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- Moderator:**  
John Moses, Deputy Director, SEC Office of Minority and Women Inclusion
- Panelists:**  
Brandon Andrews, Co-Founder, Gauge, Washington, DC  
Falon Donahue, CEO, VentureOhio, Columbus, Ohio  
Candice Matthews, CEO, Hillman Accelerator, Cincinnati, Ohio  
Kim Tapia, Founder, Polanko Group, Columbus, Ohio
- 12:30 p.m. Break**
- 12:40 p.m. Working Lunch in Breakout Groups**
- Two Breakout Groups Assemble to Develop Recommendations**
- ▶ **Exempt Securities Offerings**
- Moderators:**  
Catherine V. Mott, CEO, BlueTree Capital Group, Wexford, Pennsylvania  
Gregory C. Yadley, Partner, Shumaker, Loop & Kendrick, L.L.P.  
Tampa, Florida
- ▶ **Smaller Registered and Regulation A Securities Offerings**
- Moderators:**  
Mark Elenowitz, Founder and CEO, TriPoint Global Equities, New York,  
New York  
Aaron Seamon, Partner, Squire Patton Boggs, Columbus, Ohio  
Thomas A. Stewart, Executive Director, National Center for the Middle  
Market, The Ohio State University Max M. Fisher College of Business
- 2:00 p.m. Break**
- 2:10 p.m. Breakout Groups Reassemble to Develop Recommendations**
- 3:30 p.m. Break**
- 3:45 p.m. Plenary Session to Develop Next Steps**
- Moderators:**  
Mark Elenowitz, Founder and CEO, TriPoint Global Equities, New York, New  
York  
Catherine V. Mott, CEO, BlueTree Capital Group, Wexford, Pennsylvania  
Aaron Seamon, Partner, Squire Patton Boggs, Columbus, Ohio  
Thomas A. Stewart, Executive Director, National Center for the Middle  
Market, The Ohio State University Max M. Fisher College of Business  
Gregory C. Yadley, Partner, Shumaker, Loop & Kendrick, L.L.P.  
Tampa, Florida
- 4:30 p.m. Networking Reception at the Fawcett Center**

## OPENING REMARKS OF SEC CHAIRMAN JAY CLAYTON

SEC Government-Business Forum on Small Business Capital Formation  
December 12, 2018

Thank you, Bill [Hinman].<sup>2</sup>

Every year the SEC staff does a tremendous job identifying topics, selecting speakers and coordinating the behind the scenes work necessary to organize this all-day event focused on small business capital formation. Thank you Bill, Jennifer [Zepralka] and the staff in the Division of Corporation Finance and the Office of Minority and Women Inclusion for coordinating this year's forum. This year I also want to extend a special thank you to our co-hosts—Dean Makhija and the rest of the staff at The Ohio State University Fisher College of Business—for opening your doors to us. It is nice to know that a team from the “SEC” can get such a warm welcome at the home of the Big Ten Champions. Finally, I want to thank the panelists and moderators who are taking time out of their busy schedules to share their insights with us.

To those in the audience, or watching online, welcome to the 37<sup>th</sup> annual Government-Business Forum on Small Business Capital Formation. This is the second year in a row that we are having the Small Business Forum outside of Washington, D.C. I hope it becomes a trend in years to come.

Small business access to capital is at top of mind for me. As such, I have made it a priority to reach out to small businesses nationwide. In my first few months at the SEC, I hosted a group of small businesses from across the country, including Arkansas, Idaho, Michigan, Montana, and North Carolina. Bill [Hinman] and I also attended a high-tech jobs summit in Montana to discuss job creation and capital formation. Last November, we held the Small Business Forum in Austin, Texas. And earlier this year, we continued the conversation about small business capital formation in Nashville, Tennessee.

As I have said before, there are many good, talented people, and many promising companies, between the coasts. Austin, Nashville and Columbus all share something in common. They stand out for their ability to help small businesses grow outside of the traditional areas along the coasts. Earlier this year, Columbus was ranked as one of the top five cities for entrepreneurs and startups out of more than 300 cities across the United States.<sup>3</sup> And this past October, another publication ranked Columbus first out of the top 10 rising cities for startups.<sup>4</sup>

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<sup>2</sup> My words are my own and do not necessarily reflect the views of my fellow Commissioners or the SEC staff.

<sup>3</sup> Bill Frost, *The Top 10 US Cities for Entrepreneurs and Start-Ups in 2018*, Business.org (June 21, 2018), at <https://www.business.org/business/startup/top-cities-for-entrepreneurs-and-startups/>.

<sup>4</sup> Kurt Badenhausen, *The Top 10 Rising Cities for Startups*, Forbes (Oct. 1, 2018), at <https://www.forbes.com/sites/kurtbadenhausen/2018/10/01/the-top-10-rising-cities-for-startups/#2e239a046b37>.

The panels this morning will provide us with an opportunity to hear directly from small businesses and their investors about the options to raise capital as a small business. We also will hear about the particular challenges faced by minority entrepreneurs to access capital. Following the morning panels, you will work on recommendations on how we can improve the regulatory landscape for small businesses.

The Small Business Forum has been a source of ideas for, and feedback on, our rulemaking initiatives at the SEC. For example, in 2018 the Commission expanded the definition of “smaller reporting company.”<sup>5</sup> The amended definition will allow nearly 1,000 additional companies to take advantage of scaled disclosure requirements, reflecting the principle that a one-size regulatory structure does not fit all public companies. The Commission also expanded a key registration exemption used by non-reporting companies to issue securities pursuant to compensatory arrangements and sought comment on other ways to modernize that exemption. These initiatives had been recommendations in prior Small Business Forums.

For 2019, we have a number of initiatives in the near-term agenda that I expect will be of interest to the audience. For example, for our smaller public companies, we will be taking a fresh look at the “accelerated filer” definition and the thresholds that trigger Section 404(b) of the Sarbanes-Oxley Act of 2002, which requires certain registrants to provide an auditor attestation report on internal control over financial reporting. We also will consider expanding testing-the-waters accommodations that enable companies to engage in communications with certain potential investors prior to or following the filing of a registration statement. I also believe it is important to consider ways to encourage long-term investment in our country, so we will be studying the adequacy and appropriateness of mandated quarterly reporting and the prevalence of optional quarterly guidance, and whether our reporting system more generally drives an overly short-term focus.

For exempt offerings, we will be exploring the private offering framework. Our “patchwork” private offering system is complex and it is time to take a critical look to see how it can be improved, harmonized and streamlined. The staff is working on a concept release to solicit input about key topics, including whether our accredited investor definition—a principal regulatory threshold for participation in private offerings—is appropriately tailored to address both investment opportunity and investor protection concerns.

Several of these upcoming initiatives have been discussed at prior Small Business Forums. I hope you spend time this afternoon talking about these topics and share with us recommendations on how to improve our rules in those areas.

Thank you.

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<sup>5</sup> “[Amendments to Smaller Reporting Company Definition](#),” SEC Release No. 33-10513 (Jun. 28, 2018) [83 Fed. Reg. 31,992 (July 10, 2018)].

**REMARKS OF  
SEC COMMISSIONER ROBERT J. JACKSON, JR.**

SEC Government-Business Forum on Small Business Capital Formation  
December 12, 2018

Well, thank you very much, Mr. Chairman. I'm delighted to be here. I want to start by joining my colleagues in thanking Director Hinman, the staff and all the panelists for the time you're sharing with us this morning.

I want to also start by emphasizing how delighted I am to be back here at the Middle Market Institute. I came out to The Ohio State University earlier in the spring to talk about some of the capital formation and issues that small and medium-sized businesses face when they seek to go public, and I'm very much looking forward to learning more from you all today.

I also want to be among the first to welcome my friend and colleague Commissioner Peirce back to her home state, here in Ohio. And I'll be brief; my colleagues, may have more to say, but really, we're all here to hear from you today about the experience you're having raising capital in the economy we face.

I want to make just two very quick points about that. The first is I want to express my gratitude to the folks at the Middle Market Institute whose research has informed my thinking a great deal about the importance of these firms to the growth of our economy. It's very easy in the world in which we live to get caught in headlines about big, public companies, but what the Middle Market Institute research shows is that the driving engine, the force behind our economy, is made up of firms that are small, growing companies throughout the United States, and as the Chairman pointed out, are very much between the coasts.

You have a Commission, a Division of Corporation Finance and a group of folks from the SEC today who understand that very much, and we are very keen to hear from all of you today as to how we can help you create the jobs and continue to be the engine that you've been for so long for the growth of our economy.

For a second, Director Hinman's remarks pointed up to the fact that all of us in our own way come to this table and this conversation understanding how hard it is to start something new in this country, to put capital together, persuade customers and employees of the value proposition that you have, to sketch out a vision, even for a company that's existed for some time, to get people around you to buy into that vision. We understand how hard that is, and how important it is, not only to the economy, but also to the communities across America, and that's why we're here.

That's why you have a Commission so interested in hearing from all of you today. That's why we're so engaged, not just because we think it's important to capital formation in our economy. We think that, but because we know how important it is to the community and the individuals in this room to make sure that you feel that your government and the folks who work













***Priority***

**Rank**

**2**

**Consolidated Forum Recommendations**

**Reporting, Disclosure and Registration Simplification and Modernization**

We recommend reporting, disclosure and registration simplification and modernization, including:

- a. Aligning the definition of non-accelerated filers with the required definition of smaller reporting companies, to include issuers with a public float of less than \$250 million or with annual revenues of less than \$100 million (and either no public float, or a public float of less than \$700 million);
- b. Making it easier for issuers to use Form S-3 registration statements, including increasing the cap on the use of Form S-3 for smaller issuers under the baby shelf rule;
- c. Increasing the companies that can take advantage of Form S-3—whether listed on a national exchange or not;
- d. Modernizing and simplifying the rules related to compensatory securities offerings by eliminating Form S-8 and allowing issuers to rely upon a modified Rule 701; and
- e. Allowing incorporation by reference in Form S-4 for smaller reporting companies. [82; 3.04]

**3A**

**Harmonization of Exempt Offerings**

The current regulatory framework for exempt offerings is complex, and we recommend that the Commission rationalize, harmonize, simplify, consolidate and prioritize the regulatory regime for exempt offerings, including communications restrictions, issuer eligibility, size of the offering, type of investors, disclosure and other conditions of exemption. [81; 3.00]

*Priority*

*Rank*

3B

*Consolidated Forum Recommendations*

**Finders and Special Purpose Brokers**

- a. Finders should be exempt from registration as a broker-dealer. Define permissible activities in which finders can engage without being deemed as engaged in activities that require them to register as a broker-dealer under the Securities Exchange Act of 1934.
- b. In the event Congress fails to enact HR 477, cited as the “Small Business Mergers, Acquisitions, Sales, and Brokerage Simplification Act of 2017,” during the final days of the 115th Congress, or in the first year of the 116th Congress, the SEC should promulgate a rule codifying the relief in the *M&A Brokers* no-action letter (Jan. 31, 2014) issued by the SEC Division of Trading and Markets.
- c. Clarify the ability of funding portals to participate in Regulation A and Rule 506 offerings. [81; 3.00]

5

**General Solicitation**

The SEC should clarify the relationship between exempt offerings in which general solicitation is not permitted—such as in Section 4(a)(2) and Rule 506(b) offerings—and exempt offerings in which general solicitation is permitted—such as in, for example, Rule 506(c) offerings, as follows:

- a. A facts and circumstances integration analysis similar to that used in the 2007 Regulation D proposing release, Rel. No. 33-9497 [79 FR 3925] (Dec. 18, 2013) (concerning the integration of a concurrent private placement with the filing of a registration statement under the Securities Act of 1933) should be available to determine whether investors in a concurrent Section 4(a)(2)/Rule 506(b) private placement in which general solicitation is prohibited were solicited by means of the general solicitation used in connection with a Rule 506(c) offering or through some other means that would otherwise not foreclose the availability of the Section 4(a)(2)/Rule 506(b) exemption, regardless of whether the Rule 506(c) offering has been completed, abandoned or is ongoing;
- 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; and
- c. Review of the pre-existing relationship requirement should be made at the time of purchase rather than at the time of offer. [70; 2.59]

***Priority***

**Rank**

**6**

**Consolidated Forum Recommendations**

**Proxy Advisory Firms**

The SEC should promulgate a rule (and/or staff guidance) that provides for effective oversight of proxy advisory firms, with a focus on conflicts of interest, accuracy, transparency and issuer-specific decision making. Such a rule (and/or guidance) should emphasize the fiduciary duty that investment advisers owe to their clients, including when investment advisers rely on proxy advisory firms for vote recommendations. [69; 2.55]

**7**

**Regulation Crowdfunding**

- a. Accredited investors should be permitted to invest any amount they want in Regulation Crowdfunding offerings, provided they are verified. Removing the individual accredited investor limits would make Regulation Crowdfunding offerings a more attractive investment vehicle to accredited investors, and make it easier for offerings to reach their maximum offering goals.
- b. The limits for *all* investors should be raised. Non-accredited investors want to invest more in offerings and should be free to do so. This will only help the market grow as it allows more individual investments into the marketplace.
- c. The advertising rules and restrictions should be loosened to allow issuers more effectively to market their projects. It is very difficult for issuers to understand the burden of the advertising rules, and the rules run counter to the intent of the law: to promote the democratization of investing. The issuers should be allowed to speak more directly to the terms of the offering.
- d. Allow portals to receive securities of the issuer as compensation having different terms than the securities of the issuer received by investors in the offering (e.g., allow portals to receive warrants as compensation with different terms than the warrants sold to investors in the offering) and also allow portals to co-invest in the offerings they list.
- e. The SEC should lead a joint effort with FINRA to provide clear guidance to participants in Regulation Crowdfunding offerings.
- f. Rationalize Regulation Crowdfunding requirements for debt offerings and small offerings under \$250,000, for example, by:
  - i. Limiting the ongoing reporting obligations to actual noteholders (not to the general public); and
  - ii. Scaling regulation to reduce accounting, legal and other costs that now are relatively inelastic, regardless of the size of the offering. [60; 2.22]

***Priority***

**Rank**

**8A**

**Consolidated Forum Recommendations**

**Regulation A**

The SEC should issue guidance for broker/dealers, transfer agents, and clearing firms, regarding Regulation A securities and OTC securities. The SEC should revise Regulation A, as follows:

- a. Mandate blue sky preemption for secondary trading of Regulation A Tier 2 securities;
- b. Allow at-the-market offerings;
- c. Implement rules allowing all reporting companies to use Regulation A;
- d. Increase the maximum offering amount in any twelve month period from \$50 million to \$75 million for Regulation A Tier 2 offerings;
- e. Consider overriding advance notice requirements of state regulators in Regulation A offerings and limiting state filing fees for these offerings;
- f. Require any portal that is in the business of facilitating Regulation A offerings to register as a broker-dealer and comply with requirements similar to the requirements for intermediaries under Regulation Crowdfunding, and adhere to disclosure requirements including required disclosure of compensation and the amount thereof;
- g. The SEC should recognize use of quick response (“QR”) codes in lieu of a hyperlink to a prospectus or offering circular after the offering has gone effective or been qualified;
- h. Platforms that offer Regulation A securities offerings should be regulated like other portals, including adhering to FINRA guidelines; and
- i. The SEC should enforce Regulation SHO and Regulation T for all IPOs, including Regulation A offerings. [55; 2.04]



*Priority*

Rank

8B

*Consolidated Forum Recommendations*

**Secondary Trading of OTC Securities**

The SEC should review key rules and policies impacting secondary trading of OTC securities, including:

- a. Evaluation of FINRA Rule 6432 to make sure that there is no undue burden on applicants and issuers (e.g. the Form 211 should be processed within 3 days on a non-merit basis). An alternative trading system should be permitted to file a Form 211 with FINRA and FINRA Rule 5250 should be amended to allow payments for market making activities involving the FINRA Form 211 process.
- b. The provision of an SEC/FINRA safe harbor for clearing firms with respect to certain qualified low priced securities that meet certain best practices or minimum requirements, including re-evaluating FINRA Notice to Members 09-05.
- c. Allow broker-dealers and clearing firms to rely on information from transfer agents to properly trace securities in registered offerings or Regulation A offerings. [55; 2.04]

10

**Business Development Companies**

Registered investment companies that invest in other funds are required to disclose the fees and expenses they incur indirectly from investing in those underlying funds. Underlying funds whose expenses must be disclosed under this “acquired fund fees and expenses” (“AFFE”) rule include business development companies (“BDCs”). The SEC should accelerate its review of the required disclosure of indirect underlying fund expenses and remedy the “double counting” in its AFFE rule by exempting the disclosure of BDC expenses from the rule. [40; 1.48]

## **Commission’s Response to Recommendations of the 2018 SEC Government-Business Forum on Small Business Capital Formation**

The Commission’s responses to the Forum recommendations, as required by the Small Business Investment Incentive Act of 1980, as amended by the Economic Growth, Regulatory Relief and Consumer Protection Act of 2018, appear below.<sup>9</sup> As a general matter, where a Forum recommendation relates to an initiative as to which the Commission has solicited or expects to solicit public comment, the recommendation will be considered as part of that initiative, along with other comments received.

Below is a list of the 2018 Forum recommendations and any corresponding initiatives to which the recommendations relate. Instead of repeating each Forum recommendation, reference to the title of each recommendation is set forth below in the order appearing starting on page 17. The Commission also may be pursuing initiatives that are responsive to Forum recommendations but that have not yet been made public. Therefore, any such initiatives are not reflected in the list below.

Forum recommendations for which there is no corresponding initiative will be referred to the appropriate division or office at the Commission for consideration and recommendation.

### **1. Forum Recommendation on the Accredited Investor Definition**

As indicated on the Spring 2019 Unified Agenda of Federal Regulatory and Deregulatory Long-term Actions (“Spring 2019 Unified Agenda Long-term Actions”),<sup>10</sup> the Division of Corporation Finance is considering recommending that the Commission propose amendments to expand the definition of accredited investor under Regulation D of the Securities Act of 1933 (“Securities Act”).

As indicated on the Spring 2019 Unified Agenda of Federal Regulatory and Deregulatory Active Actions (“Spring 2019 Unified Agenda”),<sup>11</sup> the Division of Corporation Finance is considering

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<sup>9</sup> 15 U.S.C. 80c-1. Section 503 of the Economic Growth, Regulatory Relief and Consumer Protection Act of 2018 [Pub. L. 115-174, 132 Stat. 1296 (2018)] amended Section 503 of the Small Business Investment Incentive Act of 1980 to add this requirement in new paragraph (e).

<sup>10</sup> See Office of Information and Regulatory Affairs, Office of Management and Budget, “Spring 2019 Unified Agenda of Federal Regulatory and Deregulatory Long-term Actions by the Securities and Exchange Commission,” available at: [https://www.reginfo.gov/public/do/eAgendaMain?operation=OPERATION\\_GET\\_AGENCY\\_RULE\\_LIST&currentPubId=201904&showStage=longterm&agencyCd=3235&Image58.x=33&Image58.y=11](https://www.reginfo.gov/public/do/eAgendaMain?operation=OPERATION_GET_AGENCY_RULE_LIST&currentPubId=201904&showStage=longterm&agencyCd=3235&Image58.x=33&Image58.y=11). Long-term Actions are items under development but for which regulatory action is not expected within 12 months after publication of the Spring 2019 Unified Agenda.

<sup>11</sup> See Office of Information and Regulatory Affairs, Office of Management and Budget, “Spring 2019 Unified Agenda of Regulatory and Deregulatory Active Actions in Prerule, Proposed Rule and Final Rule Stages by the Securities and Exchange Commission,” available at: [https://www.reginfo.gov/public/do/eAgendaMain?operation=OPERATION\\_GET\\_AGENCY\\_RULE\\_LIST&currentPub=true&agencyCode=&showStage=active&agencyCd=3235&Image58.x=44&Image58.y=11](https://www.reginfo.gov/public/do/eAgendaMain?operation=OPERATION_GET_AGENCY_RULE_LIST&currentPub=true&agencyCode=&showStage=active&agencyCd=3235&Image58.x=44&Image58.y=11). Active regulatory actions are likely to occur in the next 12 months after publication of the Spring 2019 Unified Agenda.

recommending that the Commission seek public comment on ways to harmonize and streamline the Commission’s rules for exempt offerings under the Securities Act in order to enhance their clarity and ease of use. Part of this initiative is expected to include seeking public comment on whether current rules that limit who can invest in certain offerings should be expanded to focus on criteria other than the wealth of the investor.<sup>12</sup>

Section 413(b)(2)(A) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the “Dodd-Frank Act”) directs the Commission to review the accredited investor definition as it relates to natural persons every four years to determine whether the definition should be modified or adjusted for the protection of investors, in the public interest and in light of the economy. The next review is scheduled to take place this year.

Staff in the Division of Corporation Finance will consider this Forum recommendation in connection with these initiatives.

## **2. Forum Recommendation on Reporting, Disclosure and Registration Simplification and Modernization**

The Commission recently has taken steps to simplify and modernize reporting, disclosure and registration requirements, for example, by:

- Adopting amendments to Rule 701 to increase from \$5 million to \$10 million the aggregate sales price or amount of securities sold during any consecutive 12-month period in excess of which the issuer is required to deliver additional disclosures to investors;<sup>13</sup>
- Adopting amendments, consistent with the Commission’s mandate under the 2015 Fixing America’s Surface Transportation Act (the “FAST Act”),<sup>14</sup> to certain disclosure requirements in Regulation S-K, and related rules and forms;<sup>15</sup>
- Adopting amendments to certain disclosure requirements that have become redundant, duplicative, overlapping, outdated, or superseded, in light of other Commission disclosure requirements, U.S. Generally Accepted Accounting Principles, or changes in the information environment;<sup>16</sup> and

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<sup>12</sup> See SEC Chairman Jay Clayton “*Remarks on Capital Formation at the Nashville 36/86 Entrepreneurship Festival*,” (Aug. 29, 2018). See also SEC Chairman Jay Clayton “*SEC Rulemaking Over the Past Year, the Road Ahead and Challenges Posed by Brexit, LIBOR Transition and Cybersecurity Risks*,” (Dec. 6, 2018) (“The staff is working on a concept release to solicit input about key topics, including whether our accredited investor definition—a principal regulatory threshold for participation in private offerings—is appropriately tailored to address both investment opportunity and investor protection concerns.”).

<sup>13</sup> See “*Exempt Offerings Pursuant to Compensatory Arrangements*,” SEC Release No. 33-10520 (July 18, 2018).

<sup>14</sup> See “*Report on Modernization and Simplification of Regulation S-K*” (Nov. 23, 2016) (as required by Section 72003 of the FAST Act).

<sup>15</sup> See “*FAST Act Modernization and Simplification of Regulation S-K*,” SEC Release No. 33-10618 (Mar. 20, 2019) (adopting release).

<sup>16</sup> See “*Disclosure Update and Simplification*,” SEC Release No. 33-10532 (Aug. 17, 2018).

- Proposing rule changes to extend “testing the waters” provisions as currently available only to emerging growth companies to all issuers.<sup>17</sup>

On May 9, 2019, the Commission proposed amendments to the “accelerated filer” definition in Rule 12b-2 of the Securities Exchange Act of 1934 (the “Exchange Act”) that would have the effect of reducing the number of registrants that are subject to the Sarbanes-Oxley Act Section 404(b) attestation requirement.<sup>18</sup>

The Commission issued a concept release on July 18, 2018, in which it solicited comment on securities issued by non-reporting companies pursuant to compensatory arrangements in reliance on Rule 701 and reporting companies registering compensatory offerings on the Form S-8 Securities Act registration statement.<sup>19</sup> In the concept release, the Commission sought comment on possible ways to modernize the Rule 701 exemption and the relationship between it and Form S-8, consistent with investor protection, including the advantages and disadvantages of allowing Exchange Act reporting companies to use Rule 701 and, in turn, eliminating Form S-8.<sup>20</sup> As indicated on the Spring 2019 Unified Agenda, the Division of Corporation Finance is considering recommending that the Commission propose rule amendments to Rule 701 and Form S-8.

As indicated on the Spring 2019 Unified Agenda, the Division of Corporation Finance also is considering recommending to the Commission that it propose rule amendments to modernize and simplify disclosures regarding the description of business, legal proceedings, risk factors, management’s discussion and analysis (MD&A), selected financial data and supplementary financial information.

In addition, as indicated on the Spring 2019 Unified Agenda Long-term Actions, the Division of Corporation Finance also is considering recommending to the Commission that it seek public comment on ways to ease companies’ compliance burdens, concerning areas such as earnings releases and quarterly reports, while maintaining appropriate levels of disclosure and investor protection.

Staff in the Division of Corporation Finance will consider this Forum recommendation in connection with these initiatives.

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<sup>17</sup> See “*Solicitations of Interest Prior to a Registered Public Offering*,” SEC Release No. 33-10607 (Feb. 19, 2019).

<sup>18</sup> See “*Amendments to the Accelerated Filer and Large Accelerated Filer Definitions*,” SEC Release No. 34-85814 (May 9, 2019).

<sup>19</sup> See “*Concept Release on Compensatory Securities Offerings and Sales*,” SEC Release No. 33-10521 (July 18, 2018).

<sup>20</sup> *Id.* at text accompanying note 102.

### **3A. Forum Recommendation on Harmonization of Exempt Offerings**

Staff in the Division of Corporation Finance will consider this Forum recommendation in connection with the initiative described above on ways to harmonize and streamline the Commission's rules for exempt offerings under the Securities Act.

### **3B. Forum Recommendation on Finders and Special Purpose Brokers**

As indicated on the Spring 2019 Unified Agenda Long-term Actions, the Division of Trading and Markets is considering recommending that the Commission propose rules concerning the status of finders for purposes of Section 15(a) of the Exchange Act.

Staff in the Division of Trading and Markets will consider this Forum recommendation in connection with this initiative.

### **5. Forum Recommendation on General Solicitation**

Staff in the Division of Corporation Finance will consider this Forum recommendation in connection with the initiative described above on ways to harmonize and streamline the Commission's rules for exempt offerings under the Securities Act.

### **6. Forum Recommendation on Proxy Advisory Firms**

In November 2018, the SEC staff hosted a roundtable to engage with the public on the topic of investment advisers' use of proxy advisory firms as part of a broader discussion of the proxy process.<sup>21</sup> Chairman Clayton has asked the staff to look at the issues raised in the roundtable on this topic and formulate recommendations for the Commission's consideration.<sup>22</sup>

As indicated on the Spring 2019 Unified Agenda, the Division of Corporation Finance is considering recommending that the Commission propose rule amendments to address certain advisers' reliance on the proxy solicitation exemptions in Rule 14a-2(b).

Staff in the Divisions of Corporation Finance and Investment Management will consider this Forum recommendation in connection with this initiative.

### **7. Forum Recommendation on Regulation Crowdfunding**

In the Commission's 2015 final release adopting the Regulation Crowdfunding exemption, the staff undertook to study and submit a report to the Commission on the impact of the regulation on capital formation and investor protection no later than three years following the effective date

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<sup>21</sup> See November 15, 2018: SEC Roundtable on the Proxy Process.

<sup>22</sup> See SEC Chairman Clayton "SEC Rulemaking Over the Past Year, the Road Ahead and Challenges Posed by Brexit, LIBOR Transition and Cybersecurity Risks," (Dec. 6. 2018).

of the Regulation Crowdfunding exemption.<sup>23</sup> The release indicated that the report will include, but not be limited to, a review of: (1) issuer and intermediary compliance; (2) issuer offering limits and investor investment limits; (3) incidence of fraud, investor losses, and compliance with investor aggregates; (4) intermediary fee and compensation structures; (5) measures intermediaries have taken to reduce the risk of fraud, including reliance on issuer and investor representations; (6) the concept of a centralized database of investor contributions; (7) intermediary policies and procedures; (8) intermediary recordkeeping practices; and (9) secondary market trading practices.

Staff in the Divisions of Corporation Finance and Trading and Markets will consider this Forum recommendation, and the findings from the staff's report on Regulation Crowdfunding, in connection with its earlier described initiative on ways to harmonize and streamline the Commission's rules for exempt offerings under the Securities Act.

In addition, the staff has conducted webinars with FINRA in order to provide additional guidance and has published FAQs regarding Regulation Crowdfunding. The staff expects to continue consulting with FINRA regarding the implementation of Regulation Crowdfunding.

#### **8A. Forum Recommendation on Regulation A**

On December 19, 2018, the Commission amended Regulation A to implement Section 508 of the Economic Growth, Regulatory Relief, and Consumer Protection Act of 2018.<sup>24</sup> These amendments to Regulation A permit entities subject to the reporting requirements of Section 13 or 15(d) of the Exchange Act to use the exemption and provide that entities meeting the reporting requirements of the Exchange Act will be deemed to have met the reporting requirements of Regulation A.

In the Commission's 2015 final release adopting amendments to Regulation A, Commission staff undertook to study and submit a report to the Commission no later than five years following the adoption of these amendments on the impact of both the Tier 1 and Tier 2 offerings on capital formation and investor protection.<sup>25</sup> The final release indicates that the report will include, but not be limited to, a review of: (1) the amount of capital raised under the amendments; (2) the number of issuances and amount raised by both Tier 1 and Tier 2 offerings; (3) the number of placement agents and brokers facilitating the Regulation A offerings; (4) the number of Federal, State, or any other actions taken against issuers, placement agents, or brokers with respect to both Tier 1 and Tier 2 offerings; and (5) whether any additional investor protections are necessary for either Tier 1 or Tier 2.<sup>26</sup>

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<sup>23</sup> See "Crowdfunding," SEC Release No. 33-9974 (Oct. 30, 2015). Regulation Crowdfunding became effective on May 16, 2016.

<sup>24</sup> See "Conditional Small Issues Exemption Under the Securities Act of 1933 (Regulation A)," SEC Release No. 33-10591 (Dec. 19, 2018).

<sup>25</sup> See "Amendments for Small and Additional Issues Exemptions Under the Securities Act (Regulation A)," SEC Release No. 33-9741, at Section II(A) (Mar. 25, 2015).

<sup>26</sup> *Id.*











