. I am happy to say that there have been a few bright spots to point to over the last year or so in this regard.

In the Dodd-Frank Act, Congress appropriately, in my view, exempted smaller issuers from compliance with the auditor attestation requirements contained in Section 404(b) of the Sarbanes-Oxley Act. The benefits of the rule to investors simply were not worth the compliance costs.

I am also very pleased that both Congress and the Commission are considering ways to make private capital markets more robust, including consideration of:

- easing the limitation on general solicitations in the private placement exemptions;
- increasing the offering size limitations under Regulation A;
- creating an exemption from registration under the Securities Act for so-called "crowd-funding" transactions; and
- raising the 500-shareholder threshold for registration under the Exchange Act.

Certainly, these proposals raise a number of issues that we must understand and address. Nevertheless, I believe these proposals represent a strong step in the right direction. It is also notable that the Commission is considering a process for conducting retrospective reviews of our existing rules—given my background, I could list several for you off the top of my head. I hope that all of these considerations will result in improvements in securities laws and recommendations for Commission action that will help small businesses to raise capital, consistent with the Commission's mission to protect investors and facilitate capital formation.

With that, I will relinquish the microphone to Meredith to kick off the next panel discussion about Initial Public Offerings and Securities Regulation Involving Smaller Public Companies. Thanks once again to our panelists today for their contributions to this important event, and I very much look forward to seeing the recommendations that emerge from today's Forum.

REMARKS OF
SEC COMMISSIONER TROY A. PAREDES

SEC Government-Business Forum on Small Business Capital Formation

November 17, 2011

Thank you for the kind introduction. It is no surprise that this year's Forum on Small Business Capital Formation has carried on the tradition of earlier Forums in bringing together a terrific group of participants to discuss how we can best promote small business.

A great deal of gratitude is owed to all of those at the SEC—especially, Gerald Laporte—for their efforts in organizing this important event. I also want to thank our distinguished panelists.

I am pleased to have this chance to share with you some of my own thoughts on small business. The underpinning of my remarks this afternoon is this: Ensuring that small and emerging businesses can access the capital they need to start and grow is essential to spurring economic growth and to maintaining and furthering our country's competitive edge in an increasingly global marketplace.[1]

* * *

Why does small business matter so much? For me, four answers jump to mind most readily.

First, startups and maturing businesses create new jobs and opportunities for people.

Second, small business drives new innovations and technologies that lead us to work more productively; that enable us to transact more efficiently; that allow us to relieve and remedy illness and hardship; that permit us to communicate and network better with each other; and that empower us by making us more informed.

Third, in providing our economy with cutting-edge goods and services, new and smaller companies are a vital source of competitive pressure that disciplines larger enterprises to run themselves more successfully.

Fourth, small and emerging companies provide opportunities for investors to earn higher returns and to accumulate wealth—core investor goals—by expanding the investment options investors enjoy. Investors primarily invest so that they can earn income and build wealth. This means that investors need opportunities to invest, and that investors are better served when offered more choices. Small business capital formation not only

[1] The views I express here today are my own and do not necessarily reflect those of the Securities and Exchange Commission or my fellow Commissioners.

allows small businesses to start and grow, but it also affords investors an expanded mix of choices for putting their money to work. In other words, promoting small business is part and parcel of fulfilling the desire of investors to commit their financial resources to valuable investment opportunities.

In sum, small business matters so much because it fuels economic growth and improves our standard of living. As I like to put it, companies that today are household names can trace their origins to entrepreneurs and innovators of earlier periods who had the wherewithal and backing to start and grow a business.

* * *

For a new company to emerge and a small firm to take off, more is needed than an entrepreneur's ingenuity, hard work, and determination. Small business also needs capital.

Raising capital, however, can be costly in terms of out-of-pocket expenses and time and effort. Financial and other regulatory burdens can be particularly challenging for smaller companies. Indeed, by making it disproportionately costly for small business to raise capital, regulatory burdens can create barriers to entry and expansion. This is problematic. For when businesses struggle to get off the ground or grow because they cannot secure funding at a reasonable cost, the economy is deprived of their full participation in the marketplace. In other words, we all lose out when the conditions do not exist for small business to thrive.

* * *

So, what does this mean for the SEC? In my view, it means that we need to consider opportunities to alleviate regulatory demands and burdens that stifle the funding and growth of small business. It means that the Commission should press forward on refining the regulatory regime to allow issuers more flexibility to raise capital privately, and that we need to consider regulatory changes that address the risk that the regulatory regime itself unduly dissuades companies from going public and listing on U.S. exchanges.

Given this, I am pleased by the recent discussions and activity that have centered on such worthwhile ideas as:

- modernizing the prohibition on general solicitations under Regulation D so that businesses can raise funds more efficiently and at lower cost;
- increasing the shareholder threshold at which a private company is forced to report publicly;
- facilitating the use of Regulation A for offering securities;
- facilitating "crowdfunding" as a means for small business to raise capital more easily from individuals;
- allowing smaller companies more flexibility when communicating during a public offering; and

- easing the regulatory burden of being a public company so that going public becomes a more attractive option for smaller companies.

In particular, I am encouraged that several bills in Congress are headed in the direction of promoting capital formation. And I am pleased that the President has expressed his intent to "cut away the red tape that prevents too many rapidly growing startup companies from raising capital and going public."

Also of note is that, in recent weeks, a group called the IPO Task Force presented a number of detailed recommendations to the Treasury Department in a report entitled, "Rebuilding the IPO On-Ramp: Putting Emerging Companies and the Job Market Back on the Road to Growth." These thoughtful recommendations deserve careful consideration.

Still more ideas are sure to be offered. For example, I look forward to continuing to engage with the Division of Corporation Finance throughout its ongoing capital formation regulatory review and to considering input from the new SEC Advisory Committee on Small and Emerging Companies. And, of course, the recommendations that grow out of this 2011 Forum will warrant attention.

* * *

As I suggested, I very much welcome the current focus on small business capital formation. But much more needs to be done. We need action. We cannot just talk about small business capital formation; we need to take concrete steps to facilitate it. This includes turning the kinds of regulatory developments that are being considered into actual regulatory change that makes a tangible difference for small business. The Commission itself needs to advance reforms that will open up for small business more efficient, lower-cost pathways to capital. After all, facilitating capital formation is fundamental to the SEC's mission.

Thank you.

FORUM RECOMMENDATIONS[1]

Set forth below are the recommendations of the 2011 SEC Government-Business Forum on Small Business Capital Formation. These recommendations were developed in the two breakout groups of the Forum on the afternoon of November 17, 2011. After that date, the moderators of the breakout groups continued to work with their breakout group participants to refine each group's recommendations.

The final list of 25 recommendations is presented below in the order of priority established as the result of a poll of all participants in the breakout groups.[2] The priority ranking is intended to provide guidance to the SEC as to the importance and urgency the poll respondents assigned to each recommendation. The number of points secured by each recommendation in the poll is given in brackets at the end of the recommendation in the list.

Priority Rank	***Recommendation***
1	The prohibition on general solicitation and advertising should be eliminated for Rule 506 transactions and other capital raising transactions if purchasers are limited to those who are otherwise adequately protected. [152 points; avg. ranking 4.00]
2	The SEC should adopt a financial intermediary exemption that would remove from the scope of federal broker registration requirements persons who operate in a limited capacity to assist smaller issuers in raising private capital subject to investor protection safeguards. [143 points; avg. ranking 3.76]
3	The ceiling for the Regulation A exemption should be raised to $50 million, federal preemption should be established for such offerings and the Exchange Act Section 12(g) threshold should be increased to 2,500 shareholders of record. [140 points; avg. ranking 3.68]

[1] The SEC conducts the SEC Government-Business Forum on Small Business Capital Formation, but does not endorse or modify any of the recommendations of the Forum. The recommendations are solely the responsibility of the Forum participants, who were responsible for developing them. The recommendations do not necessarily reflect the views of the SEC, its Commissioners or any of the SEC's staff members.

[2] In the poll, all 82 breakout group participants who attended the Forum, either in person or by telephone conference call, were asked to respond whether the SEC should give "high," "lower" or "no" priority to each of the 25 Forum recommendations. Of the 82 participants, 38 responded, a 46% response rate. Each "high priority" response was awarded five points, each "lower priority" response was given three points, each "no priority" was given one point and each blank response was not awarded any points. The total number of points is listed following each recommendation in the list. The average priority ranking was determined for each recommendation by dividing the total number of points for a recommendation by the number of responses received (38).

Priority Rank	*Recommendation*
4	The SEC should not increase either the income or the net worth standards for "accredited investor" status, notwithstanding the requirement to study that definition under the Dodd-Frank Act. [134 points; avg. ranking 3.53]
5	Increase the maximum amount of public float in the definition of "smaller reporting company" from $75 million to $250 million. [132 points; avg. ranking 3.47]
6	The SEC should, by rule, codify the staff's no-action letters to *Country Business, Inc.* (Nov. 8, 2006) and *International Business Exchange Corp.* (Dec. 12, 1986), in a "small business sale" exemption from federal broker-dealer registration and FINRA membership, thereby clearly articulating when broker-dealer registration is not required under federal securities law. [131 points; avg. ranking 3.45]
7	Preempt state securities law regulation of all offerings under Regulation D, including offerings relying on the safe harbors provided by Rules 504 and 505. [130 points; avg. ranking 3.42]
8	Preempt state securities law regulation of Regulation A offerings, leaving the review and oversight process to the SEC. [128 points; avg. ranking 3.37]
9	Increase the asset threshold under Section 12(g) of the Securities Exchange Act of 1934, which together with the number of record holders threshold triggers an obligation to register a class of securities under such Act, from $10 million to $100 million. [126 points; avg. ranking 3.32]
10	If state law preemption is not adopted, at a minimum, mandate a centralized coordinated review of Regulation A offerings by NASAA on behalf of all relevant states. [125 points; avg. ranking 3.29]
11A	Provide an exemption from required filings of financial information in XBRL format for smaller reporting companies, but permit them to make XBRL filings if they choose to do so. [123 points; avg. ranking 3.24]
11B	In response to the study required by the Dodd-Frank Act, the exemption from the application of SOX Section 404(b) should be extended to companies with a public float of at least up to $250 million, and possibly up to $500 million. [123 points; avg. ranking 3.24]

Priority Rank	*Recommendation*
13	Provide better scaling of reporting requirements for publicly traded companies over the first five years after initially becoming a reporting company, along the lines of the recommendations made in the report of the IPO Task Force entitled "Rebuilding the IPO On-Ramp – Putting Emerging Companies and the Job Market Back on the Road to Growth." [122 points; avg. ranking 3.21]
14	The SEC should assist in the development of crowd-funding mechanisms. [120 points; avg. ranking 3.16]
15	The SEC should simplify and appropriately scale federal broker-dealer regulation of merger and acquisition ("M&A") intermediaries and business brokers ("M&A Brokers") involved in the transfer of ownership of privately owned businesses effected through purchases, sales, mergers, and business combinations and exempt them from FINRA membership requirements. [119 points; avg. ranking 3.13]
16	Permit (but do not require) filing of Offering Statements under Regulation A on EDGAR. [118 points; avg. ranking 3.11]
17	The SEC's Division of Corporation Finance and Division of Trading and Markets should immediately require that The Depository Trust Company (DTC) develop understandable rules, standards and processes with strict timeframes for applications for trading eligibility with DTC. Similar rules and standards should be adopted by DTC with respect to providing electronic book-entry transfer services for smaller public companies. [117 points; avg. ranking 3.08]
18	Accredited investors should be excluded from the calculation of the number of shareholders of record for purposes of the 500 shareholder of record threshold in Section 12(g) under the Securities Exchange Act of 1934. [112 points; avg. ranking 2.95]
19A	Expand the availability of the special public offering provisions currently applicable only to "well-known seasoned issuers" (WKSIs) to all public companies, including smaller reporting companies and foreign private issuers. This would permit such companies to, among other things: a. File a universal shelf registration statement; b. Test the waters; c. Pay as you go; and d. Use forward incorporation by reference for Form S-1 registration statements. [111 points; avg. ranking 2.92]

Priority Rank	*Recommendation*
19B	Encourage the development of a new stock "exchange" that better meets the needs of smaller public companies by bridging the gap between the OTC Bulletin Board and Nasdaq by offering more relaxed listing criteria and less stringent corporate governance rules than existing exchanges. [111 points; avg. ranking 2.92]
21	Provide incentives to encourage development of smaller underwriting firms and broker-dealers that handle smaller public company stocks, including, for example: a. Permitting the issuer's board of directors to determine the appropriate minimum spread between the bid and ask prices for the issuer's stock (referred to as "tick size"). b. Urging FINRA to ease the regulation of such firms. [110 points; avg. ranking 2.89]
22	Eliminate the 1/3 cap on the size of the offering for the use of Form S-3 for primary offerings by companies with less than $75 million in public float. [105 points; avg. ranking 2.76]
23	Eliminate the current exclusion of non-exchange traded companies from Form S-3 eligibility for primary offerings by companies with a public float of less than $75 million. [103 points; avg. ranking 2.71]
24	Direct the exchanges to amend the listing provisions relating to issuers that go public through a merger into a public shell corporation (a "reverse merger") so that, if the issuer's SEC filing made in connection with the reverse merger (whether made under the Securities Act of 1933 or the Securities Exchange Act of 1934) receives full SEC Staff review of both the financial and non-financial portions thereof, the issuer will be eligible to list its securities on the exchange immediately and will not be required to wait for up to two years until it becomes "seasoned." [102 points; avg. ranking 2.68]
25	Reduce the holding periods for the resale of restricted securities of reporting companies under Rule 144 from 6 to 3 months (with current public information) and 12 to 6 months (with no information requirement). [89 points; avg. ranking 2.34]

REGISTERED FORUM PARTICIPANTS

Mike Adhikari
Illinois Corporate Investments, Inc.
Lincolnshire, Illinois

Joan Adler
Ellenoff Grossman & Schole, LLP
New York, New York

George Adu
Securities Bureau
Department of Securities, Insurance and Banking
Washington, D.C.

Gabriela Aguero
Financial Industry Regulatory Authority
Washington, D.C.

Ammar Askari
Office of the Comptroller of the Currency
Washington, D.C.

Chad Baase
Homer, Michigan

Milton Barbarosh
Stenton Leigh Group, Inc.
Ft. Lauderdale, Florida

Charles Barkley
Attorney
Charlotte, North Carolina

Douglas Baumwall

Steven Anthony Behar
Behar Law Group, PLLC
Farmingdale, New York

Christine Bergin

Jason Best
Startup Exemption
San Francisco, California

Karla Black
Maine Office of Securities
Augusta, Maine

Elizabeth Bleakley
Kopecky, Schumacher & Bleakley, PC
Chicago, Illinois

Christian Blees

Brian Borders
Borders Law Group
Washington, D.C.

John Braden
McConnell & Jones, LLP
Houston, Texas

David Braun
Fildew Hinks, PLLC
Royal Oak, Michigan

James Brown
Brown & Associates
Cranberry Township, Pennsylvania

Seth Bryant
Bryant Burgher Jaffe, LLP
New York, New York

Russell Bulkeley
Thompson & Knight, LLP
New York, New York

James Burk
Burk & Reedy, LLP
Washington, D.C.

Eric Burns
Art Seigner Co.
Fontana, California

David Burton
National Small Business Association
Washington, D.C.

Bill Bush

Andrew Cagnetta
Transworld Business Brokers

Hugh Campbell
Newtek Business Services
New York, New York

Kevin Carlie
Stone Carlie
Saint Louis, Missouri

Brian Castro

Joe Cecala
Expansion Funding Partners
Park Ridge, Illinois

Janae Chamblee
First Business Resources, Inc.
Dallas, Texas

Karl Chen
Chen Law, PLLC
Washington, D.C.

Peter Christman
The Christman Group
Chicago, Illinois

Robert James Cimasi
Health Capital Consultants
St. Louis, Missouri

Patrick Clawson
Flint, Michigan

Christopher Cole
Independent Community Bankers of America
Washington, D.C.

Faith Colish
Carter Ledyard & Milburn, LLP
New York, New York

Kevin J. Conner
Conner & Associates, PC
Newtown, Pennsylvania

James Cornell
Praxiis Business Advisors
West Seneca, New York

Amy Cross
StillPoint Capital
Tampa, Florida

Stephen Cundari
Kiinnear Cundari Associates, LLC

Todd Cushing
EBIT Associates, Ltd.
Barrington, Illinois

Chasiti Dawson
The Adellsen Group, LLC
Alexandria, Virginia

Molly Deere
Donovan & Rainie, LLC
Baltimore, Maryland

Suzanne De Lucia
Front Range Business, Inc.
Boulder, Colorado

Ralph Donaldson
Prism Health Services
Atlanta, Georgia

Gal Dov

Jason Eaton
Arlington, Virginia

Douglas Ellenoff
Ellenoff Grossman & Schole, LLP
New York, New York

Dan Elliott
Southwest M&A, LLC
Houston, Texas

Joseph Ertel
Legacy Advisors Group
Lakeland, Florida

Mike Ertel
Legacy M&A Advisors, LLC
Tampa, Florida

Spencer Feldman
Greenberg Traurig, LLP
New York, New York

David B. Fisher
Maui Venture Consulting, LLC
Haiku, Hawaii

Rick Fleming
North American Securities
Administrators Association (NASAA)
Washington, D.C.

Graeme Frazier
Private Capital Research, LLC
Conshohocken, Pennsylvania

Richard Friedman
Sichenzia Ross Friedman Ference
Anslow, LLP
New York, New York

Deborah Froling
Real Estate Investment Securities
Association
Washington, D.C.

Lindsay Gardner
Zamia Group
Englewood, Colorado

Cathryn Gawne
Hopkins & Carley
San Jose, California

Robert Goehring
Robert W. Goehring & Associates
Pittsburgh, Pennsylvania

Hank Gracin
Gracin Marlow, LLP
Boca Raton, Florida

Giuseppe Graminga
U.S. Small Business Administration
Washington, D.C.

Derrick Grava

Brett Greene
American Management Corporation
Washington, D.C.

David Grossman
GBH CPAs, PC
Houston, Texas

Andy Guggenheim
House Committee on Small Business
Washington, D.C.

Robert Gurrola
Summa Financial Group, LLC
San Jose, California

Shane Hansen
Warner Norcross & Judd, LLP
Grand Rapids, Michigan

Timothy Harden
Krieg DeVault
Indianapolis, Indiana

Liz Heese
OTC Markets Group, Inc.
Washington, D.C.

John Henberger
Henberger Group, Inc.
Encinitas, California

Eric Hess
OTCCM
Jersey City, New Jersey

Martin A. Hewitt
East Brunswick, New Jersey

Edgar Hidalgo
Reed Smith
Washington, D.C.

Jay Honeycutt
TimeSlicer, Inc.
Ponte Vedra, Florida

Nancy Horton

Amy Hughes
Burch & Company, Inc.
Kansas City, Missouri

David Hunt
THLC
Salt Lake City, Utah

John Huntz
Arcapita
Atlanta, Georgia

Bryan Jacobs
Keating Muething & Klekamp
Cincinnati, Ohio

June Jimenez
American Management Corporation
Washington, D.C.

John Johnson
BluestemUSA

Mark Jones
Super Rush DPO, dba Ecinema Networks, Inc.
Seffner, Florida

Francis Keenan
The THOR Group

James Kendrick
Independent Community Bankers of America
Washington, D.C.

Harvey J. Kesner
Sichenzia Ross Friedman Ference Anslow, LLP
New York, New York

Brian Knight
CBI
Manchester Center, Vermont

Raymond Kolak
Eckhart Kolak, LLC
Chicago, Illinois

Len Krick
Sunbelt Business Brokers of Las Vegas, Inc.
Las Vegas, Nevada

Cynthia Krus
Sutherland Asbill & Brennan, LLP
Washington, D.C.

Michele Kulerman
Skadden, Arps, Slate, Meagher & Flom LLP
Washington, D.C.

Ford Ladd
DiMuroGinsberg, PC
Alexandria, Virginia

David Laeha
CFO Hawaii, LLC
Honolulu, Hawaii

Garit Lawson

Richard Levin
Baker & Hostetler, LLP
Denver, Colorado

Lee Liebolt, Attorney
New York, New York

David Lopez
Spartan Securities Group
St. Petersburg, Florida

John Lux
Dunedin, Florida

Andrew MacInnes
Oppenheimer & Co.
New York, New York

Marita Makinen
Society of Corporate Secretaries and Governance Professionals
New York, New York

Gene Massey
MediaShares.com
Los Angeles, California

Brenda Maxwell
University of West Georgia
Carrollton, Georgia

J. Mike McManus
D.C. Department of Insurance, Securities & Banking
Washington, D.C.

Theodore Miles
D.C. Department of Insurance, Securities & Banking
Washington, D.C.

Vincent Molinari
Gate Technologies, LLC
New York, New York

Michael Muellerleile
M2 Law, PC
Newport Beach, California

A. John Murphy
Wickersham & Murphy
Palo Alto, California

Scott Museles
Shulman, Rogers, Gandal, Pordy & Ecker, PA
Potomac, Maryland

Michael Nall
Alliance of M&A Advisors
Chicago, Illinois

Sherwood Neiss
The Startup Exemption
Miami Beach, Florida

Lisa Newport
Grant Thornton, LLP
Washington, D.C.

R. Nick Niehoff
United States OTC Markets, Inc.
Pelham Manor, New York

Maureen O'Brien

Harry Pangas
Sutherland, Asbill & Brennan, LLP
Washington, D.C.

Phoebe Papageorgiou
American Bankers Association

Gary Papay
CK Business Consultants, Inc.
Hughesville, Pennsylvania

Jessica Pastorino
Burch & Company, Inc.
Kansas City, Missouri

Gerard Peregrin
The Peregrin Foundation
Santa Cruz, California

David Perkins
Tulsa, Oklahoma

Peggy Peterson
Baker & Hostetler, LLP
Washington, D.C.

Diana Preston
American Bankers Association
Washington, D.C.

Derric Price
A.F.R.O. Organization
Chicago, Illinois

Kenneth Priore
Katovich and Kassen
San Francisco, California

Linda J. Purcell
Purcell Associates, LLC
Palatine, Illinois

Lynn Rasmussen
Icanology, LLC
Makawao, Hawaii

Alfred Reeves
Convergent Securities
Hallandale, Florida

Mark Reuter
Keating Muething & Klekamp
Cincinnati, Ohio

Jill Arlene Robbins
Jill Arlene Robbins, P.A.
Surfside, Florida

Richard Rodriguez
Washington, D.C.

John Romano
International Open Finance
Association, Inc.
Miami, Florida

Brad Rush
Ascensic, PLC
Lansdowne, Virginia

Len Russek
Murphy M&A
Clearwater, Florida

Michael Sauvante
Commonwealth Group
Austintown, Ohio

Josh Scheinfeld

Steven Sharpe
Federal Reserve Board
Washington, D.C.

Carl Sherrill
Sherrill & Co.
Temecula, California

Michael Shuman
Cutting Edge Capital
Silver Spring, Maryland

Richard Sin
M2 Law

Lori Smith
White and Williams
New York, New York

Darold Stagner
ClearMarket Advisors
Overland Park, Kansas

Tony Stanco
National Council of Entrepreneurial Tech Transfer
Washington, D.C.

Eric Stein
Anslow & Jaclin, LLP
Manalapan, New Jersey

Robert Stevens
Technology Partners
Denver, Colorado

Edward Stillman
Southern Business Brokers, LLC
Miami, Florida

Donald Stoecklein
Stoecklein Law Group
San Diego, California

Deborah Stoecklein
Stoecklein Law Group
San Diego, California

Robert Suderman
Tower Brokerage Services, Inc.
Lawrence, Kansas

Steven Uslaner
Littman Krooks
New York, New York

Mike Vasilios
OTC Markets Group

Daniel Viola
Sadis & Goldberg, LLP
New York, New York

Michele Vonderbrink
StillPoint Capital
Tampa, Florida

Ann Yvonne Walker
ABA Federal Regulation of Securities Committee
c/o Wilson Sonsini Goodrich & Rosati
Palo Alto, California

Jerry Warren
McAfee & Taft, PC
Oklahoma City, Oklahoma

Lee Weiss

Brian Wendler
National Business Valuation Services

Jillien Williams
Porterfield & Lowenthal, LLC

Robert Winterlet
Ardmore, Pennsylvania

Tim Witt
Michigan

Mark Wood

Gregory Yadley
Shumaker, Loop & Kendrick, LLP
Tampa, Florida

Thomas Yang
Bank of America Merrill Lynch
New York, New York