

THIRTY-FIFTH ANNUAL

SEC Government-Business

FORUM

ON
**Small Business
Capital Formation**

Final Report



**November 17, 2016
Washington, DC**

2016 SEC Government-Business Forum on
Small Business Capital Formation

FINAL REPORT

Published March 2017

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 2016 Forum, the 35th, was convened at the SEC’s headquarters at 100 F Street, N.E., Washington, D.C., on Thursday, November 17, 2016. The program included a panel discussion and three 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 2016 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 2016 Forum. Invitations to attend the Forum were sent to participants of 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 discussion was accessible through a live webcast on the SEC's website. A written transcript of the panel discussion 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 breakout group sessions were not webcast, but were accessible by telephone conference call to pre-registered participants.

Approximately 150 attendees were physically present for the Forum proceedings in Washington, plus 13 panelists and moderators, including SEC staff.

Proceedings

The agenda for the 2016 Forum is reprinted starting on page 8. All three SEC Commissioners delivered remarks at the Forum's morning proceedings. These remarks are reproduced starting on page 10. After the remarks of the SEC Commissioners, a panel discussion was conducted on how capital formation options are working for small businesses after the implementation of the JOBS Act. The panel was moderated by Keith Higgins and Sebastian Gomez Abero.

The remainder of the Forum was devoted to 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 Douglas S. Ellenoff and Gregory C. Yadley; a second on smaller reporting companies, which was moderated by David N. Feldman and Bonnie J. Roe; and a third on secondary market place for securities of small businesses, which was moderated by Martin A. Hewitt and Chris Tyrrell.

Each breakout group was asked to formulate 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 the day of the 2016 Forum. The SEC staff recorded any recommendations over the breakout group's five recommendation limit in order to present them at next year's Forum breakout groups for additional consideration. After the 2016 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, 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 recommendation. This poll resulted in the prioritized list of 15 recommendations presented starting on page 15.

² The breakout group on secondary marketplace for securities of small businesses formulated two additional recommendations.

Records of Proceedings and Previous Forum Materials

A video recording of the Forum's morning proceedings, including the panel discussion, is available on the SEC's website at https://www.sec.gov/video/webcast-archive-player.shtml?document_id=gbforum111716. A transcript of the morning proceedings is available on the SEC's website at <https://www.sec.gov/info/smallbus/sbforum111716-record-proceedings.pdf>.

The Forum program, including the biographies of the Forum panelists and moderators, is available on the SEC's website at <https://www.sec.gov/info/smallbus/sbforum111716-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 <https://www.sec.gov/info/smallbus/sbforumreps.htm>.

PLANNING GROUP

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AGENDA

2016 SEC Government-Business Forum on Small Business Capital Formation
SEC Headquarters
Washington, D.C.
November 17, 2016

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
Chair Mary Jo White
Commissioner Kara M. Stein
Commissioner Michael S. Piwowar

9:30 a.m. How Capital Formation Options Are Working for Small Businesses After the Implementation of the JOBS Act?

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:
Anya Coverman, Deputy Director of Policy and Associate General Counsel,
North American Securities Administrators Association, Washington, D.C.
Douglas S. Ellenoff, Partner, Ellenoff, Grossman & Schole LLP, New York, New York
Ryan Feit, CEO and Co-Founder, SeedInvest, New York, New York
David N. Feldman, Partner, Duane Morris LLP, New York, New York
Stanley Keller, Of Counsel, Locke Lord LLP, Boston, Massachusetts
Chris Tyrrell, Founder & CEO, OfferBoard Group, Princeton, New Jersey
Jeffrey R. Vetter, Partner, Fenwick & West LLP, Mountain View, California

11:00 a.m. Break

11:10 a.m. Breakout Groups Assemble to Develop Recommendations

▶ **Exempt Securities Offerings Breakout Group**

Moderators:

Douglas S. Ellenoff, Partner, Ellenoff, Grossman & Schole LLP, New York, New York

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

▶ **Smaller Reporting Companies Breakout Group**

Moderators:

David N. Feldman, Partner, Duane Morris LLP, New York, New York

Bonnie J. Roe, Partner, Cohen & Gresser LLP, New York, New York

▶ **Secondary Marketplace for Securities of Small Businesses**

Moderators:

Martin A. Hewitt, Attorney At Law, East Brunswick, New Jersey

Chris Tyrrell, Founder & CEO, OfferBoard Group, Princeton, New Jersey

12:30 pm. Lunch Break

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

3:15 p.m. Break

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

4:45 p.m. Plenary Session to Develop Next Steps

Moderators:

Anthony G. Barone, Special Counsel, 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 at Nearby Restaurant

**OPENING REMARKS OF
SEC CHAIR MARY JO WHITE**

SEC Government-Business Forum on Small Business Capital Formation
November 17, 2016

Thank you, Keith and Sebastian. I also want to welcome everyone to today's Government-Business Forum on Small Business Capital Formation. I especially want to thank all of the panelists, moderators and participants in today's program. The great staff in the Division of Corporation Finance organized today's Forum and I want to thank them as well.

This Forum—the 35th annual Government-Business Forum—provides a unique opportunity for the Commission to gather with entrepreneurs and leaders of the small business community to hear about the successes and challenges of small businesses seeking to raise capital and grow their businesses. We always look forward to these discussions and always benefit from your feedback.

Over the past few years, the Commission has taken action on multiple fronts seeking to facilitate capital formation for small and emerging companies while providing appropriate investor protections. Notably, the Commission has fully implemented all the rulemakings under the JOBS Act and companies are now taking advantage of these new capital raising options—Rule 506(c), Regulation A+, and Regulation Crowdfunding—which are designed to foster new ways for smaller companies to access the capital markets.

Looking beyond the JOBS Act, the Commission recently proposed rules to increase the financial thresholds in the smaller reporting company definition, an area in which this Forum made a recommendation last year. The proposed amendments would expand the number of companies that qualify for SRC status and the scaled disclosure requirements in Regulations S-K and S-X. The Commission also recently adopted rules that update and modernize the intrastate and regional offering framework to better accommodate how local offerings have evolved. Last year the Forum made recommendations related to Rule 147 and Rule 504, which the Commission considered in adopting final rules. Consistent with your recommendations, the \$5 million limit on Rule 147 offerings was eliminated, the safe harbor was retained, and a new exemption was adopted.

Our work, however, obviously does not end with finalizing those rulemakings. We are monitoring each of these capital formation options to observe how they are working both in terms of protecting investors and enabling companies to raise money efficiently.

Over the years, the recommendations from this Forum have provided valuable feedback to the Commission as it has considered rules to give smaller companies new ways to access the capital markets. Now that we have the JOBS Act rules in place, as well as our new rules to facilitate intrastate and regional offerings, we want to make sure that the rules protect investors, promote general confidence in the new markets, and are workable for issuers. We ask that your

recommendations consider how we can best monitor and maintain investor protection and the integrity of these new capital markets, while improving the ability of small businesses to access them in order to grow and drive job creation and economic growth.

Thank you again for your time and efforts today. I very much look forward to your input.

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

SEC Government-Business Forum on Small Business Capital Formation
November 17, 2016

Good morning. Welcome to the annual Government-Business Forum on Small Business Capital Formation. I would also like to thank Sebastian and his team for all their work in putting the Forum together.

Since 1982 this Forum has provided a means for the public to engage on issues that are impacting small businesses and capital formation throughout this country. This Forum, therefore, necessarily involves consideration of two critical components of small business capital formation—the small businesses themselves and the investors who support them. How are initiatives geared towards facilitating capital formation working in practice?

Who is benefitting from these initiatives and is any group being left out?

Last year, we adopted Regulation A+ and Regulation Crowdfunding. Three weeks ago, the Commission adopted revisions to the intrastate offering exemption in Securities Act Rule 147, created a new offering exemption under Rule 147A, and revised Rule 504 of Regulation D by raising the aggregate offering limit from \$1 million to \$5 million in a 12-month period. Rule 504 was also revised to include bad actor disqualification provisions. All of these initiatives were adopted with the purpose of increasing the options available to small businesses to raise capital. These initiatives also incorporated the Commission's considerations of investor protection, market integrity and market confidence. How do we provide opportunities for small businesses while instilling market confidence so that investors are willing to provide capital to small businesses?

It has been more than a year since the adoption of Regulation A+ and six months since the effective date of Regulation Crowdfunding. By some accounts, the new capital raising options have not been widely adopted.

Other data suggest those using the new options are concentrated by sector and geographic region. Why is this? Is there a problem with supply—i.e., not enough small businesses want to utilize these capital raising options? Or do we have a demand problem—i.e., not enough investors who are willing to put capital into this space? Alternatively, do we have a problem with outreach, support and, education?

Ultimately, we have to ask how our rules should work for all small businesses and their investors. These are not simple questions with simple answers. We need to think broadly and creatively. We need to avoid jumping prematurely to conclusions without the data needed to support such conclusions. Additionally, we need to think about how we build and promote confidence in the market so that much needed capital can flow to businesses trying to expand and grow. Today, we will start out focusing on what is happening in the current landscape for capital formation.

If preliminary results suggest geographic, sector, or demographic concentration of businesses using the new capital formation options, then perhaps we should query what more needs to be done to ensure equality of opportunity for all small business owners.

How do we ensure that the small business owner in Tennessee is as aware of the options available for her start-up as her male counterpart in California? What more can be done to support the diverse groups of current owners and *would* be business owners, which may include the African American woman seeking to fund a hair product idea or the Armenian immigrant seeking to open a small restaurant?

As such, I invite you to consider recommendations that focus on data collection and more outreach. Also, I encourage you to consider recommendations that would continue to instill confidence in our markets.

When investors are protected, investor confidence and willingness to invest will likely be maintained or rise, which positively impacts the funding environment for small businesses.

Thank you.

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

SEC Government-Business Forum on Small Business Capital Formation
November 17, 2016

Thank you, Keith [Higgins] for the introduction. Thank you, Sebastian [Gomez Abero] and the rest of the Office of Small Business Policy for organizing this annual gathering of the Commission, its staff, and the many individuals from across the country who have a strong dedication and passion for small businesses.

This year's Forum offers the Commission a chance to reflect on our efforts to improve access to capital for small businesses over the past several years. Under the leadership of Chair White, the Commission has adopted rules that modernize and update the legal framework, which should facilitate capital formation and protect investors. I am pleased that the Commission has successfully implemented the Jumpstart Our Business Startups ("JOBS") Act, which shows what is achievable when common sense laws are enacted on a bipartisan basis.

As described by Chair White, the Commission has adopted final rules that permit general solicitation in private offerings to accredited investors, increase the limits on Regulation A offerings, implement crowdfunding provisions, and update the rules on intra-state offerings. Many of these rules had their origins in past recommendations from this Forum.

The menu of capital-raising choices available today to small businesses presents more flexibility and more alternatives than ever before. As the effective dates for many of these changes have recently passed—and in some cases have yet to start—only time will tell as to how issuers, investors, and other market participants react. Fortunately, the Commission has an entire division focused on studying the economic effects of our rulemakings. As an economist, I cannot wait to see their analyses in the months and years to come.

The innovation, creativity, and job creation from small businesses are an essential component to fostering continued economic growth. Thank you for your participation and I look forward to reviewing this year's recommendations.

CONSOLIDATED FORUM RECOMMENDATIONS³

Set forth below are the 15 recommendations of the 2016 SEC Government-Business Forum on Small Business Capital Formation, consolidated from the three breakout groups of the Forum held on November 17, 2016. The three breakout groups covered the following topics: Exempt Securities Offerings, Smaller Reporting Companies and Secondary Marketplace for Securities of Small Businesses. 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.⁴ 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.⁵

³ 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.

⁴ 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 63 participants, 24 responded, a 38% 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 (24).

⁵ Of the 24 respondents to the poll, 12 participated in the Exempt Securities Offerings Breakout Group, 8 participated in the Smaller Reporting Companies Breakout Group and 8 participated in the Secondary Marketplace for Securities of Small Businesses. Of the 24 respondents, at least three 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, the SEC should (a) maintain the monetary thresholds for accredited investors and (b) 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, or status as managerial or key employees affiliated with the issuer. [80; 3.33]
- 2 The definition of smaller reporting company (SRC) and non-accelerated filer should be revised to include an issuer with a public float of less than \$250 million or with annual revenues of less than \$100 million, excluding large accelerated filers; and to extend the period of exemption from Sarbanes 404(b) for an additional five years for pre- or low-revenue companies after they cease to be emerging growth companies (EGCs) and SRCs. [74; 3.08]
- 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. [73; 3.04]
- 4 The SEC should adopt rules that preempt from state registration all primary and secondary trading of securities qualified under Regulation A/Tier 2, and all other securities registered with the Commission. [70; 2.92]
- 5 Regulation A should be amended to:
 - a. Preempt from state Blue Sky regulation all secondary sales of Tier II securities;
 - b. Allow companies registered under the Exchange Act (at least business development companies (BDCs), EGCs and SRCs) to utilize Regulation A, with such restrictions as the SEC deems appropriate; and
 - c. Provide a clearer definition of what constitutes “testing the waters materials” and permissible media activities. [69; 2.87]
- 6 Simplify disclosure requirements and costs for SRCs and EGCs with a principles-based approach to Regulation S-K, eliminating information that is not material, reducing or eliminating “non-securities” disclosures with a political or social purpose (pay ratio, conflict minerals, Iran disclosures, etc.), making XBRL compliance optional and harmonizing rules for EGCs with those applicable to SRCs. [61; 2.54]

***Priority
Rank***

Recommendations

- 7 Mandate comparable disclosure by short sellers (or market makers holding short positions) that apply to long investors such as in Schedule 13D. [57; 2.37]
- 8 The SEC should provide scaled public disclosure requirements (including the use of non-GAAP accounting standards) that would constitute adequate current information for entities whose securities will be traded on secondary market platforms. [53; 2.21]
- 9A The eligibility requirements for use of Form S-3 should be revised to include all reporting companies. [50; 2.08]
- 9B The SEC should clarify the relationship of exempt offerings in which general solicitation is not permitted—such as in Section 4(a)(2) and Rule 506(b) offerings—with Rule 506(c) offerings involving general solicitation in the following ways:
- a. The facts and circumstances analysis regarding whether general solicitation is attributable to purchasers in an exempt offering in which general solicitation is not permitted (as set forth in the 2007 Regulation D Proposing Release) applies to a Rule 506(c) offering, whether completed, abandoned or ongoing, just as it does to a registered public offering; and
 - b. Rule 152 applies to a Rule 506(c) offering so that an issuer using Rule 506(c) may subsequently engage in a registered public offering without adversely affecting the Rule 506(c) offering exemption. [50; 2.08]
- 11A The SEC should amend Regulation ATS to allow the resale of unregistered securities, including those traded pursuant to Rule 144 and Rule 144A and issued pursuant to Sections 4(a)(2), 4(a)(6) and 4(a)(7) and Rules 504 and 506. [47; 1.96]
- 11B The SEC should permit an ATS to file a 15c2-11 with FINRA and review the FINRA process to make sure that there is no undue burden on applicants and issuers. [47; 1.96]
- 11C Regulation CF should be amended to:
- a. Permit the usage of special purpose vehicles so that many small investors may be grouped together into one entity which then makes a single investment in a company raising capital under Reg. CF; and
 - b. Harmonize the Reg. CF advertising rules to avoid traps in situations where an issuer advertises or engages in a general solicitation in a Reg. A+ or Rule 506(c) offering and then wishes to convert to a Reg. CF offering. [47; 1.96]

***Priority
Rank***

Recommendations

- 14 The SEC should provide greater clarity on when trading activities require ATS registration, and when an entity or technology platform needs to be a funding portal, broker-dealer, ATS, and/or exchange in order to “be engaged in the business” of secondary (and, in fact, primary) transactions. [45; 1.87]

- 15 Reduce the Rule 144 holding period to 3 months for reporting companies. [41;1.71]

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 4 of the preceding section.

Exempt Securities Offerings Breakout Group Recommendations

***Priority
Rank***

Recommendation

- 1 Consistent with the recommendations of the SEC Advisory Committee on Small and Emerging Companies, the SEC should (a) maintain the monetary thresholds for accredited investors and (b) 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, or status as managerial or key employees affiliated with the issuer. [80; 3.33]
- 2 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. [73; 3.04]
- 3 Regulation A should be amended to:
 - a. Preempt from state Blue Sky regulation all secondary sales of Tier II securities;
 - b. Allow companies registered under the Exchange Act (at least business development companies (BDCs), EGCs and SRCs) to utilize Regulation A, with such restrictions as the SEC deems appropriate; and
 - c. Provide a clearer definition of what constitutes “testing the waters materials” and permissible media activities. [69; 2.87]
- 4 The SEC should clarify the relationship of exempt offerings in which general solicitation is not permitted—such as in Section 4(a)(2) and Rule 506(b) offerings—with Rule 506(c) offerings involving general solicitation in the following ways:
 - a. The facts and circumstances analysis regarding whether general solicitation is attributable to purchasers in an exempt offering in which general solicitation is not permitted (as set forth in the 2007 Regulation D Proposing Release) applies to a Rule 506(c) offering, whether completed, abandoned or ongoing, just as it does to a registered public offering; and

***Priority
Rank***

Recommendation

- b. Rule 152 applies to a Rule 506(c) offering so that an issuer using Rule 506(c) may subsequently engage in a registered public offering without adversely affecting the Rule 506(c) offering exemption. [50; 2.08]

5 Regulation CF should be amended to:

- a. Permit the usage of special purpose vehicles so that many small investors may be grouped together into one entity which then makes a single investment in a company raising capital under Reg. CF; and
- b. Harmonize the Reg. CF advertising rules to avoid traps in situations where an issuer advertises or engages in a general solicitation in a Reg. A+ or Rule 506(c) offering, and then wishes to convert to a Reg. CF offering. [47; 1.96]

Smaller Reporting Companies Breakout Group Recommendations

***Priority
Rank***

Recommendation

- 1 The definition of smaller reporting company (SRC) and non-accelerated filer should be revised to include an issuer with a public float of less than \$250 million or with annual revenues of less than \$100 million, excluding large accelerated filers; and to extend the period of exemption from Sarbanes 404(b) for an additional five years for pre- or low-revenue companies after they cease to be emerging growth companies (EGCs) and SRCs. [74; 3.08]
- 2 Simplify disclosure requirements and costs for SRCs and EGCs with a principles-based approach to Regulation S-K, eliminating information that is not material, reducing or eliminating “non-securities” disclosures with a political or social purpose (pay ratio, conflict minerals, Iran disclosures, etc.), making XBRL compliance optional and harmonizing rules for EGCs with those applicable to SRCs. [61; 2.54]
- 3 Mandate comparable disclosure by short sellers (or market makers holding short positions) that apply to long investors such as in Schedule 13D. [57; 2.37]
- 4 The eligibility requirements for use of Form S-3 should be revised to include all reporting companies. [50; 2.08]
- 5 Reduce the Rule 144 holding period to 3 months for reporting companies. [41; 1.71]

**Secondary Marketplace for Securities of Small Businesses Breakout Group
Recommendations**

<i>Priority Rank</i>	<i>Recommendation</i>
1	The SEC should adopt rules that preempt from state registration all primary and secondary trading of securities qualified under Regulation A/Tier 2, and all other securities registered with the Commission. [70; 2.92]
2	The SEC should provide scaled public disclosure requirements (including the use of non-GAAP accounting standards) that would constitute adequate current information for entities whose securities will be traded on secondary market platforms. [53; 2.21]
3A	The SEC should amend Regulation ATS to allow the resale of unregistered securities, including those traded pursuant to Rule 144 and Rule 144A, and issued pursuant to Sections 4(a)(2), 4(a)(6) and 4(a)(7) and Rules 504 and 506. [47; 1.96]
3B	The SEC should permit an ATS to file a 15c2-11 with FINRA and review the FINRA process to make sure that there is no undue burden on applicants and issuers. [47; 1.96]
5	The SEC should provide greater clarity on when trading activities require ATS registration, and when an entity or technology platform needs to be a funding portal, broker-dealer, ATS, and/or exchange in order to “be engaged in the business” of secondary (and, in fact, primary) transactions. [45; 1.87]

BREAKOUT GROUP PARTICIPANTS

The participants identified below took part either in person or by telephone conference call in the Forum breakout groups on November 17, 2016. These participants formulated the Forum recommendations set forth beginning on page 15 and were later given an opportunity to participate in a poll to prioritize the recommendations.

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