

THIRTY-FOURTH ANNUAL

SEC Government-Business

FORUM

ON
**Small Business
Capital Formation**

Final Report



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Washington, DC

2015 SEC Government-Business Forum on
Small Business Capital Formation

FINAL REPORT

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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.

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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 2015 Forum, the 34th, was convened at the SEC’s headquarters at 100 F Street, N.E., Washington, D.C., on Thursday, November 19, 2015. The program included both panel discussions and breakout groups.

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 (part of 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 2015 Forum. The individuals who participated in planning the Forum, and their professional affiliations, are listed on pages 4 through 6.

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 2015 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. The SEC issued two press releases to inform the public about the time, date and location of the Forum.

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 morning panel discussions were accessible through a live webcast on the SEC's website. A written transcript of the panel discussions and other morning proceedings has been posted on the SEC website. Links to the webcast and written transcript are set forth below under the section "Records of Proceedings and Previous Forum Materials." The afternoon breakout group sessions were not webcast, but were accessible by telephone conference call to pre-registered participants.

Approximately 200 attendees were physically present for the Forum proceedings in Washington, plus 16 panelists and moderators, including SEC Commissioners and SEC staff.

Proceedings

The agenda for the 2015 Forum is reprinted starting on page 8. Remarks of all four SEC Commissioners were delivered at the Forum's morning proceedings. The remarks of all of the Commissioners are reproduced starting on page 10. After the remarks of the SEC Commissioners, panel discussions were conducted on exempt offerings—post JOBS Act implementation and on registered offerings—post JOBS Act implementation. Both panels were moderated by Keith Higgins and Sebastian Gomez Abero.

The afternoon proceedings included breakout group meetings open to all pre-registered participants, who took part either in person or by telephone conference call. Three breakout groups met: one on exempt securities offerings, which was moderated by Gregory C. Yadley; a second on smaller reporting companies, which was moderated by Spencer G. Feldman; and a third on the Commission's proposed amendments to Rules 147/504, which was moderated by Sara Hanks.

Each breakout group was asked to formulate no more than five recommendations, in no specific order of priority, in order to arrive at a consensus of recommendations.² Any recommendations in excess of the five recommendations were noted when the moderators of the three breakout groups presented their respective group's recommendations at a final assembly of all the Forum participants as the last matter of business on November 19, 2015. The SEC staff also recorded any recommendations over the breakout group's five recommendation limit in order to present them at next year's Forum afternoon breakout groups for additional consideration. After the Forum, the moderators of the three breakout groups continued to work with their group participants to refine each group's recommendations. Each breakout group then submitted its final draft of five recommendations to the SEC staff from these discussions, resulting in a list of 15 recommendations that was circulated by e-mail to all participants in the three breakout groups in the form of an electronic ballot, asking them to specify whether, in their view, the SEC should give high, medium, low or no priority to each

² The exempt securities offerings breakout group was the only breakout group that formulated recommendations over the five recommendation limit. This breakout group formulated two additional recommendations.

recommendation. This poll resulted in the prioritized list of 15 recommendations presented starting on page 22.

Records of Proceedings and Previous Forum Materials

A video recording of the Forum's morning proceedings, including the two panel discussions, is available on the SEC's website at http://www.sec.gov/video/webcast-archive-player.shtml?document_id=gbforum111915. A transcript of the morning proceedings is available on the SEC's website at <https://www.sec.gov/info/smallbus/sbforum111915-record-proceedings.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/sbforum119015-program.pdf>.

The final reports and other materials relating to previous Forums, dating back to 1993, may be found on the SEC's website at <http://www.sec.gov/info/smallbus/sbforum.shtml>.

PLANNING GROUP

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AGENDA

2015 SEC Government-Business Forum on Small Business Capital Formation
Washington, D.C.
November 19, 2015

9:00 a.m. Call to Order
Sebastian Gomez Abero, Chief, Office of Small Business Policy, SEC Division of Corporation Finance

Introductions of Chair and Commissioners
Keith F. Higgins, Director, SEC Division of Corporation Finance

Remarks
SEC Chair Mary Jo White
SEC Commissioner Luis A. Aguilar
SEC Commissioner Kara M. Stein
SEC Commissioner Michael S. Piwowar

9:50 a.m. Panel Discussion: Exempt Offerings—Post JOBS Act Implementation

Moderators:

Keith F. Higgins, Director, SEC Division of Corporation Finance
Sebastian Gomez Abero, Chief, Office of Small Business Policy, SEC Division of Corporation Finance

Panelists:

Vladimir Ivanov, Senior Financial Economist, SEC Division of Economic and Risk Analysis
Sara Hanks, Co-Founder and CEO at CrowdCheck, Alexandria, Virginia
Anya Coverman, Deputy Director of Policy, North American Securities Administrators Association
Kevin Laws, Chief Operating Officer, AngelList
Chris Weekes, Managing Director, Capital Markets, Cowen and Co.
Rick A. Fleming, Investor Advocate, SEC Office of the Investor Advocate

11:20 a.m. Break

11:30 a.m. Panel Discussion: Registered Offerings—Post JOBS Act Implementation

Moderators:

Keith F. Higgins, Director, SEC Division of Corporation Finance
Sebastian Gomez Abero, Chief, Office of Small Business Policy, SEC Division of

Corporation Finance

Panelists:

Spencer G. Feldman, Olshan Frome Wolosky, LLP, New York, New York
William D. Waddill, Senior Vice President and Chief Financial Officer, Calithera Biosciences, Inc.
Prof. Michael D. Guttentag, Loyola Law School, Los Angeles, California

12:30 pm. Lunch Break

2:00 p.m. Breakout Group Meetings to Develop Recommendations

▶ **Exempt Securities Offerings Breakout Group**

Moderator:

Gregory C. Yadley, Partner, Shumaker, Loop & Kendrick, LLP,
Tampa, Florida

▶ **Smaller Reporting Companies Breakout Group**

Moderator:

Spencer G. Feldman, Olshan Frome Wolosky, LLP, New York, New York

▶ **Proposed Amendments to Rules 147/504 Breakout Group**

Moderator:

Sara Hanks, Co-Founder and CEO at CrowdCheck, Alexandria, Virginia

3:15 p.m. Break

3:30 p.m. Breakout Group Meetings to Develop Recommendations (continued)

5:00 p.m. Plenary Session to Develop Next Steps

Moderators:

Sebastian Gomez Abero, Chief, Office of Small Business Policy, SEC Division of Corporation Finance
Gregory C. Yadley, Partner, Shumaker, Loop & Kendrick, LLP,
Tampa, Florida

5:30 p.m. Networking Reception

OPENING REMARKS OF SEC CHAIR MARY JO WHITE

SEC Government-Business Forum on Small Business Capital Formation
November 19, 2015

Thank you, Keith and Sebastian.

This is our 34th annual Government-Business Forum on Small Business Capital Formation—the latest in a remarkable series of open and direct discussions that have given the Commission critical insight into the impact of our rules on small businesses and on their efforts to raise capital. This Forum can be counted on to be another frank and productive conversation, and we welcome all of your perspectives as leaders of the small business community.

The Commission has been quite busy over the last year advancing initiatives aimed at facilitating capital formation for small and emerging companies. I want to highlight those efforts today, many of which were discussed and the subject of recommendations in past Forums. I will then step back to provide a few brief observations on what we are seeing so far in the markets already impacted by the regulatory changes of the last few years.

A Changing Regulatory Landscape for Small Businesses

Let me begin with our work in connection with the JOBS Act. Most recently, the Commission finalized rules last month to permit startups and small businesses to raise capital by offering and selling securities through crowdfunding. There has been keen interest in these much-anticipated rules, and the Commission and its staff worked very hard to simultaneously meet the statutory requirements of the JOBS Act, make the rules workable for businesses, and protect investors in this new market. The rules will be effective next May, and we will be closely monitoring how well they work.

In addition, in March, the Commission approved final rules increasing the offering ceiling and modernizing the Regulation A exemption, which we call Regulation A+. These rules became effective in June, and we have already begun to see a number of offerings using the exemption. Here too, we will be keenly focused on the operation of the rules, and I hope to see small businesses putting Regulation A+ to good use.

Finally, building on the study on decimalization required by the JOBS Act, the Commission approved a proposal by the national securities exchanges and the Financial Industry Regulatory Authority, submitted in response to a Commission order, for a two-year pilot program that would widen the minimum quoting and trading increments—the tick sizes—for stocks of smaller companies. To allow market participants to coordinate the complicated changes required to implement the pilot, the likely start date for the pilot was recently adjusted to October 3, 2016. We are anxious to receive the data produced by the pilot.

These efforts have marked the end of our major work under the JOBS Act, and we have sought to refocus on using our own discretion to further enhance the ability of small businesses

to raise capital. Most significantly, the Commission recently approved a proposal to modernize our Rule 147 for intrastate offerings and to amend the exemption in Rule 504 of Regulation D to raise the permitted threshold to \$5 million. We look forward to hearing your comments on these proposals and how they might facilitate capital formation by smaller companies.

A Few Observations on the Impact of Recent Regulatory Changes

While it is obviously too soon to assess the impact of these recent actions, the Commission staff has been closely following the effects of regulatory changes where we now have a somewhat longer track record. One example is the Commission's implementation of the statutory mandate to change Rule 506 of Regulation D, a safe harbor for private offerings that prohibited general solicitation and advertising to the public. In 2013, as directed by Congress, the SEC lifted the ban on general solicitation for certain Rule 506 offerings, provided that all purchasers are "accredited investors" and that issuers take reasonable steps to verify that status. At the same time, the Commission adopted rules to disqualify bad actors from participating in Rule 506 offerings and proposed rules to enhance our ability to collect information on such offerings.

So what have we seen? The staff has been following the market and making its results public, most recently last month. They have observed that issuers are using the new rule to raise capital, but at a significantly lower rate than issuers using the traditional avenue that does not permit general solicitation. They have also not observed widespread fraud, as some had feared would occur, but we have received tips and complaints and we have some investigations open.

Another example of regulatory change under the JOBS Act was the creation of "emerging growth companies" and an "on-ramp" for initial public offerings. Since then, we have observed some 1,000 emerging growth companies take advantage of that process and confidentially submit draft registration statements for IPOs. EGCs represent about 85% of the IPOs since passage of the JOBS Act. The staff processes these registration statements the same way they do others, and generally the staff believes that compliance has been on par with non-EGC registration statements.

* * *

With all of these changes, investors and companies alike have new choices for both registered and unregistered offerings, and today's discussions will focus on the new options. As we work to implement and monitor these changes—and consider potential new initiatives—we are focused on how we can best maintain investor protection and the integrity of the markets, while also improving the ability of small businesses to access them in order to grow and drive job creation and economic growth. I would ask that your recommendations today take into account the investor protections that are so fundamental to market confidence and success.

Let me close by thanking all of the panelists, moderators, and participants in today's program. I also want to commend the staff of the Division of Corporation Finance for their work in organizing today's Forum, as well as the Office of the Investor Advocate, our Division of Economic and Risk Analysis and the Division of Trading and Markets for their contributions.

Thank you again for your time and efforts today. The staff, my fellow Commissioners, and I highly value and look forward to your input.

**REMARKS OF
SEC COMMISSIONER LUIS A. AGUILAR
“The Continuing Work of Enhancing Small Business Capital Formation”³**

SEC Government-Business Forum on Small Business Capital Formation
November 19, 2015

Thank you and good morning. Let me start by extending a warm welcome to the panel members and other participants, including those viewing by webcast, to today’s Government-Business Forum on Small Business Capital Formation. I look forward to your discussions. I also want to thank the staff of the Division of Corporation Finance and, of course, the Division’s Office of Small Business Policy for organizing today’s Forum.

As everyone participating in today’s Forum knows well, our nation’s small businesses⁴ spur innovation, produce technological change, and drive job creation across the greater economy.⁵ In fact, from mid-2009—or what some pinpoint as the end of the “Great Recession”—to mid-2013, small businesses accounted for approximately 60% of net new jobs.⁶ More recently, statistics compiled through the first three quarters of 2014 show that our nation’s 28 million small business owners have been responsible for an even greater share of overall job creation, accounting for between 73% and 84% of net new jobs during that period.⁷ There can be no doubt that facilitating an environment that nurtures and breeds successful startups and small companies is critical to the health of our greater economy.

The SEC’s annual Government-Business Forum on Small Business Capital Formation recognizes this fact, and once again brings participants together to discuss how regulatory regimes may impact or facilitate the growth of small and emerging companies. After all, small

³ The views expressed are my own, and do not necessarily reflect the views of the U.S. Securities and Exchange Commission (“SEC” or “Commission”), my fellow Commissioners, or members of the Commission staff.

⁴ For these purposes, small businesses are defined as those independent businesses with fewer than 500 employees. See U.S. Small Business Administration Office of Advocacy, *Frequently Asked Questions* (March 2014), available at http://www.sba.gov/sites/default/files/advocacy/FAQ_March_2014_0.pdf

⁵ See U.S. Small Business Administration, *Strategic Plan: Fiscal Years 2014-2018*, at 4, available at https://www.sba.gov/sites/default/files/aboutsbaarticle/SBA_FY2014-2018_Strategic_Plan_final_update.pdf.

⁶ See U.S. Small Business Administration Office of Advocacy, Small Business Finance, *Frequently Asked Questions* (Feb. 2014), available at http://www.sba.gov/sites/default/files/advocacy/FAQ_March_2014_0.pdf. (Note: these SBA statistics run from mid-2009 to mid-2013.) The statistics show that small firms were responsible for 63% of net new jobs created between 1993 and mid-2013, or more than 14 million of the nearly 23 million net new jobs created during this period. See *id.*

⁷ See U.S. Small Business Administration Office of Advocacy, Small Business Bulletin, *Small Business Market Update, June 2015*, available at https://www.sba.gov/sites/default/files/Small_business_bulletin_June_2015.pdf (pointing to BLS Business Employment Dynamics statistics (73%) and U.S. Small Business Administration Office of Advocacy calculations (84%)).

businesses need ready access to capital to grow and flourish.⁸ To that end, small businesses continue to rely heavily on owner investment (including loans from “friends and family”) and traditional bank credit for their financing needs.⁹ However, sometimes this traditional financing is not enough, or is not available, to help small companies make ends meet or expand their businesses. As a result, the Commission has used its statutory authority over the years to adopt rules to help small businesses raise money by issuing securities to both public and private investors. Indeed, as today’s agenda highlights, since the passage of the Jumpstart Our Business Startups Act (“JOBS Act”), the SEC has implemented multiple rulemakings intended to facilitate the ability of small businesses to access the capital markets and some of our efforts go beyond what the JOBS Act mandated. For example:

- Less than three weeks ago, the Commission adopted rules permitting small businesses to raise capital from investors in Crowdfunding transactions. Under these rules, qualifying Crowdfunding transactions will provide an exemption from federal registration for internet-based offerings of up to \$1 million in a 12-month period;¹⁰
- On the same day the Commission adopted the Crowdfunding rules, the agency also proposed various amendments to the intrastate transaction safe harbor under Rule 147 and to Rule 504 of Regulation D. These proposed amendments aim to revitalize Rule 147 and Rule 504 securities offerings by increasing their efficiency and usefulness for small businesses;¹¹
- Earlier this year, the Commission adopted rule amendments to Regulation A (known as “Regulation A-plus”), which permits companies to raise up to \$50 million in any 12-month period without requiring registration under the Securities Act, provided certain requirements are met;¹² and
- In July 2013, the Commission adopted final rules amending Rule 506 of Regulation D, to remove the prohibition against general solicitation and advertising, provided that all

⁸ See U.S. Small Business Administration, *Strategic Plan: Fiscal Years 2014-2018*, at 5, available at https://www.sba.gov/sites/default/files/aboutsbaarticle/SBA_FY2014-2018_Strategic_Plan_final_update.pdf.

⁹ See U.S. Small Business Administration Office of Advocacy, Small Business Finance, *Frequently Asked Questions* (Feb. 2014), available at https://www.sba.gov/sites/default/files/2014_Finance_FAQ.pdf.

¹⁰ See *Crowdfunding*, Release No. 34-76324 (Oct. 30, 2015), available at <http://www.sec.gov/rules/final/2015/33-9974.pdf>.

¹¹ See *Exemptions to Facilitate Intrastate and Regional Securities Offerings*, Release No. 34-76319 (Oct. 30, 2015), available at <http://www.sec.gov/rules/proposed/2015/33-9973.pdf>.

¹² See *Amendments for Small and Additional Issues Exemptions under the Securities Act (Regulation A)*, Release No. 33-9741 (Mar. 25, 2015), available at <http://www.sec.gov/rules/final/2015/33-9741.pdf>.

purchasers are accredited investors, and also proposed additional amendments to enhance investor protections.¹³

Together, these Commission rulemakings are intended to form a tapestry of options for small businesses to obtain financing from investors in our capital markets. However, these rulemakings alone are not a panacea for the financing challenges faced by small and emerging companies. As I have mentioned on other occasions, a vibrant capital formation process requires a vibrant secondary market for the securities of smaller businesses.¹⁴ For investors to make money, buying the securities is just the first step. They also need to be able to sell them.

The long-existing problems in the secondary market for small company securities are well known.¹⁵ With the new and expanded exemptive regimes, they are likely to get worse as more unregistered and unlisted companies will find themselves with a larger number of shareholders than ever before. Moreover, these shareholders will need to find liquidity in the secondary markets—markets which as of now are less fair, less liquid, and less transparent than the

¹³ See *Eliminating the Prohibition Against General Solicitation and General Advertising in Rule 506 and Rule 144A Offerings*, Release No. 33-9415 (July 10, 2013), available at <http://www.sec.gov/rules/final/2013/33-9415.pdf>. At that same time, the Commission proposed various rules to further amend Rule 506 to address concerns about the impact of general solicitation that were raised by numerous commenters. I urge the Commission to adopt some form of these rules as soon as practicable. See *Amendments to Regulation D, Form D and Rule 156*, SEC Release No. 33-9416 (July 10, 2013), available at <http://www.sec.gov/rules/proposed/2013/33-9416.pdf>. Among other things, these amendments proposed (i) requiring the filing of a Form D in Rule 506(c) offerings before the issuer engages in general solicitation; (ii) requiring the filing of a closing amendment to Form D after the termination of any Rule 506 offering; (iii) requiring written general solicitation materials used in Rule 506(c) offerings to include certain legends and other disclosures; and (iv) requiring the submission, on a temporary basis, of written general solicitation materials used in Rule 506(c) offerings to the Commission.

¹⁴ See, e.g., Commissioner Luis A. Aguilar, *Making Capital Formation Work for Smaller Companies and Investors* (Oct. 30, 2015), available at http://www.sec.gov/news/statement/aguilar-regulation-crowdfunding-147-504.html#_ednref4; Commissioner Luis A. Aguilar, *The Need for Greater Secondary Market Liquidity for Small Businesses* (Mar. 4, 2015), available at <http://www.sec.gov/news/statement/need-for-greater-secondary-market-liquidity-for-small-businesses.html>; Commissioner Luis A. Aguilar, *Setting Forth Goals for 2015: Address to Practising Law Institute's SEC Speaks in 2015 Program* (Feb. 20, 2015), available at <http://www.sec.gov/news/speech/022015-spchclaa.html>; Commissioner Luis A. Aguilar, *The Importance of Small Business Capital Formation* (Nov. 20, 2014), available at <http://www.sec.gov/News/PublicStmt/Detail/PublicStmt/1370543532516>; Commissioner Luis A. Aguilar, *Promoting Investor Protection in Small Business Capital Formation* (Dec. 18, 2013), available at <http://www.sec.gov/News/PublicStmt/Detail/PublicStmt/1370542557949>.

¹⁵ See U.S. Securities and Exchange Commission Advisory Committee on Small and Emerging Companies, *Recommendation Regarding Separate U.S. Equity Market for Securities of Small and Emerging Companies* (Feb. 1, 2013), available at <http://www.sec.gov/info/smallbus/acsec/acsec-recommendation-032113-emerg-co-ltr.pdf> (stating that “[t]he Committee believes that current U.S. equity markets often fail to offer a satisfactory trading venue for the securities of small and emerging companies because they fail to provide sufficient liquidity for such securities and because the listing requirements are too onerous for such companies.”) See also *Crowdfunding*, Release No. 34-76324, at 352 (Oct. 30, 2015), available at <http://www.sec.gov/rules/final/2015/33-9974.pdf> (directing the Commission staff review the development of secondary market trading in these securities during the study it plans to undertake within three years following the effective date of Regulation Crowdfunding.)

secondary markets for listed securities.¹⁶ Ultimately, if investors in these companies are unable to transfer their shares in an active secondary market, then small business issuers may find less appetite from investors for future offerings.

Accordingly, this is an issue that requires a solution before the capital market for smaller companies is adversely impacted and should be part of any discussion on what to do in a post-JOBS Act world. In that vein, I would like to offer some questions that I hope will be considered today, and in future discussions, concerning small business capital formation:

- I have previously suggested that reforming Rule 15c2-11—commonly referred to as the broker-dealer “piggyback” exception—would enhance the integrity of market quotations for small business securities, and thereby lend an assist to the secondary market for these securities.¹⁷ Would such reforms be enough to address abuses in the microcap securities market sector and facilitate trading in such securities, or are other reforms also necessary?
- In addition, as I have suggested before, finding a path for smaller company securities to gain access to the Depository Trust Company’s services and for improving the regulation of transfer agents with respect to such securities could enhance the capital formation eco-system for these companies.¹⁸ If so, how could these goals best be accomplished?

There are, of course, other aspects of the eco-system for the offering of the securities of smaller companies that warrant attention. For example, developments in the investment banking

¹⁶ See, e.g., Commissioner Luis A. Aguilar, *Making Capital Formation Work for Smaller Companies and Investors* (Oct. 30, 2015), available at http://www.sec.gov/news/statement/aguilar-regulation-crowdfunding-147-504.html#_ednref4; Commissioner Luis A. Aguilar, *The Need for Greater Secondary Market Liquidity for Small Businesses* (Mar. 4, 2015), available at <http://www.sec.gov/news/statement/need-for-greater-secondary-market-liquidity-for-small-businesses.html>; Commissioner Luis A. Aguilar, *Setting Forth Goals for 2015: Address to Practising Law Institute’s SEC Speaks in 2015 Program* (Feb. 20, 2015), available at <http://www.sec.gov/news/speech/022015-spchclaa.html>; Commissioner Luis A. Aguilar, *The Importance of Small Business Capital Formation* (Nov. 20, 2014), available at <http://www.sec.gov/News/PublicStmnt/Detail/PublicStmnt/1370543532516>; Commissioner Luis A. Aguilar, *Promoting Investor Protection in Small Business Capital Formation* (Dec. 18, 2013), available at <http://www.sec.gov/News/PublicStmnt/Detail/PublicStmnt/1370542557949>.

¹⁷ See Commissioner Luis A. Aguilar, *Making Capital Formation Work for Smaller Companies and Investors* (Oct. 30, 2015), available at http://www.sec.gov/news/statement/aguilar-regulation-crowdfunding-147-504.html#_ednref4; Commissioner Luis A. Aguilar, *The Need for Greater Secondary Market Liquidity for Small Businesses* (Mar. 4, 2015), available at <http://www.sec.gov/news/statement/need-for-greater-secondary-market-liquidity-for-small-businesses.html>.

¹⁸ See Commissioner Luis A. Aguilar, *Making Capital Formation Work for Smaller Companies and Investors* (Oct. 30, 2015), available at http://www.sec.gov/news/statement/aguilar-regulation-crowdfunding-147-504.html#_ednref4; Commissioner Luis A. Aguilar, *The Importance to the Capital Markets of Updating the Rules Regarding Transfer Agents* (Dec. 17, 2014), available at <http://www.sec.gov/news/statement/spch121714-2laa.html>. See also Commissioners Luis A. Aguilar and Daniel M. Gallagher, *Statement Regarding the Need to Modernize the Commission’s Transfer Agent Rules* (June 11, 2015), available at <http://www.sec.gov/news/statement/modernize-sec-transfer-agent-rules.html>.

industry have resulted in fewer investment banks focused on underwriting smaller offerings.¹⁹ Accordingly, what can be done to sufficiently incentivize investment banks to participate in these offerings, such as Regulation A-plus offerings? In essence, what are feasible and cost-efficient ways to encourage investment banks to underwrite more of these deals?²⁰

Of course, in thinking through the best ways to facilitate capital formation for small businesses, the challenge is to develop processes that enable businesses to raise capital efficiently while also, importantly, providing for ways to benefit and protect investors and the markets generally.

The path to successful capital formation for small businesses must lead through an investment environment that works for both issuers and investors.

Thank you.

¹⁹ See Matt Egan, *America's stock market is shrinking*, CNNMoney (July 9, 2015), available at <http://money.cnn.com/2015/07/09/investing/stock-market-shrinking/> (noting that Regulation ATS “ushered in the widespread use of electronic markets in the U.S., making trading far more efficient and cheaper for everyday investors. ... [but] it also made it less profitable for the small investment banks, many of which no longer exist.”). In addition, many small investment banks are focused on providing merger and acquisition advice. See, Ed Hammond and Daniel Schäfer, *Small proves beautiful at boutique banks*, Financial Times (Mar. 16, 2014), available at <http://www.ft.com/intl/cms/s/0/020df240-a7bd-11e3-9c7d-00144feab7de.html#axzz3rT0itzL0> (describing a “growing band of independent investment banks taking a share of the US merger and acquisition fee pool, once the preserve of Wall Street’s largest financial institutions.”); *Trading places: After decades of consolidation, Wall Street is fragmenting*, The Economist (Dec. 6, 2014), available at <http://www.economist.com/news/finance-and-economics/21635485-after-decades-consolidation-wall-street-fragmenting-trading-places> (describing that “[s]o-called ‘boutique’ investment banks have gained a much larger share of the lucrative business of advising on mergers and acquisitions (M&A) since the financial crisis [] and are gaining other footholds. Their flourishing has put paid to the belief that consolidation was inevitable as one institution after another was crushed or absorbed by bigger rivals.”).

²⁰ See Tom Zanki, *Reg A+ Struggles to Find Footing In Uncertain Climate*, Law360 (Nov. 3, 2015), available at <http://www.law360.com/articles/720673/reg-a-struggles-to-find-footing-amid-uncertain-climate> (noting that the “modest sums” permitted by Regulation A+ offerings along with “liquidity questions” limit the appeal of underwriting Regulation A+ deals for investment banks).

**REMARKS OF
SEC COMMISSIONER KARA M. STEIN**

SEC Government-Business Forum on Small Business Capital Formation
November 19, 2015

Thank you. It is a pleasure to be with you again, at the annual Government-Business Forum on Small Business Capital Formation. A lot has happened since we gathered here just one year ago. Regulation A+ and Crowdfunding, two pivotal pieces of the JOBS Act, have now been completed. And, we have proposed an expansion of intrastate securities offerings under Rule 147.

As I have been speaking about small business capital formation over the past year, I have talked about creating a continuum of capital raising options for small businesses of different sizes, different business models, and different capital needs. Whatever the stage or type of small business, it should be able to get the capital it needs to grow in a form it is willing to live with as it grows. Hopefully, the new options put in place over the last two years will allow an entrepreneur's good idea to develop into a thriving, successful enterprise—and hopefully, at some point, a registered public company.

However, despite the best and good faith efforts of all involved, many small businesses do not succeed. That may be why prior to the JOBS Act, the options for small business capital formation consisted largely of an entrepreneur's own personal investment, loans from a bank, and/or capital provided by accredited investors. With each of these options, the risks were limited to the entrepreneur herself, and sophisticated investors or lenders.

The JOBS Act and our recent rules have certainly expanded the palette of options for investors to tap outside capital. Have we created a rationalized continuum of capital formation for small businesses? I'm not sure. We may be overly broad in some areas and too narrow in others. What is clear, though, is that these new options expose retail investors—the retiree, the working mom, the young college student—to new risks in unprecedented ways. How will investors fare? Some things worry me more than others. Only time will tell.

In some ways, these initiatives are experiments. As with any experiment, one must transition from the design and implementation phase to the data collection and evaluation phase. That's why I think today's meeting is so important. Your input will be critical in helping the Commission evaluate what we have done so far, both for small businesses and investors. Help us think through the tough questions. For example, what data and metrics should we be using to evaluate whether our experiments are working for small businesses? What about for investors?

We should also be monitoring how those experiments are working in different regions, sectors, and communities. For example, are the new capital raising options being deployed more effectively in some regions of the country than in others? Do some options work better for some sectors than for others? What about for different types of investors? And, critically, is capital formation working for entrepreneurs and investors from diverse backgrounds?

I hope the answers to these questions can help us improve our continuum of capital formation to maximize healthy opportunities for small businesses and for investors.

I look forward to your input. Let me know what you think. My office door is always open. Thank you again for joining us today to share some of your thoughts and insights with the Commission.

**REMARKS OF
SEC COMMISSIONER MICHAEL S. PIWOWAR**

SEC Government-Business Forum on Small Business Capital Formation
November 19, 2015

Thank you, Keith [Higgins], for that introduction. Last month, I visited a number of cities in Asia to meet with fellow regulators, business groups, and other market participants. One topic of significant concern was how to facilitate the creation and success of small and medium-sized enterprises (“SMEs”). Many of the meeting participants recognized that an economy conducive to SMEs was an important factor for innovation, business development, and jobs creation. They expressed admiration for the Silicon Valley-like culture that not only fosters new start-ups, but rapidly grows the successful ones. They asked many questions as to how they might replicate that environment in their own jurisdictions.

One of the key topics in those discussions was the Commission’s implementation of the Jumpstart Our Business Startups Act (“JOBS Act”). Since this Forum last convened a year ago, the Commission has taken a number of steps to fully implement the JOBS Act. First, at the end of October, we adopted final rules for crowdfunding. Second, in March, we adopted final amendments to Regulation A. Third, last December, we proposed amendments to revise rules adopted under Section 12(g) of the Securities Exchange Act to reflect the new, higher thresholds for registration. In addition, in a matter not mandated by the JOBS Act, the Commission proposed rule amendments to facilitate intrastate and regional securities offerings last month.

Today’s agenda calls for discussion of post-JOBS Act implementation of both exempt and registered offerings. I hope that the morning discussions will help stimulate ideas that can be used during the afternoon breakout session to develop recommendations. Those recommendations are reviewed by many people, including members of Congress, who are looking for ideas as to how to further improve the regulatory environment for small business capital formation. In fact, yesterday at the House Financial Services Committee hearing examining the SEC’s agenda and budget, Congressman Scott Garrett (R-NJ), Chairman of the Capital Markets Subcommittee, said in his opening statement “Tomorrow, the SEC will...hold its annual Government-Business Forum on Small Business Capital Formation. As in previous years, I expect this forum to produce a number of valuable ideas that would help small enterprises access capital and grow our economy. And as in previous years, I expect the vast majority of these recommendations to be promptly ignored by the SEC.”²¹

Given your tremendous efforts to develop thoughtful recommendations, I believe that the Commission should respond to each one. By statute, the Commission is required to respond to each recommendation provided by the Investor Advisory Committee. It should not take a law to require the Commission to respond to the Forum’s recommendations—it is more of a matter of common courtesy and good government.

²¹ Available at <http://financialservices.house.gov/calendar/eventsingle.aspx?EventID=399885>.

Thank you for giving up your time and spending your money to join us in Washington, D.C. today. As I mentioned in my remarks last year, I hope that we consider alternating the venue of this Forum with locations elsewhere in the country to maximize inclusiveness in these discussions. I would also like to thank our staff from the Office of Small Business Policy as well as the individuals who were part of the planning group for organizing the Forum.

CONSOLIDATED FORUM RECOMMENDATIONS²²

Set forth below are the 15 recommendations of the 2015 SEC Government-Business Forum on Small Business Capital Formation, consolidated from the three breakout groups of the Forum held on the afternoon of November 19, 2015. The three breakout groups covered the following topics: Exempt Securities Offerings, Smaller Reporting Companies and Proposed Amendments to Rules 147/504. After the Forum, the moderators of the breakout groups continued to work with their breakout group participants to refine and finalize each group's recommendations.

The recommendations are presented below in the order of priority established as the result of a poll of all participants in the breakout groups.²³ The priority ranking is intended to provide guidance to the SEC as to the importance and urgency the poll respondents assigned to each recommendation.

For additional clarity with respect to the interest in each broad area of discussion, the recommendations are also subsequently presented by the breakout groups from which they originated.²⁴

²² 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.

²³ In the poll, the participants were asked to respond whether the SEC should give "high," "medium," "low" or "no" priority to each of the 15 recommendations. Of the 98 participants, 30 responded, a 30.6% response rate. Each "high priority" response was assigned five points, each "medium priority" was assigned three points, each "low priority" response was assigned one point and each "no priority" or blank response was assigned zero points. The total number of points assigned to each recommendation is shown in brackets after the text of the recommendation, as is the average assignment of points for the recommendation. The average assignment of points was determined for each recommendation by dividing the total number of points for a recommendation by the number of responses received (30).

²⁴ Of the 30 respondents to the poll, 22 were participants in the Exempt Securities Offerings Breakout Group, 10 were participants in the Smaller Reporting Companies Breakout Group and 3 were participants in the Proposed Amendments to Rules 147/504 Breakout Group. Five respondents participated in more than one breakout group.

**Priority
Rank**

Recommendations

- 1 Consistent with the recommendations of the SEC Advisory Committee on Small and Emerging Companies, maintain the monetary thresholds for accredited investors, and expand the categories of qualification for accredited investor status based on various types of sophistication, such as education, experience or training, including without limitation persons holding FINRA licenses or CPA or CFA designations. [115 points; average ranking 3.83]
- 2 Expand the availability of Regulation A, Tier 2 offerings by:
 - i. providing federal pre-emption of state blue sky laws for resales of securities by issuers that have satisfied for the past two years and are current in their reporting obligations;
 - ii. permitting offerings by public micro-cap companies, small business investment companies (“SBICs”) and business development companies (“BDCs”); and
 - iii. considering an increase in the monetary cap to greater than \$50 million. [97 points; average ranking 3.23]
- 3 Exemption from state law, rule, regulation, order or other administrative action pursuant to Section 18 of the Securities Act should be afforded to all primary and secondary fully-registered public offerings of securities on Form S-1 (including rights offerings) by way of the SEC defining the term “qualified purchaser” to mean all original and subsequent purchasers of such covered security. [90 points; average ranking 3.00]
- 4 The definitions of “smaller reporting company” and “non-accelerated filer,” as defined or used in Rule 12b-2 of the Exchange Act, should be revised to include:
 - i. an issuer with a public float of less than \$250 million as of the last business day of its most recently completed second fiscal quarter; or
 - ii. an issuer with annual revenues of less than \$100 million during its most recently completed fiscal year and a public float of less than \$700 million as of the last business day of its most recently completed second fiscal quarter. [89 points; average ranking 2.97]
- 5 Lead a joint effort with NASAA and FINRA to implement the basic principles of the American Bar Association Task Force on Private Placement Brokers. To achieve this goal, join NASAA and FINRA in developing a timeframe for quarterly or other regular meetings—with specified benchmarks—until a mutually agreeable regime of finder and limited intermediary registration and regulation or exemption is achieved. [87 points; average ranking 2.90]
- 6 The SEC should take a more active role, through regulatory and policy changes, to create a framework for the establishment of viable “venture exchanges,” operated as national securities exchanges or Regulation ATS alternative trading systems, with

*Priority
Rank*

Recommendations

- rules tailored for smaller reporting companies and for issuers that have conducted a Regulation A+ offering. [83 points; average ranking 2.77]
- 7A Because the average size of investment is likely to be small resulting in issuers acquiring a large number of non-accredited investors, a permanent exemption from Section 12(g) registration under the Exchange Act for securities sold in a Rule 147 or Rule 504 offering, which exemption should “follow the securities,” is essential if these rules are to be an effective means of capital-raising. [79 points; average ranking 2.63]
- 7B The eligibility requirements for use of Form S-3 pursuant to General Instruction I.B.1 should be revised to include smaller reporting companies and non-exchange traded public companies that have filed in a timely manner all reports (other than those reports excluded in General Instruction I.A.3(b)) required to be filed during the 24 calendar months immediately preceding the filing of the registration statement (keeping in place General Instruction I.B.6, if determined by the SEC to be reasonably necessary for investor protection). For this purpose, such smaller reporting companies and non-exchange traded public companies should be afforded the exemption provided in Recommendation No. 3 above. [79 points; average ranking 2.63]
- 8 Increase the proposed limit on Rule 504 to \$10 million, and remove the implicit \$5 million limit in Rule 147, permitting the states to set their own limits as appropriate. [78 points; average ranking 2.60]
- 9 Because many states’ intrastate crowdfunding laws or regulations specifically refer to Section 3(a)(11), unless the Commission believes it can make all the proposed changes to Rule 147 in its current form as a safe harbor under Section 3(a)(11), the Commission should take a “side-by-side” approach in introducing a new Rule 147— as it did with Rule 506 and Regulation A—keeping old Rule 147 in place as a safe harbor under Section 3(a)(11) (but amending it as far as possible under the statutory limitations of Section 3(a)(11)) at the same time as it adopts a new Rule 147. [75 points; average ranking 2.50]
- 10 Propose a new federal exemption governing the private resale of restricted securities under Sections 4(a)(1) of the Securities Act, commonly referred to as “Section 4(1-1/2).” [69 points; average ranking 2.30]
- 11 Make a public statement for the benefit of FINRA that Rule 147 offerings are not “public offerings” for the purposes of FINRA Rule 5110, and that FINRA Rule 5123 is the appropriate rule to apply. [68 points; average ranking 2.27]
- 12 Create a safe harbor for determining the “place of business” of a non-natural person investor in Rule 147 offerings, which could be as simple as a self-certification as to

its place of business. [67 points; average ranking 2.23]

- 13 Enhance the utility of Regulation Crowdfunding by:
- i. substituting in paragraph (a)(2) of Rule 100, the phrase “greater of their annual income or net worth” for the phrase “lesser of their annual income or net worth” to increase the amount that individual investors, over the course of a 12-month period, are permitted to invest in the aggregate across all crowdfunding offerings;
 - ii. increasing the investment limit for accredited investors;
 - iii. permitting investments by special purpose vehicles (syndicates), including by venture capital investors in syndicates that share an adviser or subadviser, and clarifying that such syndicates are not investment companies for purposes of the Investment Company Act;
 - iv. allowing issuers relying on Section 4(a)(6) to provide reviewed rather than audited financial statements in subsequent offerings unless audited financial statements of the issuer that have been audited by an independent auditor are available; and
 - v. clarifying further that concurrent offerings of securities under Rule 506(c) and Regulation CF are permitted.

[65 points; average ranking 2.17]

- 14 Non-securities related disclosure items in annual, quarterly and current reports, including the use of conflict minerals and certain Iran-related activities and any other special interest social or political focused issue, should be eliminated (particularly in the case of smaller reporting companies) and more highly scrutinized prior to adoption in the future. [64 points; average ranking 2.13]

FORUM RECOMMENDATIONS BY BREAKOUT GROUP

Set forth below are the recommendations of participants in each of the three Forum breakout groups in order of priority, as discussed in footnote 23 of the preceding section.

Exempt Securities Offerings Breakout Group Recommendations

<i>Priority Rank</i>	<i>Recommendation</i>
1	Consistent with the recommendations of the SEC Advisory Committee on Small and Emerging Companies, maintain the monetary thresholds for accredited investors, and expand the categories of qualification for accredited investor status based on various types of sophistication, such as education, experience or training, including without limitation persons holding FINRA licenses or CPA or CFA designations. [115 points; average ranking 3.83]
2	Expand the availability of Regulation A, Tier 2 offerings by: <ul style="list-style-type: none">i. providing federal pre-emption of state blue sky laws for resales of securities by issuers that have satisfied for the past two years and are current in their reporting obligations;ii. permitting offerings by public micro-cap companies, small business investment companies (“SBICs”) and business development companies (“BDCs”); andiii. considering an increase in the monetary cap to greater than \$50 million. [97 points; average ranking 3.23]
3	Lead a joint effort with NASAA and FINRA to implement the basic principles of the American Bar Association Task Force on Private Placement Brokers. To achieve this goal, join NASAA and FINRA in developing a timeframe for quarterly or other regular meetings—with specified benchmarks—until a mutually agreeable regime of finder and limited intermediary registration and regulation or exemption is achieved. [87 points; average ranking 2.90]
4	Propose a new federal exemption governing the private resale of restricted securities under Sections 4(a)(1) of the Securities Act, commonly referred to as “Section 4(1-1/2).” [69 points; average ranking 2.30]
5	Enhance the utility of Regulation Crowdfunding by: <ul style="list-style-type: none">i. substituting in paragraph (a)(2) of Rule 100, the phrase “greater of their annual income or net worth” for the phrase “lesser of their annual income or net worth” to increase the amount that individual investors, over the course of a 12-month period, are permitted to invest in the aggregate across all crowdfunding offerings;ii. increasing the investment limit for accredited investors;iii. permitting investments by special purpose vehicles (syndicates), including by venture capital investors in syndicates that share an adviser or

**Priority
Rank**

Recommendation

- subadviser, and clarifying that such syndicates are not investment companies for purposes of the Investment Company Act;
- iv. allowing issuers relying on Section 4(a)(6) to provide reviewed rather than audited financial statements in subsequent offerings unless audited financial statements of the issuer that have been audited by an independent auditor are available; and
 - v. clarifying further that concurrent offerings of securities under Rule 506(c) and Regulation CF are permitted.
- [65 points; average ranking 2.17]

Smaller Reporting Companies Breakout Group Recommendations

**Priority
Rank**

Recommendation

- 1 Exemption from state law, rule, regulation, order or other administrative action pursuant to Section 18 of the Securities Act should be afforded to all primary and secondary fully-registered public offerings of securities on Form S-1 (including rights offerings) by way of the SEC defining the term “qualified purchaser” to mean all original and subsequent purchasers of such covered security. [90 points; average ranking 3.00]
- 2 The definitions of “smaller reporting company” and “non-accelerated filer,” as defined or used in Rule 12b-2 of the Exchange Act, should be revised to include:
 - i. an issuer with a public float of less than \$250 million as of the last business day of its most recently completed second fiscal quarter; or
 - ii. an issuer with annual revenues of less than \$100 million during its most recently completed fiscal year and a public float of less than \$700 million as of the last business day of its most recently completed second fiscal quarter.[89 points; average ranking 2.97]
- 3 The SEC should take a more active role, through regulatory and policy changes, to create a framework for the establishment of viable “venture exchanges,” operated as national securities exchanges or Regulation ATS alternative trading systems, with rules tailored for smaller reporting companies and for issuers that have conducted a Regulation A+ offering. [83 points; average ranking 2.77]
- 4 The eligibility requirements for use of Form S-3 pursuant to General Instruction I.B.1 should be revised to include smaller reporting companies and non-exchange traded public companies that have filed in a timely manner all reports (other than those reports excluded in General Instruction I.A.3(b)) required to be filed during the 24 calendar months immediately preceding the filing of the registration statement (keeping in place General Instruction I.B.6, if determined by the SEC to be reasonably necessary for investor protection). For this purpose, such smaller

***Priority
Rank***

Recommendation

reporting companies and non-exchange traded public companies should be afforded the exemption provided in Recommendation No. 1 of the Smaller Reporting Companies Breakout Group above. [79 points; average ranking 2.63]

- 5 Non-securities related disclosure items in annual, quarterly and current reports, including the use of conflict minerals and certain Iran-related activities and any other special interest social or political focused issue, should be eliminated (particularly in the case of smaller reporting companies) and more highly scrutinized prior to adoption in the future. [64 points; average ranking 2.13]

Proposed Amendments to Rules 147/504 Breakout Group Recommendations

***Priority
Rank***

Recommendation

- 1 Because the average size of investment is likely to be small resulting in issuers acquiring a large number of non-accredited investors, a permanent exemption from Section 12(g) registration under the Exchange Act for securities sold in a Rule 147 or Rule 504 offering, which exemption should “follow the securities,” is essential if these rules are to be an effective means of capital-raising. [79 points; average ranking 2.63]
- 2 Increase the proposed limit on Rule 504 to \$10 million, and remove the implicit \$5 million limit in Rule 147, permitting the states to set their own limits as appropriate. [78 points; average ranking 2.60]
- 3 Because many states’ intrastate crowdfunding laws or regulations specifically refer to Section 3(a)(11), unless the Commission believes it can make all the proposed changes to Rule 147 in its current form as a safe harbor under Section 3(a)(11), the Commission should take a “side-by-side” approach in introducing a new Rule 147—as it did with Rule 506 and Regulation A—keeping old Rule 147 in place as a safe harbor under Section 3(a)(11) (but amending it as far as possible under the statutory limitations of Section 3(a)(11)) at the same time as it adopts a new Rule 147. [75 points; average ranking 2.50]
- 4 Make a public statement for the benefit of FINRA that Rule 147 offerings are not “public offerings” for the purposes of FINRA Rule 5110, and that FINRA Rule 5123 is the appropriate rule to apply. [68 points; average ranking 2.27]
- 5 Create a safe harbor for determining the “place of business” of a non-natural person investor in Rule 147 offerings, which could be as simple as a self-certification as to its place of business. [67 points; average ranking 2.23]

BREAKOUT GROUP PARTICIPANTS

The participants identified below took part either in person or by telephone conference call in the Forum afternoon breakout groups on November 19, 2015. These participants formulated the Forum recommendations set forth beginning on page 22 and were later given an opportunity to participate in a poll to prioritize the recommendations.

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