

35<sup>th</sup> ANNUAL  
SECURITIES AND EXCHANGE COMMISSION  
GOVERNMENT-BUSINESS FORUM ON  
SMALL BUSINESS CAPITAL FORMATION

RECORD OF PROCEEDINGS

**Thursday, November 17, 2016**

**9:00 a.m. - 11:00 a.m.**

**SEC Headquarters**

**Washington, D.C.**

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

### **Panelists (in order of presentation):**

Jeffrey R. Vetter, Partner, Fenwick & West LLP, Mountain View, California

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

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

Anya Coverman, Deputy Director of Policy and Associate General Counsel,  
North American Securities Administrators Association

Ryan Feit, CEO and Co-Founder, SeedInvest, New York, New York

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

Stanley Keller, Of Counsel, Locke Lord LLP, Boston, Massachusetts

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1                   **PROCEEDINGS**

2           MR. ABERO: Good morning, everyone. And it's  
3 my pleasure to welcome you to the 35th Annual Small  
4 Business Forum here, at the SEC.

5           For those of you who I haven't had the pleasure  
6 of meeting yet, my name is Sebastian Gomez, I am Chief of  
7 the Office of Small Business Policy here, in the SEC's  
8 Division of Corporation Finance.

9           The forum today is being conducted under the SEC's  
10 mandate in section 503 of the Omnibus Small Business  
11 Capital Formation Act of 1980. The SEC has been holding this  
12 forum since 1980.

13          Before we begin the program today, I want to  
14 give the standard SEC disclaimer on behalf of each person  
15 from the SEC who will be speaking today. The views that  
16 we and the staff express today are our own, and do not  
17 necessarily reflect, or represent, the views of the  
18 Commission, any of the Commissioners, or my fellow  
19 colleagues at the staff.

20          I also want to express my gratitude to the  
21 staff in the Office of Small Business Policy. It takes a  
22 lot of effort to put together this forum.  
23 Many of you are going to have a chance to meet  
24 them throughout the day here in the auditorium or during  
25 the breakout panels. So, keep in mind that they work

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1 tireless hours to make this a successful forum.

2 I especially would like to thank Tony Barone,  
3 who, year after year, puts countless hours to make sure

4 that this forum is a success. Keith and I are going to  
5 provide very brief introductions of each Commissioner

6 and the panelists, because the full bios of the  
7 Commissioners and the panelists are in the forum package.

8 For those of you watching the forum online, there is a  
9 copy of the forum package available on the forum webpage.

10 Now, I would like to introduce Keith Higgins,  
11 who needs no introduction. Keith joined the SEC in 2013  
12 as the Director of the Division of Corporation Finance.

13 Keith has been actively leading the Division staff on a  
14 number of initiatives, and I have always been able to  
15 count on Keith's support and encouragement for issues  
16 relating to small business capital formation.

17 Keith?

18 MR. HIGGINS: Thanks, Sebastian.

19 Good morning, and welcome, everybody here in  
20 the auditorium, as well as those who are able to join us  
21 by webcast. It's great that you're here today, taking  
22 the time to share with us your insights and expertise  
23 about small business capital formation. The topics that  
24 will be discussed over the course of the day are very  
25 important, not only to the Division of Corporation

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1 Finance, but to the Commission, and indeed, to the economy  
2 as a whole, and our capital markets.

3 We have what I expect will be an exciting day  
4 ahead of us. We look forward to setting the stage with  
5 the views this morning of the panelists. And I know that  
6 will lead to productive discussions in the breakout  
7 sessions that all of you will attend later on during the  
8 course of the day.

9 Before we start, I would like to acknowledge  
10 the just tremendous hard work that Sebastian Gomez puts  
11 into not only this forum, but into all things relating to  
12 small business at the Commission. He is the Chief of our  
13 Office of Small Business Policy. We consider him our  
14 small business advocate, as many of you know. His office  
15 is the SEC's main point of contact for small businesses.

16

17 In addition to organizing events such as this,  
18 it serves as the staff to the Advisory Committee on Small  
19 and Emerging Companies, plays a key role in the  
20 Commission's rulemakings related to capital, small  
21 business capital formation, Reg A, crowdfunding, and does  
22 a terrific job, day to day, in answering questions from  
23 small businesses and practitioners interested in small  
24 business capital formation.

25 So, thanks, Sebastian, for everything that you

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1 do, and for all the folks in your office. It really is a  
2 tremendous effort.

3 With that, I am pleased to start the forum by  
4 introducing Chair Mary Jo White. Chair White became the  
5 31st Chair of the Commission in April of 2013. She  
6 arrived at the SEC with decades of experience as a  
7 federal prosecutor and as a securities lawyer. More  
8 importantly, besides bringing a sterling reputation and  
9 resume to the Commission, Chair White has brought a  
10 practical common-sense approach to securities regulation  
11 and a deep commitment to the mission of the agency,  
12 protecting investors, facilitating capital formation, and  
13 promoting fair and efficient markets. And I can truly  
14 say all the wonderful words that have been said about her  
15 this week in the press are absolutely and totally  
16 deserved.

17 Chair White?

18 CHAIR WHITE: You didn't mention those other  
19 words in the press.

20 (Laughter.)

21 MR. HIGGINS: I said the "wonderful things"  
22 that have been said about you.

23 CHAIR WHITE: I was listening carefully to the  
24 adjective; I was listening.

25 No, thank you very much, Keith and Sebastian.

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1 And let me just first echo, as to both Keith and  
2 Sebastian, as well as the great staff of Corp. Fin., Small  
3 Business Office, as well as throughout the Division, you  
4 deserve -- tremendous public servants. Day-in and day-  
5 out, a lot of your work is visible. Much of it isn't,  
6 but it is so essential to protecting investors in our  
7 markets, and making them work.

8 So let me just -- I will be brief this morning.

9 Let me just -- I want to add my welcome to everybody to  
10 today's Government Business Forum on Small Business  
11 Capital Formation. I especially want to thank all of the  
12 panelists, the moderators, and the participants in  
13 today's program. And I have thanked -- but I will thank  
14 again -- the great staff of the Division of Corporation  
15 Finance, who organized today's forum.

16 This forum is actually the 35th one. Is it our  
17 35th Annual Government Business Forum, and it really does  
18 provide a unique opportunity for the Commission to gather  
19 with entrepreneurs and leaders of the small business  
20 community to hear about the successes and challenges of  
21 small businesses seeking to raise capital and grow their  
22 businesses. We always look forward to these discussions,  
23 and we always benefit from your feedback.

24 Over the past few years, as you know, the  
25 Commission has taken action on multiple fronts, seeking

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1 to facilitate capital formation for small and emerging  
2 companies, while, obviously, also providing appropriate  
3 investor protections.

4 Notably, the Commission has fully implemented  
5 all of the rulemakings into the JOBS Act, and companies  
6 are now taking advantage of these new capital-raising  
7 options: Rule 506(c), Regulation A+, and Regulation  
8 Crowdfunding, which are designed to foster new ways for  
9 smaller companies to access the capital markets.

10 Looking beyond the JOBS Act, the Commission  
11 recently proposed rules to increase the financial  
12 thresholds in the smaller reporting company definition,  
13 an area in which this forum made a recommendation last  
14 year. The proposed amendments would expand the number of  
15 companies that qualify for SRC status, and to scale  
16 disclosure requirements of Regs S-K and S-X.

17 The Commission also recently adopted rules that  
18 update and modernize the intrastate -- that is intrastate  
19 -- and regional offering framework to better accommodate  
20 how local offerings have evolved with the Internet and  
21 other developments.

22 Last year the forum made recommendations  
23 related to Rule 147 and Rule 504, which the Commission  
24 considered in adopting final rules. And, consistent with  
25 your recommendation, the \$5 million limit on Rule 147

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1 offerings was eliminated, the safe harbor was retained,  
2 and a new exemption was adopted.

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

8 Over the years the recommendations from this  
9 forum have provided valuable feedback to the Commission  
10 as it has considered rules to give smaller companies new  
11 ways to access our capital markets. Now that we have the  
12 JOBS Act rules in place, as well as our new rules to  
13 facilitate intrastate and regional offerings, we want to  
14 make sure that the rules are operating as they should to  
15 promote general confidence in the new markets, and are  
16 workable for issuers.

17 We ask that your recommendations actually, as  
18 you think about them today, consider how we can best  
19 monitor and maintain investor protection and the  
20 integrity of these new capital markets, while improving  
21 the ability of small businesses to access them in order  
22 to grow and drive job creation and economic growth.

23 So, let me stop there, thanking you again for  
24 your time and efforts, all you do for small businesses,  
25 and I very much look forward to your input. Thank you.

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1 MR. HIGGINS: Thanks, Chair White.

2 Next we will hear from Commissioner Michael  
3 Piowar. Commissioner Piowar joined the Commission,  
4 began serving in August of 2013. Before that time he was  
5 in the Senate –serving as the Republican Chief Economist for the  
6 Senate Committee on Banking, Housing, and Urban Affairs,  
7 working on both the Dodd-Frank Act, as well as the JOBS  
8 Act.

9 Prior to that time, Commissioner Piowar also  
10 served at the White House, as the Senior Economist on the  
11 President's Council of Economic Advisors.

12 Mr. Piowar?

13 COMMISSIONER PIWOWAR: Thank you, Keith, for  
14 that introduction. I guess, unlike you, I do need  
15 introductions.

16 (Laughter.)

17 COMMISSIONER PIWOWAR: And I would like to echo  
18 what folks are saying about Sebastian and the rest of the  
19 Office of Small Business Policy. You all do a great job  
20 throughout the year. In organizing this annual  
21 gathering, you know, you show your strong dedication and  
22 passion for small businesses. Thank you.

23 This year's forum offers the Commission a  
24 chance to reflect on efforts to -- on our efforts to  
25 improve access to capital for small businesses over the

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1 past several years. Under the leadership of Chair White,  
2 the Commission has adopted rules that modernize and  
3 update the legal framework, which should facilitate  
4 capital formation and continue to protect investors.

5 I am pleased that the Commission has  
6 successfully implemented all of the provisions under the  
7 JOBS Act, which shows what is achievable when common-  
8 sense laws are enacted on a bipartisan basis.

9 As described by Chair White, the Commission has  
10 adopted final rules that permit general solicitation and  
11 private offerings to accredited investors, increase the  
12 limits on Regulation A offerings, implement crowdfunding  
13 provisions, and update the rules on intrastate offerings.

14 Many of these rules have their origins in past  
15 recommendations from this forum. So no pressure for this  
16 year about participants.

17 The menu of capital-raising choices available  
18 today for small businesses presents more flexibility and  
19 more alternatives than ever before. As the effective  
20 dates for many of these changes have recently passed, and  
21 in some cases have yet to start, only time will tell as  
22 to how issuers, investors, and market participants will  
23 react.

24 Fortunately, the Commission has an entire  
25 division focused on studying the economic effects of our

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1 rulemaking. And, as an economist, I can't wait to see  
2 their analysis in the months and years to come. The  
3 innovation, creativity, and job creation from small  
4 businesses are a central component to fostering continued  
5 economic growth.

6 Thank you all for your participation, and I  
7 look forward to reviewing this year's recommendations.

8 MR. HIGGINS: Thank you, Commissioner Piwowar.

9 Next we will hear from Commissioner Kara Stein.

10 Commissioner Stein has served as a Commissioner since  
11 August of 2013. Before that time she served as Legal  
12 Counsel and Senior Policy Advisor to Senator Jack Reed,  
13 and was the Staff Director of the Senate Banking,  
14 Housing, and Urban Affairs Subcommittee on Securities  
15 Insurance and Investment.

16 Commissioner Stein?

17 COMMISSIONER STEIN: Thank you very much. I  
18 want to welcome everyone this morning to this Annual  
19 Government Business Forum on Small Business Capital  
20 Formation. It's a mouthful. I want to thank the staff,  
21 Sebastian and his office, for putting this together.

22 Since 1982, this forum has provided a means for  
23 us to engage with the public on issues that are impacting  
24 small businesses and capital formation throughout the  
25 country. This forum necessarily involves consideration

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1 of two critical components of small business capital  
2 formation: the small businesses themselves and the  
3 investors who support them.

4 How are initiatives geared towards capital  
5 formation working in practice? Who is benefitting from  
6 these initiatives? And is any group being left out?

7 Last year, as you all know, we adopted Reg A+  
8 and Reg Crowdfunding. Three weeks ago, the Commission  
9 adopted revisions to the intrastate offering exemption,  
10 and Securities Act Rule 147, and we created a new  
11 exemption under Rule 147A and revised Rule 504 of Reg D,  
12 by raising the aggregate offering limit from \$1 million  
13 to \$5 million in a 12-month period of time. Rule 504 was  
14 also revised to include bad actor disqualification  
15 provisions.

16 All of these initiatives were adopted with the  
17 purpose of increasing the options available to small  
18 businesses to raise capital. These initiatives also  
19 incorporated the Commission's consideration of investor  
20 protection, market integrity, and market confidence.

21 So, ultimately, one of the questions we're  
22 faced with each time we do a rule in this area is how do  
23 we provide opportunities for small businesses, while  
24 instilling market confidence so that investors are  
25 willing to provide their capital to small businesses?

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1           It has been more than a year since the adoption  
2 of Reg A+ and six months since the effective date of Reg  
3 Crowdfunding. By some accounts, the new capital raising  
4 options have not been widely adopted. Other data  
5 suggests those using the new options are concentrated by  
6 sector and geographic region. Why is this?

7           Is there a problem with supply? For example,  
8 there aren't enough small businesses who want to use  
9 these capital-raising options? Or do we have a demand  
10 problem. Are there not enough investors who are willing  
11 to put capital into this space? Alternatively, do we  
12 have a problem with outreach, support, and education? It  
13 is also fair to say maybe it's too early to tell.

14           Ultimately, we have to ask how our rules should  
15 work for all small businesses and their investors. And  
16 clearly, we wouldn't be here today if these were simple  
17 questions with simple answers. I think we need to think  
18 broadly and creatively. We need to avoid jumping  
19 prematurely to conclusions without the data needed to  
20 support such conclusions.

21           Additionally, I think we need to keep thinking  
22 about how we build and promote confidence in the market,  
23 so that much-needed capital can flow to businesses trying  
24 to expand and grow. I think part of this also involves  
25 secondary market liquidity. How do investors get out of

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1 that initial investment once they're in? We've seen over  
2 and over how important that is to investors.

3 Today we will start focusing on what is  
4 happening in the current landscape for capital formation.  
5 If preliminary results suggest geographic, sector, or  
6 demographic concentration of businesses using these new  
7 capital formation options, then perhaps we should query  
8 what more needs to be done to ensure equality of  
9 opportunity for small business owners.

10 How do we ensure that the small business owner  
11 in Tennessee is as aware of the options available for her  
12 startup as her male counterpart in California? What more  
13 can be done to support the diverse groups of current  
14 owners and would-be business owners, which may include  
15 the African-American woman seeking to fund a hair product  
16 idea -- I met such a person at an incubator in  
17 Philadelphia -- or the Armenian immigrant seeking to open  
18 a small restaurant.

19 So, for example, I invite you to consider  
20 recommendations that focus on data collection and more  
21 outreach, and I also encourage you to consider  
22 recommendations that would continue to instill confidence  
23 in our markets.

24 We all know this, but when investors are  
25 protected, investor confidence and willingness to invest

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1 will likely be maintained or rise, which positively  
2 impacts the funding environment for small businesses. So  
3 thank you, and I look forward to the forum this morning.

4 MR. HIGGINS: Thank you, Commissioner Stein.

5 Before we turn -- I turn it over to Sebastian  
6 to introduce the panelists and get the panel started, I  
7 wanted to quickly highlight some of the accomplishments  
8 the Commission has had over the past year as it relates  
9 to small business capital formation and the work of this  
10 forum.

11 Not too long after last year's forum, in  
12 December, the Commission issued a staff report on the  
13 accredited investor definition. It was the Commission's  
14 first review of that definition that's required under the  
15 Dodd-Frank Act. The report not only reviewed the  
16 definition, but suggested potential ways in which the  
17 Commission could consider various alternative approaches  
18 to this definition.

19 In May of this year, as was mentioned, the  
20 final rules for securities-based crowdfunding went into  
21 effect. Through to the end of last month, the end of  
22 October, there have been over 130 offerings conducted  
23 under Reg CF seeking to raise nearly \$16 million in  
24 capital, with an average target of approximately  
25 \$115,000. Of these, 19 offerings have been reported as

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1 having been completed, raising a total of \$6.6 million,  
2 or an aggregate offering of approximately \$350,000.

3 In addition to securities-based crowdfunding,  
4 we've seen continued interest in securities offerings  
5 under Regulation A. From effectiveness of the final  
6 rules in June of 2015 through to the end of last month,  
7 issuers have filed to conduct over 140 offerings under  
8 Reg A, for an aggregate offering amount of over \$2.5  
9 billion, seeking an average of approximately \$18 million  
10 per offering.

11 It's been largely split between tier one and  
12 tier two offerings. Of these, over 80 offerings have  
13 been qualified by the Commission to raise an aggregate of  
14 approximately \$1.4 billion. Since Reg A went into  
15 effect, issuers have reported raising proceeds of  
16 approximately \$189 million to date.

17 It was also mentioned in June of this year the  
18 Commission proposed amendments that would increase the  
19 financial thresholds of the smaller reporting company  
20 definition, so that companies with less than \$250 million  
21 in public float -- or, alternatively, \$100 million in  
22 revenues if they had no float -- would be eligible for  
23 that definition in the scale disclosure requirements of  
24 Reg S-K and Reg S-X.

25 Finally, as was also mentioned a few weeks ago,

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1 the Commission adopted changes to Rule 147, Rule 504, and  
2 a new 147A for intrastate offerings to allow, really,  
3 intrastate crowdfunding opportunities to be taken  
4 advantage of, as well as the regional coordination of  
5 offerings.

6 So, in recent years, as I think was also  
7 mentioned, these -- all of these have been part of the  
8 recommendations of this forum, and I wanted to highlight  
9 them today, because I believe they illustrate how  
10 important that the work that you all will do today really  
11 is.

12 With that, I would like to turn it over to  
13 Sebastian, who is going to introduce our panel.

14 Sebastian?

15 MR. ABERO: Thank you, Keith. A little bit of  
16 a road map for today. I am going to briefly introduce  
17 the panelists who are going to provide brief remarks.  
18 After that Keith and I will moderate the panel  
19 discussion.

20 But, as we do each year, we encourage you to  
21 participate as well by using the index card that -- it's  
22 in your forum package -- to write any questions that you  
23 would like for us to ask the panelists. We will be  
24 collecting those cards, and then Keith and I will be  
25 presenting those questions to the panelists.

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1 For those of you who are watching the webcast  
2 online, you can send your questions to  
3 [smallbusiness@sec.gov](mailto:smallbusiness@sec.gov), and I will get a copy of those  
4 questions, as well.

5 So now I am very pleased to introduce our  
6 distinguished panel today.

7 Starting from my right is Jeffrey Vetter, who  
8 is a partner at Fenwick and West. Next  
9 to Jeff is David Feldman, who is a partner at Duane  
10 Morris. Next to David is Doug Ellenoff, who is a partner  
11 at Ellenoff, Grossman and Schole. Next to Doug is Anya  
12 Coverman. Anya is Deputy Director of Policy and  
13 Associate General Counsel at the North American  
14 Securities Administrators Association, or NASAA. Next to  
15 Anya is Ryan Feit. Ryan is CEO and Co-Founder of  
16 SeedInvest. Next to Ryan is Chris Tyrrell, who is Founder  
17 and CEO of OfferBoard Group. And last, but not least,  
18 next to Chris is Stan Keller of Counsel at LockeLord.

19 Like I said, I promise that we are going to be very  
20 brief, because their full bios are in the package.

21 So, with that, Jeff, I thought maybe you could  
22 get us started. I know that you have done more than 75  
23 IPOs, some before Title I of the JOBS Act went into  
24 effect, some of them after Title I of the JOBS Act went  
25 into effect. So we would appreciate your thoughts as to

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1 what has changed and what you are seeing.

2 MR. VETTER: Great. Thank you very much and  
3 good morning. I will just briefly, for background, give  
4 a summary of the changes from Title I of the JOBS Act,  
5 and how they affected both IPOs and public reporting  
6 companies.

7 The key changes were the JOBS Act permitted  
8 confidential submissions of registration statements and  
9 not needing to make a public filing until -- now it's 15  
10 days prior to the commencement of the road show. There  
11 is a reduced financial statement requirement. Now  
12 companies need only have two years of an audited income  
13 statement and most recent year-end audited balance sheet.  
14 Reduced executive compensation disclosure. So in IPOs  
15 and for EGCs going forward, you don't need to see the  
16 lengthy CD&A sections that other larger public companies  
17 now have.

18 There is also an ability to conduct testing the  
19 waters meetings, so meeting with potential investors  
20 before submission, after submission, without violating  
21 Section 5.

22 There is also some easing of restrictions in  
23 the JOBS Act language of kind of the types of  
24 communications research analysts could have with  
25 management and the ability of research analysts to

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1 publish about companies, emerging growth companies, prior  
2 to their IPOs. And also, EGCs could also opt out of new  
3 accounting standards.

4 For public companies, once an EGC went public,  
5 there were continued benefits under the JOBS Act: the  
6 delayed requirement for the auditor attestation  
7 requirement of their internal controls under 404 of  
8 Sarbanes-Oxley, continued ability to have reduced  
9 executive compensation disclosures, and the ability to  
10 defer say-on-pay votes.

11 So, I think I'd like to kind of now summarize  
12 kind of what provisions of Title I are EGCs taking  
13 advantage of and, alternatively, what ones maybe aren't  
14 getting as much traction.

15 In the IPO context, with respect to the  
16 financial statements, except for the cases of, say,  
17 development stage companies -- and I would -- you know,  
18 those might be, like, life sciences, medical device  
19 companies, biotech companies, nearly every -- most  
20 companies aren't taking advantage of the ability to use  
21 the two years income statement and one-year balance  
22 sheet, and I think that's largely a function of the  
23 investment community. I think the investors do want to  
24 see kind of a longer time period and get a better sense  
25 of the trajectory of the financial statements of the

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1 companies.

2 But in these development stage companies cases,  
3 it actually has been helpful, and it makes a lot of  
4 sense. If your company doesn't have any revenue and you  
5 are still just developing a product, having an extra year  
6 of income statement when you have no revenue, you know,  
7 it's not going to add a lot of additional information for  
8 investors.

9 And in our surveys of kind of the cost of an  
10 IPO, we've also noticed that, particularly in the case of  
11 these kind of pre-revenue development stage companies,  
12 there has been a pretty significant savings in their  
13 stated accounting fees. We've seen those down. As  
14 compared to tech IPOs, it's almost a third lower in cost.  
15 And compared to all IPOs, it's about 20 percent lower in  
16 cost, with respect to accounting fees. So, I think  
17 that's actually been very helpful for many types of  
18 smaller companies that are still in the development  
19 stage.

20 There is also the confidential submission  
21 process. This has been very helpful for emerging growth  
22 companies because they now can kind of start the review  
23 process with the SEC, start the comment process without  
24 having that be out in public, where, you know, people  
25 will notice it, their employees will notice it.

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1           And so, you're not going to have the situation  
2 that you ran into in the early 2000s, where many people  
3 filed for an IPO, but then the market windows weren't  
4 there, and they just remained on file, and they started  
5 to appear to take on sort of the image of damaged goods.  
6 And then also impacting the morale of their employees.  
7 So that's been helpful.

8           I would say I don't think it's necessarily  
9 provided significant cost advantages, because the process  
10 is essentially the same, it's just that it's not public  
11 facing. Interestingly, though, when the confidential  
12 submission process was first being implemented with the  
13 SEC, when companies could submit via PDF copy via email  
14 of their draft registration statement, that actually did  
15 save some money because they didn't need to go start  
16 running up the clock at the more expensive financial  
17 printers that would submit by EDGAR. So I'd just throw  
18 that one out there for potential cost saving.

19           The other issue is kind of the testing the  
20 waters, the ability to do these testing the waters  
21 meetings. I would say now, in nearly every IPO, there is  
22 some kind of testing the waters meeting that occurs.  
23 Often, it's -- typically tends to be sort of right before  
24 they make the public filing. So just sort of as a last-  
25 minute check to see if the messaging resonates, and see

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1 if the investors sort of potentially understand the  
2 story.

3 But we are also seeing companies do this ahead  
4 of even the filing process. It sort of gives them some  
5 insight as to whether it makes sense to kind of kick in  
6 all that time and effort to get going there.

7 We do still see people expressing concerns  
8 about whether, when you have these testing the waters  
9 meetings, what kind of information should be shared,  
10 whether -- you potentially have issues with having a  
11 testing the waters meeting with an investor who then, you  
12 know, a few weeks later, will then go ahead and purchase  
13 an IPO or something. So there is still a lot of  
14 uncertainty, just kind of within the participants there  
15 on that. I certainly have my views on that, but I would  
16 say there is still a lot of people that spend a lot of  
17 time thinking about those kinds of things.

18 I think the one thing I've seen after the JOBS  
19 Act is we're not seeing sort of a return to an increase  
20 in sort of the smaller-sized IPOs. You know, like in the  
21 late nineties you saw a number of -- particularly in my  
22 space that I work in, the technology space, you saw a lot  
23 of these \$25 to \$30 million IPOs, and there were sort of  
24 these smaller underwriters that kind of specialized in  
25 those sorts of things.

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1 Today, the average IPO size outside of sort of  
2 life sciences and medical space tends to be \$75 million on  
3 the low end to, you know, to over \$100 million. And I  
4 think the underwriters will tell you that's because  
5 that's sort of the bare minimum size you need in order to  
6 have a significant public float and an active trading  
7 market in the shares.

8 In the life sciences kind of biotech space, I  
9 think it's maybe a little bit of a different type of  
10 investor there, and -- but even then you're still seeing  
11 kind of deal sizes in the \$50 to \$75 million range. So  
12 still maybe even a little higher than maybe a lot of the  
13 other ones that we used to see years ago for smaller-  
14 sized companies.

15 I think the other thing I would say is, you  
16 know, with respect to analysts, we're not seeing sort of  
17 as much pre-IPO analyst reporting on the EGCs. Now --  
18 and maybe necessarily the same types of interactions with  
19 management, other than just kind of what you would  
20 normally have, just within IPO for analysts to kind of  
21 understand the model so that they can report on it once  
22 the company is public. I think there is probably some  
23 issues there with respect to kind of parts of the global  
24 settlement that are still in effect that might be  
25 hindering that a little bit.

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1           And then, after the IPO process itself, once  
2 the EGC is public, I do think we are seeing a lot more  
3 benefit from Title I. You know, for EGCs, the ability to  
4 defer the 404 and auditor attestation on the internal  
5 controls is a real cost savings for them. And so, the  
6 ability to sort of defer that for even up to five years,  
7 you know, for folks is a big benefit. And that is  
8 probably the number-one thing that most EGCs would cite.

9           I think also the delayed say-on-pay and say-on-  
10 frequency votes are also helpful. I think the -- you  
11 know, it helps the companies just generally not have to  
12 have sort of the same level of process and disclosure and  
13 sort of IR activity that maybe much larger companies have  
14 to have. So I think it does save management time and  
15 some cost.

16           And for the smaller, newly-public companies, we  
17 are not seeing as much investor demand for that kind of  
18 information quite yet, as you might once the companies  
19 become more mature and larger.

20           The new accounting standards, the ability to  
21 defer implementation of new accounting standards, it's  
22 helpful for public companies. But, as a practical  
23 matter, it makes -- an EGC really does, as a practical  
24 matter, if they are public, need to adopt the new  
25 accounting standards if everybody else in their industry

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1 is doing it, because it just makes it much harder for  
2 that company to be comparable to other companies in the  
3 space.

4 So, as a practical matter, I don't know that  
5 that one is necessarily providing much benefit for the  
6 EGCs.

7 MR. HIGGINS: Jeff, can I ask you --

8 MR. VETTER: Yeah.

9 MR. HIGGINS: -- and to the other panelists, as  
10 well, the FAST Act tweaked some of the Title I -- the 21  
11 to 15 days. It added the ability to omit an early year  
12 financial if you weren't going to use it in the  
13 prospectus. Are there other Title I changes that you all  
14 are seeing or expecting, things that would make it even  
15 more useful to emerging growth companies?

16 MR. KELLER: Keith, let me maybe take the  
17 opportunity which picks off of that to ask the broader  
18 question, or to raise the broader issue. If the changes  
19 we've seen in Title I for EGCs have made so much sense,  
20 and don't seem to be creating abuses of denying investor  
21 protection, why shouldn't they be expanded and made more  
22 available to other companies?

23 In other words, why limit it to this  
24 arbitrarily defined category of EGCs, but rather look at  
25 it as something we should revisit for broader

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1 application, whether you draw a line between smaller  
2 issuers, for example, and the like? But rather than just  
3 limiting it to EGCs, having that broader application.

4 MR. FELDMAN: Keith, the other thing people  
5 talk about is that EGCs are only sort of prospective.  
6 And companies that were previously public were not roped  
7 in. And people are talking about, well, why not think  
8 about letting companies that were public before the JOBS  
9 Act, that would otherwise qualify, get the benefit of the  
10 emerging growth company status.

11 MR. HIGGINS: I guess that's really  
12 coordinating it with the smaller reporting company  
13 definition. And, you know, because the EGC is now \$700 million,  
14 you have to go over \$700 million before you lose your status, or a  
15 billion in revenue.

16 MR. VETTER: I think I would just throw out  
17 one, also, response to this, too, as well, or this  
18 concept. You know, in my experience, regardless of  
19 whether the company is an EGC or even doesn't meet the  
20 qualification because they're much larger, in the IPO  
21 context as compared to the public company reporting  
22 context and proxy season, we find very little discussion,  
23 interest in sort of the lengthy compensation disclosures  
24 from investors.

25 It seems to be very -- you know, the

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1 underwriters really don't think it's important in terms  
2 of marketing the IPO itself. Now that becomes a totally  
3 different dynamic once you're already public, because  
4 then you have the different constituencies, you know,  
5 like the ISSs of the world, and different folks.

6 But in the IPO context, we find just very  
7 little interest in that kind of disclosure. And I wonder  
8 how valuable it is, too, when a company has been private,  
9 and they are just not running their business with the  
10 same amount of rigor that you might have as a public  
11 company.

12 MR. ABERO: I think this is probably a good  
13 opportunity to switch to what has been referred to as the  
14 mini-IPO, or more -- better known as the Reg A+.

15 And, David, I know you have been active in that  
16 market. I also know that the term "Reg A+" likely was  
17 coined by you and others in discussions at this small  
18 business forum in years past. Could you tell us about  
19 what you are seeing in that area?

20 MR. FELDMAN: Sure. And thank you for having  
21 me. Thank you to the Chair and the Commissioners for  
22 their leadership and hard work on this JOBS Act and in  
23 general.

24 I will use a word that we are all going to have  
25 to start getting used to and say I'm a huge supporter and

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1 advocate of Reg A+. The JOBS Act ushered in what I  
2 believe was a truly brilliant rulemaking job by the staff  
3 of the Division of Corporation Finance led by Karen  
4 Wiedemann and others, where they really wanted to  
5 encourage companies to use this, make it attractive, but  
6 also put in very good protections for investors.

7 For many years I promoted the sort of  
8 legitimate use of reverse mergers, but I always used to  
9 say we wouldn't need reverse mergers if IPOs were easier  
10 to do. And as we did back in the nineties, I think we  
11 may see an ushering back, Jeff, of a lot of these small  
12 IPOs. As Keith has already indicated, we have about 14,  
13 15 deals that have closed, averaging about \$12 million or  
14 so per closing. So enough people are finding it  
15 attractive, and we are really hoping.

16 For a brief overview, as we know, the JOBS Act,  
17 which is -- made Reg A bigger, by allowing you to raise  
18 up to \$50 million, it created a blue sky exemption for  
19 these offerings, which is very, very important for IPOs  
20 over the counter. Test the waters was even expanded from  
21 where it was before, to allow testing the waters with any  
22 investor, both before and after your filing.

23 The rulemaking created both a light reporting  
24 option, as well as a full reporting option, robust  
25 disclosure, but protections for unaccredited investors

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1 who cannot invest more than 10 percent of their income or  
2 net worth unless the offering is going to a national  
3 exchange.

4       So, let's turn to how is it going. It's going  
5 well, I guess, is the easy answer. Although it has taken  
6 a little while to get going. True to their word, the SEC  
7 staff has given sort of expedited review of these  
8 filings. We are seeing a couple of dozen, maybe,  
9 comments. Generally, very minor. People are saying they  
10 are averaging 71-ish days in the SEC, which was  
11 phenomenal.

12       Second is that we are starting to see  
13 underwriters emerge, including some middle-market-level  
14 guys. And some deals are being done purely with  
15 crowdfunding. Those have been not always as successful,  
16 except when you sort of bring your own crowd. The first  
17 deal that really is trading is called Elio Motors. They  
18 raised, I think, \$18 million, all from people who were  
19 pre-ordering their 3-wheeled car. No underwriter, that  
20 was successful. But it is very challenging to find  
21 companies like that.

22       So the Wall Street firms, the underwriters, are  
23 coming in and saying, "Let's do a crowdfund piece along  
24 with a traditional underwriting," and that's been the  
25 trend so far. And you do see an emergence of these

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1 professional marketing firms coming in and charging,  
2 frankly, quite a lot of money. But they are producing  
3 incredible video, they are doing Facebook and Twitter  
4 campaigns, and they are helping build the crowd.

5       And, as I said, shell mergers are rapidly  
6 disappearing. I think there was an article in the PIPEs  
7 Report recently that -- the headline was "RIP Reverse  
8 Mergers." The seasoning rules that came in for shells  
9 and the cost of the shell -- the big advantage for  
10 reverse mergers used to be speed. And now that this  
11 process takes about as long -- maybe a little bit longer  
12 -- than a shell merger and actually costs less, most  
13 people, when they call me, I say, "Let's do this."

14       Many of the deals are going -- looking to go to  
15 over-the-counter markets. But more and more, we are  
16 working on deals going directly to a national exchange.  
17 FINRA gets it. They have set up their systems to allow  
18 it. Both the New York Stock Exchange and NASDAQ are very  
19 much excited. Both are facing dealing with companies now  
20 that are in the process of, hopefully, getting their  
21 deals done and listed. And I think that's exciting.

22       But others are saying, "No, let me trade over  
23 the counter." Elio is on the QX, I believe, and they are  
24 doing this light reporting and taking advantage of it.  
25 And then there is companies like Fundrise, which is not

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1 even trading. They did a public offering. It's a REIT.  
2 And the only way you get out is with a quarterly  
3 redemption opportunity. As I say, much lower cost.  
4 You're talking about -- probably about half of a  
5 traditional IPO because, in part, of the expedited SEC  
6 review.

7 One thing that held us up for a while was a  
8 lawsuit brought by Massachusetts and Montana against the  
9 SEC and the D.C. Court of Appeals, seeking to invalidate  
10 the new rules as outside the statutory authority of the  
11 SEC. It took almost a year, but the court finally  
12 dismissed that case in April of this year. Before that,  
13 many players were saying, "Let me wait before I want to  
14 dive in, until I know what's going to happen. Because if  
15 the rules that we're doing this deal under become  
16 invalid, that could be problematic."

17 So, in many ways we have really only started  
18 gearing up heavily since then. And, as I say, even since  
19 I wrote this last week you said it was \$175 million, and  
20 now you're saying there is another \$14 million in, like,  
21 the last week. We're up to almost \$200 million raised.  
22 So I think that's exciting. Next slide?

23 So, there have been a couple of things that  
24 have come up. And I want to say that Sebastian and the  
25 team and the small business office are phenomenally

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1 helpful, accessible, responsive. They really want this  
2 to work, and they really want to be available and  
3 helpful, and I greatly appreciate that.

4       So some things that have come up. In testing  
5 the waters, it's kind of new. Yes, it was always there,  
6 but so few Reg A deals were done, so we're all kind of  
7 figuring out what the rules should be. With respect to  
8 materials that are designed to solicit interest from  
9 investors, you are required to put a legend on that, and  
10 also file it with the SEC. And the question is what  
11 constitutes that material as you're going through normal  
12 business as a company?

13       So we, for example, did a -- we had a company  
14 that had filed to do an IPO under Reg A, and they did a  
15 press release that said we hired a new executive. And  
16 then one little line in there said, "We filed with the  
17 SEC confidentially to do a Reg A IPO."

18       A week later we get a call from the SEC, and  
19 they said, "Well, this is test the waters material." And  
20 we were, frankly, surprised to hear that. And they said,  
21 "We want you to go back on your PR news wire and put a  
22 legend on it." And so we did, and that was fine.

23       And so, for now we are kind of taking the  
24 attitude that everything is test the waters material,  
25 when in doubt, if it even mentions or says anything about

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1 the IPO. But we are hoping to be able to have  
2 discussions about having greater clarity in that regard.

3 Another example relating to that is media  
4 interviews. If my CEO goes on CNBC or gives an interview  
5 to the New York Times and talks about the IPO, well, how  
6 can there be a disclaimer on those things? And maybe  
7 there can, maybe that is the condition. But again, we're  
8 not sure how to deal with that. I know we have been  
9 having discussions, and hopefully we will see some  
10 guidance on that, as well.

11 The rulemaking has a unique provision that, you  
12 know, in an S-1, under the Title I, you can -- you must  
13 come out of 15 days before your first road show. With  
14 Reg A you come out 21 days before qualification.

15 Now, since none of us can, you know -- we're  
16 not prescient about the future, you don't know today when  
17 you're actually going to get qualified. And so we do our  
18 best to sort of guess it. So that's a little awkward.

19 And also, we're hoping to maybe, you know, jump on to the  
20 FAST Act benefits, and maybe we can get that 21 down to  
21 15, as well.

22 One negative thing that's also been happening  
23 is Reg A allows the states to require a notice filing,  
24 similar to Reg D and Form D, and charge fees for that  
25 notice filing. Unfortunately, many of the states have

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1 imposed very high fees that are the same fees as if you  
2 were filing a registered offering that was going to be  
3 reviewed by the state.

4 And you can argue that there should be a higher  
5 fee when they have got to pay people to be on staff to  
6 review, and so on. But this is just a notice filing that  
7 is going into their file, and will never be reviewed, and  
8 to charge, in some cases, over \$1,000 or, in a few, even  
9 over \$2,000, seems very high to me. And maybe that's  
10 something we can have a discussion with our friends at  
11 NASAA about.

12 And the last thing that's been sort of issues  
13 is, you know, is this the same as rules -- the rules we  
14 have for registered offerings. For example, when you do  
15 an S-1, if your 10Q is due the next day after  
16 effectiveness, there is a rule that allows you to go and  
17 wait 45 days to file that. It doesn't apply to  
18 unregistered offerings. We have talked informally about  
19 that. We are hoping maybe we make some guidance on that.

20 In addition, I understand we are about to get  
21 some guidance on the FAST Act rules that allow you to  
22 eliminate financials that are likely to be excluded at  
23 the end. I hope that will be positive guidance.

24 MR. ABERO: That guidance is out as of this  
25 morning, so I encourage everyone to take a look at it and

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1 our compliance discussion interpretation.

2 MR. FELDMAN: Awesome. And, in addition, you  
3 know, we would like to talk about some guidance on the  
4 2007 interpretation on concurrent offerings, and we can  
5 get to that, hopefully, at some point.

6 I know I am almost out of time. So some of the  
7 things we may be talking about in the breakout sessions  
8 today that could make this possibly even better, the OTC  
9 markets company has submitted a petition to the SEC for  
10 some improvements. My law firm actually submitted a  
11 letter of support of that to allow at-the-market  
12 offerings, to have a blue sky preemption for the resale  
13 of these securities, and to allow full reporting  
14 companies to use Reg A+, which they are not now.

15 We would also love to talk about increasing the  
16 maximum. The JOBS Act requires the SEC to either, every  
17 two years, increase the maximum amount under Reg A, or go  
18 to Congress and explain why they did not. And I know in  
19 2014 they went and said, "Well, we don't even have the  
20 rules done yet." I'm not sure whether there was a  
21 submission in 2016 or not, but clearly the amount has not  
22 gone up. But, you know, I have a client that is getting  
23 ready to do a \$75 million IPO, and they'd love to be able  
24 to use Reg A. But it's not available.

25 One idea we can consider is, well, if the

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1 review is so expedited, why not think about do you really  
2 need 30 days? Could we consider a 15 or 20-day review  
3 period for Reg A? That would really make people very,  
4 very excited, if something like that could be considered.

5

6 Unless -- you know, Reg A is only available for  
7 U.S. and Canadian companies. And when the SEC didn't  
8 change it in the new rules, they didn't really have a  
9 reason given, except that, "Well, this is how it was  
10 before, we are leaving it as it is." And, you know, I  
11 think there is no reason we shouldn't allow a company  
12 from the UK or Israel or other places to be able to  
13 benefit from this. Maybe you could do it with a lower  
14 limit, or something like that. And that's my overview.

15 MR. ABERO: Thank you, David.

16 Doug, we've been working on crowdfunding for  
17 many years. I remember shortly after the JOBS Act we had  
18 one of our first meetings about crowdfunding, even  
19 previous -- prior to the proposal. There has been a lot  
20 of excitement about crowdfunding. The rules are live  
21 now. Can you tell us what you're seeing?

22 MR. ELLENOFF: Certainly, and thanks for having  
23 me. And I really do appreciate the staff's energy and  
24 time that they spent on the Regulation CF rules. I was  
25 down here a lot. And the attention and the considered

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1 opinions of the staff that are reflected in the final  
2 rules that are somewhat different than the statutory  
3 provisions actually has enabled the industry to be  
4 viable. And it's with great appreciation that I am here  
5 today to express that.

6       There have been about 150 campaigns, as Keith  
7 mentioned, that have been posted to the now-nearly 20  
8 platforms that FINRA has approved for doing business. I  
9 think the number that Keith mentioned are the closed or  
10 the funded deals. But there are another 25 or so that  
11 are above their minimum numbers. So it's really about a  
12 third of the deals that currently are able to close,  
13 which, out of the 150, as it ramps, I think actually is a  
14 very high close rate.

15       I think the regulation -- the crowdfunding  
16 industry, similar to the Reg A+ industry, has got to  
17 figure out some of the rules of engagement for the  
18 digital agencies, and how they interact within compliance  
19 of the securities laws in order to get those close rates  
20 higher. But I -- there are a lot of people who are  
21 focused on the industry who are also migrating from the  
22 Kickstarter and the Indiegogo world, in order to make  
23 that happen.

24       Indiegogo, by the way, for those of you who  
25 didn't see the release this week, in joint venture with

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1 MicroVentures, is actually entering into the Title III  
2 space.

3 And I actually want to address some of the  
4 concerns that Commissioner Stein mentioned. Of those  
5 deals, while a vast preponderance of them are the coast -  
6 - 56 of them are in California, and a bunch are in New  
7 York and the surrounding states -- nearly half of those  
8 same 152 campaigns are geographically dispersed into  
9 almost half the states. So, while that is not a lot,  
10 it's still, I think, as the Commissioner pointed out,  
11 it's small numbers.

12 And of those small numbers, I think you have  
13 representation of a variety of different deals that would  
14 not otherwise be attractive to venture or institutional  
15 investors, but are to friends and family, which is what -  
16 - the way I see Reg CF really playing out. It -- not  
17 negative adverse selection, the way some people  
18 suggested, but just interesting deals that are otherwise  
19 not properly profiled for larger institutional amounts of  
20 money.

21 I think you will see women and minorities get a  
22 much better uptake in this world. I think it takes time.  
23 I think there is not a lot of money to be made here, so  
24 there are not a lot of evangelists for Title III,  
25 unfortunately. I'm on the road a lot. And I'm out

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1 espousing it. But I wouldn't say that there is a lot of  
2 knowledge amongst the securities bar. Certainly not  
3 investment professionals, because they're not going to  
4 make money. The platforms will.

5       But I think that, over time -- and certainly a  
6 lot of people on the panel have helped established  
7 programs, whether it's David with reverse mergers, us  
8 with SPACs and PIPEs, it just takes time. One hundred  
9 and fifty deals is quite small.

10       My observation would be that the entrepreneurs  
11 -- and I think Ryan, who does have a Title III platform  
12 and has deals posted and has been actively engaged since  
13 May 16th, when we were down here last -- can tell you the  
14 entrepreneurs are excited about this. They just don't  
15 know that it's an avenue that is available to them, as  
16 well as the costs still may be a little bit of an issue,  
17 because you do have to create a disclosure document.

18       For those of you in the room who don't -- are  
19 not aware of that, the Form C has to be filed with the  
20 SEC. It is a legitimate disclosure document that enables  
21 investors to really understand what they're investing in,  
22 as well as the risks associated with that investment.  
23 And it actually has some forms of financial statements.  
24 Again, I think the SEC really took an enlightened  
25 approach as to the final rules on the financials that

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1 need to be included. They don't need to be audited if,  
2 in fact, you are a first-time issuer. And it's actually  
3 pretty regulatory light touch.

4 I want to point out that FINRA, as well -- as  
5 David is also lauding FINRA for the Reg A+ industry -- in  
6 the CF space the process for getting the platforms  
7 approved has been done timely. The comments have been  
8 very legitimate. And of the now 25 approved funding  
9 platforms, only 20, as I mentioned, are publicly known.  
10 Five are going to announce over the next several months.

11 But there is another crop of funding platforms  
12 that got disapproved, or withdrew, because FINRA  
13 appropriately, through their commenting process, I think  
14 dissuaded those platforms from going forward. I think  
15 you will see, as the industry starts to broaden, which,  
16 if you look at the month-over-month numbers, you will see  
17 the number of campaigns increasing, the amount that they  
18 are actually raising increasing, the types of deals that  
19 they are attracting to the site is a huge range of deals.

20

21 As that spreads out, I think all 50 States,  
22 Commissioner, will be represented in a very healthy way,  
23 because those states in particular that are not  
24 represented by New York, Massachusetts, California, are  
25 the ones who need this program most, as well as the

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1 number of debt-focused platforms are the fewest, which is  
2 really upside down. Over time you will see many more  
3 debt-focused platforms, because there are many more small  
4 businesses, as you point out, that need some amount of  
5 debt, and can actually pay current interest.

6 Those could also be real estate deals, although  
7 I think there are some rule changes that need to take  
8 place in the regulations, as well, to accommodate better  
9 for real estate, because it prohibits common ownership,  
10 and the million dollars gets aggregated if you have  
11 several different deals, which we can talk about, as  
12 well.

13 But I think -- and I'm going to give you some  
14 of the names, because I think it's worth going to these  
15 funding platforms, because the deals are interesting.

16 Wefunder, in California, has 56 deals up.  
17 Maybe they're the whole California representation in that  
18 regard. But there is one in Texas that focuses only on  
19 debt, called NextSeed, which is a very nice site, as  
20 well. I told you Indiegogo and MicroVentures went into  
21 the business this week. Angellist Republic is in the  
22 business. Ryan does a remarkably responsible job with  
23 his platform, not only in Title III, but Reg A+, 506(b),  
24 506(c), which he will share with you, the whole lifecycle  
25 of financings.

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1           And so, there are some very interesting deals  
2 that differentiate themselves from the venture market.  
3 There is a lot of booze. Booze gets a lot of Reg CF  
4 capital, because you can taste it. And if it's in your  
5 local community, you know that, like Peter Lynch, that  
6 you want to support it. But there are a lot of other  
7 deals, as well, that I'm sure Ryan will go through on his  
8 platform that are technology deals. There are a lot of  
9 consumer product deals for the same reason as the booze:  
10 people can see it and know it and determine if it's  
11 something that they want to support.

12           So what I'm most excited about, besides that  
13 after years we've gotten going, is that it's been done  
14 responsibly. You don't see a lot of nonsense. It's a  
15 lot of maybe younger entrepreneurs that need some  
16 coaching. There are compliance issues that need to be  
17 better attended to. The disclosure, in my mind, needs to  
18 be more substantial than it has been. But at the same  
19 time, it's not because people are -- have bad intentions.

20

21           I think running it through a platform, where  
22 there is a gatekeeper that's doing their job, I think the  
23 diligence that people like Ryan spend, relative to the  
24 amount of money they are making, relative to the capital  
25 markets, is far greater than you see elsewhere, because

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1 Ryan knows, Chris knows: you don't do a good job,  
2 investors are not going to come back to that site. And  
3 they live it every day.

4 So, I am thrilled that 150 campaigns are up,  
5 even though, from the amount of effort that the staff put  
6 into it, and FINRA puts into it, that seems small. But  
7 you got to start somewhere. And I much prefer to be  
8 there than tell you there are 5,000 deals, because there  
9 are going to be many more problems with those 5,000 deals  
10 than there are with 150. So be patient. It will fill in  
11 the way all the other programs that a lot of the people  
12 on this panel have been involved with.

13 MR. ABERO: Thank you, Doug. I would like to  
14 turn over to Anya now to tell us what we should expect  
15 about intrastate crowdfunding.

16 Before I do so, many of you have been wondering  
17 when the rules will go into effect, the rules that the  
18 Commission just adopted last month. We anticipate that  
19 the Federal Register is going to publish the rules early  
20 next week. So, with the caveat that they have not been  
21 published, but in anticipation of potentially being  
22 published as early as the beginning of next week,  
23 assuming, that is, when it gets published, we would be  
24 looking at amendments to Rule 504 to be effective mid-  
25 January, and the amendments to Rule 147 and new Rule

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1 147A will be effective in mid-April of 2007.

2 Rule 505, the Commission voted to repeal that  
3 rule, and the effectiveness of the repeal of Rule 505  
4 would be expected to be May of -- mid-May of 2017. With  
5 that, Anya, if you could let us know what we should  
6 expect.

7 MS. COVERMAN: Thank you, Sebastian. Good  
8 morning. And, of course, thank you for having me back  
9 this year.

10 And it's -- you know, it's great to see a  
11 number of people that I have gotten to know as I've  
12 worked on state crowdfunding over the last several years.  
13 So my remarks today do reflect my personal views, and  
14 not those of NASAA. But just to jump in, so as we know,  
15 the SEC adopted its final rules that will impact state  
16 crowdfunding.

17 So, NASAA has been very supportive of changes  
18 to the federal regulatory structure, and we were very  
19 pleased to see the final rules completed. I wanted to  
20 just spend a few minutes talking about some of the  
21 biggest changes that will affect state crowdfunding over  
22 the next several years. And, of course, the biggest one  
23 is the creation of new Rule 147A, which, unlike current  
24 Rule 147, allows advertising across state lines, and  
25 allows issuers to incorporate out of state.

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1           And another positive change, in our eyes, is  
2 the retaining of existing Rule 147 with amendments,  
3 because, you know, this really provides continuity to  
4 existing and effective state exemptions, including state  
5 crowdfunding that rely on Rule 147, but also flexibility  
6 to look to new Rule 147A.

7           You know, Sebastian asked me the question sort  
8 of what comes next. Of course, the states are looking at  
9 these changes and when they will take effect. Many  
10 states, should they wish to make changes, can do that  
11 through the rulemaking process. In some states it may be  
12 that a legislative change would be necessary.

13           But also, the new disjunctive 80 percent test  
14 and the addition of the fourth employees test is a  
15 positive change. The principal place of business  
16 standard -- and, you know we, of course, look forward to  
17 the -- working with the SEC on the three-year look-back  
18 of how it's going.

19           Our members have done a lot of outreach. I  
20 think in state crowdfunding and crowdfunding generally  
21 this is really about, like, the buy local movement.  
22 That's what I think about. And there is a lot of  
23 education that -- and understanding that is, you know,  
24 really important for businesses to start using these  
25 exemptions, investors to understand what they are about.

0049

1 How do they differ from Kickstarter, for example, or  
2 other donation-based crowdfunding sites?

3 And so, our members, while they have been doing  
4 outreach, have found that these different changes are  
5 important to increase the utility of state crowdfunding  
6 over the next several years.

7 I just wanted to say a couple words about the  
8 Rule 504 changes to increase the offering cap and add the  
9 bad actor disclosure. This, obviously, will be a great -  
10 - provide great utility for states that are interested in  
11 and working on a more regional, multi-state review  
12 approach. NASAA had already underway revisions to the  
13 Form U-7, which is the SCOR Form, also known as the small company  
14 offering registration form. That form was last updated,  
15 I believe, in 1999. And this is really a form for sort  
16 of the do-it-yourself small business owner that is  
17 interested in a more simple Q&A disclosure format. And  
18 so, these changes are really important to that effort, as  
19 well, that we are working on.

20 I wanted to just give some updates. I know  
21 I've spoken about this a number of times. But today  
22 there are 31 states plus D.C. that have effective state  
23 crowdfunding exemptions, and 3 more in the rulemaking  
24 process. Two states still have active pending  
25 legislation. We -- NASAA -- we've done some look at sort

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1 of the number of filings to date. Of course there is  
2 going to be a lot more to look at over the next several  
3 years with these changes. In -- as of June of 2016, 179  
4 filings had been made under the state crowdfunding  
5 exemptions.

6       You know, I like to talk about some early  
7 trends that we're seeing again. This is an early  
8 landscape. So a lot of the -- so there are sophisticated  
9 businesses that are using state crowdfunding. But again,  
10 a lot of them are really consumer-based, community-based  
11 businesses, those that really believe in the buy-local  
12 movement. They range from, you know, a dog groomer, hair  
13 salon, to lots of breweries and distilleries, farming  
14 operations. And in some cases, real estate firms and,  
15 you know, other more sort of sophisticated service  
16 businesses are using it.

17       And we're also seeing a mix of stock and debt  
18 offerings. And so, within the debt space there is sort  
19 of this trend toward creative debt. And that can be  
20 either in the form of a revenue-sharing arrangement or a  
21 term debt offering with sort of a kicker, where, if  
22 revenues exceed a certain threshold, then the investor  
23 gets an additional percent, so, for example, two to five  
24 percent of their money back.

25       This is interesting because this is good for

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1 the investor, it is good for the company. There is a  
2 defined timeline, there is an exit strategy. For an  
3 investor, they have an upside if revenues exceed a  
4 certain percentage. And for the company, you have less  
5 investors that you need to service at the end, and you  
6 have maybe a more manageable cap table. So it will be  
7 interesting to see how this evolves over the next several  
8 years.

9 We also see some smaller overall raises in the  
10 state crowdfunding space. So, companies really looking  
11 toward a target goal that they feel they can meet and  
12 would enable them to close the offering.

13 And in terms of deciding whether to work with  
14 an intermediary, in some states issuers are really happy  
15 to go it alone. There may be less intermediary interest.  
16 And in other states, working with an intermediary has  
17 been a great benefit. For example, it allows the company  
18 to focus on the day-to-day operations of their business.  
19 They're not out there, doing the advertising of the  
20 portal, the website, themselves. So that will be  
21 something that we want to keep looking at and focusing  
22 on.

23 And, you know, NASAA looks forward to working  
24 with the SEC and looking at this over the next several  
25 years, and looking at how these changes impact the

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1 market. So thank you.

2 MR. ABERO: Thank you, Anya. And I think your  
3 reference to intermediaries is a good segue to Ryan.

4 As Doug mentioned, Ryan, your platform has  
5 dipped its toes in crowdfunding, Reg A, 506(b), 506(c).  
6 Tell us what you are seeing, since you are touching so  
7 many of these exemptions. What are issuers thinking when  
8 they are trying to decide between a 506(b) or (c)  
9 offering or a crowdfunding offering or a Reg A offering?

10 MR. FEIT: Sure. Thanks so much for having me.

11 So I'll just start out and give you a little bit of  
12 background on SeedInvest. So we're a leading equity  
13 crowdfunding platform. We've been helping companies  
14 raise capital for about three-and-a-half years now.  
15 We've built up an investor base of about 22,000  
16 accredited investors and 140,000 total investors. And  
17 we're fairly different from other platforms. We operate  
18 our own wholly-owned broker-dealer. We vet and perform  
19 independent due diligence, and all the opportunities  
20 before listing them.

21 Historically, we have accepted around 1 percent  
22 of the 8,500 companies that have applied to raise capital  
23 on SeedInvest. And Sebastian, as you alluded to, we  
24 utilized four different exemptions. So 506(b), 506(c),  
25 Reg CF, and Reg A+, and so that leads me into just

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1 talking about how we recommend different exemptions for  
2 different companies.

3 So, it really depends on the company. For a  
4 consumer-facing company that's looking to raise up to \$1  
5 million, we will likely recommend taking a look at Reg  
6 CF. For a company that's looking to raise a million to  
7 three million, Reg D with accredited investors is most  
8 likely the best fit for those companies. And, depending  
9 on the type of company, we will either recommend 506(b)  
10 or (c), and I will talk a little bit more about that in a  
11 second.

12 And then, lastly, for more established  
13 companies that are looking to raise more of a growth  
14 round of capital of greater than \$3 million, Regulation  
15 A+ is most likely the fit -- a fit for them. And I'll  
16 talk a little bit more about that, as well.

17 Just going to spend a little bit of time on  
18 each of the offering types. So, in terms of Reg CF, Doug  
19 already provided a pretty good overview of Reg CF, so I'm  
20 not going to spend a ton of time. As a number of people  
21 have spoken about it, still very early days. There has  
22 only been about \$12 million that has been of investment  
23 commitments across the industry so far, so still very  
24 early, but not surprising. And the UK saw a similar  
25 trajectory early on.

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1 I think a couple things that are worth paying  
2 attention to. I agree with what Doug actually said  
3 earlier. It's not -- for this to really work, and for it  
4 to benefit both companies and investors in the long run,  
5 it's not about having as many companies raise capital as  
6 possible; it's about making sure that a lot of good  
7 companies raise capital through Reg CF, and that we're  
8 careful about it.

9 So, I think, you know, one thing to pay  
10 attention to is the different approaches. There are  
11 platforms that take more of a listing service approach,  
12 where any company can raise capital on their portal, and  
13 they don't, you know, curate the opportunities or  
14 negotiate valuation or terms on behalf of investors.  
15 That will be something to keep an eye out for.

16 And I think, in terms of just the challenges  
17 that we have to getting companies that have other  
18 options, to start utilizing Reg CF it really is ongoing  
19 reporting requirements. It's cap table issues, which I'm  
20 sure we will talk more about. And it's just the overall  
21 cost and complexity of complying with Reg CF when you're  
22 raising a small amount of capital.

23 So those are the sort of issues that I'm sure  
24 we're going to speak more about in the breakout sessions  
25 today.

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1 In terms of Reg D for accredited investors, I  
2 think a lot of us up here are, frankly, disappointed with  
3 how many issuers have utilized 506(c) to date. I am  
4 certainly surprised it hasn't been used more, just  
5 generally. We have had a fair number of companies that  
6 are consumer facing that have used 506(c) successfully,  
7 primarily to reach out to their existing customers who  
8 might be accredited, who want to invest in those  
9 companies. So that, I would say, has been good.

10 On the flip side, there is still -- I would say  
11 the majority of companies would rather go down the 506(b)  
12 route because of the perceived notion that it is -- that  
13 the cost of complying with the accreditation verification  
14 outweigh the benefits. And that still is a perception in  
15 the industry, whether it's the case or not. And happy to  
16 talk more about that. And you can see on the slide that  
17 the number -- the percentage of companies that have been  
18 utilizing 506(b) versus (c) has declined pretty  
19 precipitously since 2013 on SeedInvest. Happy to talk  
20 more about that.

21 I think the one glimmer of hope that we see  
22 right now is we just launched at SeedInvest our first  
23 side-by-side offering recently, and that allows a company  
24 to raise up to \$1 million for non-accredited investors to  
25 Reg CF, and simultaneously raise an unlimited amount from

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1 accredited investors through 506(c) at the same time.

2 And I think that actually will breathe some new life into

3 506(c). But we'll see over the next -- the ensuing few

4 months.

5 Regulation A+, from our vantage point, has

6 really shown a lot of promise. Again, it's still early,

7 as David mentioned. But we've seen consumer-facing

8 companies have a lot of success with reaching out to

9 their existing customer base, and invite them to invest

10 small amounts in those companies. We have had about

11 8,500 people that have initiated investments on

12 SeedInvest over the last few months, and I think, very

13 interestingly, about half of the capital that has been

14 committed has been from accredited, and about -- and the

15 other half has been from non-accredited.

16 So we've seen, I think, a pretty healthy

17 balance from both types of investors. And we actually

18 have a company on Monday that is going to launch a

19 testing-the-waters campaign and reach out to all 50

20 million of their existing customers to invite them to

21 invest. So, I think, you know, cases like that will show

22 you the potential of what Reg A+ can do to help with

23 capital formation.

24 In terms of -- I think two challenges to Reg A+

25 where we really can make this a lot more powerful for

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1 companies is that a lot of companies are getting caught  
2 up on audited financials and ongoing reporting. And to  
3 sort of end on that note, I know that there are companies  
4 that sort of David spoke about earlier that are trying to  
5 raise \$50 million, and they want to list on a public  
6 exchange, and that's why they're using Reg A+. But,  
7 frankly, the vast majority of the companies that we are  
8 speaking with at SeedInvest are not those types of  
9 companies. They are companies that are looking to raise  
10 somewhere between \$5 to \$20 million, but they get hung up  
11 on the ongoing reporting requirements, and the audited  
12 financials.

13       Theoretically, these companies could use --  
14 utilize tier one, which would alleviate them from ongoing  
15 reporting and audited financials. However, the  
16 coordinated review process -- apologize, Anya -- simply  
17 does not work. And I can talk about our experience with  
18 attempting to go through that process.

19       So, what we would recommend is one of two  
20 changes to Reg A+, which would have substantial benefits  
21 for small businesses. Either preempt Blue Sky review  
22 from tier one, or modify tier two, so that companies that  
23 are not listing their shares on the secondary market for  
24 after-market trading, permit them to not necessarily need  
25 audited financials or ongoing reporting. If we were to

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1 make either of those changes, that would have meaningful  
2 benefits for a lot of small businesses out there.

3 And, with that, thanks for having me, and happy  
4 to answer any questions.

5 MR. ABERO: Thank you, Ryan. I wanted to  
6 switch over to Chris. Chris is serving two hats today.  
7 He is the chairman of CFIRA, and he is also CEO of  
8 OfferBoard.

9 OfferBoard took a slightly different approach  
10 as a platform than SeedInvest. You guys are focusing on  
11 506(b) and 506(c) deals. Could you tell us a little bit  
12 about why the decision to stick with Reg D, and whether -  
13 - what you are seeing of the usage of 506(b) and 506(c)  
14 there?

15 MR. TYRRELL: Sure. Our decision was based on  
16 the business model that we chose, which was to build a  
17 traditional boutique investment bank model. We grew --  
18 we have grown that to over 25 brokers who are working  
19 with a platform. They are still using a lot of  
20 traditional means of marketing, but they're also able to  
21 offer to their clients 506(c) in addition to 506(b).

22 We've experienced the same thing that Ryan has,  
23 which is a decline in interest in 506(c), other than from  
24 companies that already have a big marketing base that  
25 they are interested in marketing to, or much, much

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1 smaller companies for whom a 506(c) raise managed by a  
2 professional investment banker is not the right economic  
3 choice.

4       Our -- the good news I have is that we have  
5 been able to operate profitably for the last 13 months,  
6 and I think one of the things that gets missed about the  
7 industry is that it's all startup companies. I mean the  
8 industry, because this is a new set of laws, and a new  
9 set of regs, the vast majority of the people operating in  
10 Titles II, III, and IV who are operating platforms are  
11 startup companies, they're small companies. So they  
12 either have to raise new growth capital themselves -- and  
13 some of them have even eaten their own dog food, like  
14 seed invested and raised money through crowdfunding for  
15 their crowdfunding platform.

16       And -- or they have to figure out how to  
17 generate adequate revenue to get enough deals done to  
18 operate profitably, because that's the real success of  
19 the startup company, is when it becomes a real company.  
20 And that's not an insult to startup companies. Startup  
21 companies are experiments masquerading as businesses that  
22 are trying to figure out whether that business is viable  
23 on a long-term basis. They are starting up, and they are  
24 trying to grow into long-term profitable and growing  
25 businesses.

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1           And so, our decision was an early decision to  
2 go the fully regulated route, an early decision to build  
3 a platform that would serve professionals that we're  
4 trying to engage in private placements. And that's how  
5 we ended up where we are now.

6           To stick my other hat on and talk briefly in  
7 retrospective about the last four years, first I want to  
8 thank Sebastian and Keith and the staff and the  
9 Commissioners for the amazing amount of work.

10          Sebastian, you asked me earlier if I would give  
11 you some kind of insight into the broader experience of  
12 all of the platforms that are members of CFIRA and that I  
13 speak with, and I would say it has really been a multi-  
14 phase experience over the last four years that really has  
15 four different sections.

16          The first one is -- the first one was from  
17 April of 2012 until September of 2013, when, if you just  
18 looked at market activity, nothing was happening. But  
19 there was a lot going on. And that was when Doug and  
20 Ryan and I and many of our colleagues who are here in the  
21 audience came down to D.C. a lot and had conversations  
22 with the staff, who were spending an incredible amount of  
23 time to try to be incredibly intelligent and judicious  
24 about rolling out regulations that would work, would  
25 protect investors, and would help foreign capital.

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1 And so, first, I would like to say thank you,  
2 particularly for that period, when there was a lot of  
3 clamor to get rules out, and the staff really took its  
4 time and engaged with industry to get that done.

5 So, once the market started, however, it was  
6 all Title II platforms, because we didn't have Title III  
7 and Title IV. And so, I think that led both to the  
8 choice that OfferBoard made, as well as the choice that  
9 many platforms made, to roll out into Title II, even  
10 though some of them had started thinking they would only  
11 be doing Title III or Title IV, but to roll out into  
12 Title II because it was an area in which they could  
13 operate.

14 And so, I think you saw a little bit of a  
15 bulge in 506(c) offerings right out of the gates because  
16 of that, because there were some platforms who were  
17 really aiming at being Title III and Title IV platforms  
18 who said, "Well, here is something we can operate under.  
19 Let's become operational."

20 And then, since June of 2015, when Title IV  
21 came out, I think there has been a -- in addition to  
22 those platforms that had waited and were now ready to go  
23 out into the Title IV marketplace, I think what we've  
24 seen is an increase in interest, and -- I think it was  
25 Jeff who mentioned this earlier -- an increase in

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1 interest from the traditional institutional middle market  
2 actors in being active in the marketplace and starting to  
3 engage in preparing for what we hope and what we believe  
4 is going to be a resurgence of the small IPO through  
5 Title IV.

6 And then, finally -- and it's just been since  
7 May of 2016 -- that last phase since Title III of the  
8 JOBS Act has come into effect. Now the rulemaking job is  
9 done, and now it's time for the market actors to start  
10 working all that out. And that's begun, and several  
11 people have commented on what that's meant.

12 Keith mentioned earlier successes and  
13 challenges over the last four years. And I think, in  
14 reviewing all four of those phases, I can point to a few  
15 significant successes and a few significant challenges  
16 that stand out to me.

17 Among the successes I think, when you look at  
18 the data, and when you look at the anecdotal experience  
19 of the platforms, more smaller companies are engaging  
20 with the private and the public capital markets, and  
21 raising capital. And I think that's a good thing. It's  
22 slow, it's early, but that's happening.

23 And more investors, overall, are engaging in  
24 the capital markets. People who have never invested in  
25 private companies, people who have never invested in

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1 startup companies, they are coming into the marketplace.

2       And finally, I think the organization onto a  
3 platform has caused the process, particularly in angel  
4 investing, that was relatively scattered and disorganized  
5 -- but the general organization of a lot of those efforts  
6 onto platforms, and the raising of small capital, has  
7 actually caused that entire process to become more  
8 organized and more compliant. And I think that's a good  
9 thing, not only for the investors, but for the companies  
10 who are thinking about their cap table, the future of  
11 their cap table, the future of raising capital from the  
12 get-go, from the beginning.

13       In terms of problems and challenges, it's  
14 really hard to be a financial services innovator and to  
15 run a platform, because you have -- in addition to the  
16 risk any startup faces of running out of capital and  
17 having that existential risk, you have potential  
18 regulatory existential risk. And I think that there have  
19 been -- there are several platforms that have been faced  
20 with both of those things, and have gone out of business,  
21 sold, merged.

22       The amount of time that it took to roll out the  
23 regulations was unexpected by many of the early, more  
24 eager participants in the market space. And many of  
25 those players aren't -- you know, aren't with us. I mean

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1 they are with us, they're still living, but they're not  
2 operating in the marketplace because they didn't have  
3 adequate capital to get to today.

4 We also have a problem and a challenge of  
5 having a new industry that has a lot of inexperienced  
6 operators, that has a lot of people who -- this is their  
7 first foray into capital markets and financial markets.  
8 And they are learning, and their learning curve is very  
9 high, and they are learning, and they are working it  
10 through. But that is a risk to the industry, and a  
11 difficulty for the industry, as a whole, in addition to  
12 it being a difficulty for those individual players.

13 And finally, even the existing operators to  
14 just continue to navigate and operate as we try to turn  
15 startup companies into long-term profitable companies,  
16 it's just -- it's generally a difficult process because  
17 we're doing something so new. I think a lot of the fall-  
18 off in interest in 506(c) is because it's still new and  
19 we haven't seen a lot of outcomes of it that will comfort  
20 people that the accreditation process will always go  
21 smoothly, even if -- what if you have small institutional  
22 investors? How will that go? What if you have  
23 particular individual accredited groups? So I think  
24 there are some difficulties there.

25 In terms of opportunities to reduce friction -

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1 - and I think that's what we're going to spend the rest  
2 of the day talking about -- there are four main  
3 categories. I think increasing liquidity in the  
4 secondary markets has already been mentioned, doing that  
5 by reducing friction in the secondary markets, helping  
6 people do 50 state compliant offerings, whether by blue  
7 sky preemption or otherwise, making that an easier  
8 process.

9       Increasing opportunities for investor  
10 diversification. Some of the things that were built  
11 early on in the structures of the regulations like, for  
12 example, the statutory requirement that you can't have  
13 SPVs in Reg Crowdfunding prevent people from building  
14 diversified pools for the small investors to invest in.  
15 So, there is some opportunities there.

16       And finally, increasing market certainty, which  
17 I think will also increase market confidence. And that's  
18 for everyone. That's not only for the operators who are  
19 trying -- who are doing their best to try to operate in a  
20 regulatory environment that is new, to the issuers who  
21 are trying to navigate a process that, for some of them,  
22 is entirely brand new, to investors, again, some of whom  
23 -- for whom this is their first foray into the private  
24 financial markets.

25       MR. ABERO: Thank you. Stan, I want to go to

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1 you because what the JOBS Act has brought is multiple  
2 opportunities for -- different paths for companies to  
3 access capital. And I think with that comes a lot of  
4 questions as to how these exemptions interact with each  
5 other. You are the authority when it comes to  
6 integration, so could you walk us through what are the  
7 challenges, what are the questions that you are hearing  
8 in the area of integration, now that we have all these  
9 offering exemptions?

10 MR. KELLER: It was difficult many years ago,  
11 when I first focused on these integration issues. And,  
12 as Sebastian indicated, I think it's become even more  
13 difficult and challenging for smaller companies and their  
14 advisors to kind of come to grips with this multitude of  
15 alternatives that we now have, this very broad menu,  
16 which is, I think, good in its own right, and having  
17 these opportunities, but also creates these unique  
18 challenges. How do the pieces fit together so that you  
19 can weave your way through this?

20 Let me make the point that integration, as such  
21 -- and it's been codified in the five factor test, and  
22 you can find it in 502(a) -- really, it applies as an  
23 overarching principle to multiple offerings. But it is  
24 not itself, I think, a -- what I would call a policy in  
25 and of itself. It is merely a way to avoid offerings

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1 being structured as devices that circumvent the  
2 underlying statutory policies to protect investors by  
3 promoting registration and tailoring and treating  
4 exemptions differently.

5       And I think it's important to kind of think of  
6 the integration challenge and, indeed, application of the  
7 five factor test in that way. Start by asking the  
8 question, "Is there an abuse here that needs to be  
9 fixed," not, "Can we figure out a way why these offerings  
10 should be treated similarly?"

11       You know, as a device, as a way to avoid the  
12 device, I mean, it was simple in the traditional sense.  
13 You can't split the same transaction into two  
14 transactions, two or more transactions, to obtain  
15 exemptions. You can't sell to 70 non-accredited  
16 investors by having 2 similar offerings around the same  
17 time, 35 to 1 and 35 in the other. That's a  
18 circumvention. Okay, that's easy.

19       Also, you can't combine private offers with  
20 public sales, or the converse, public offers with private  
21 sales. That's the public-to-private integration that's  
22 been a challenge. And we could say that's a device.  
23 Indeed, there has been erosion of those concepts with the  
24 EGC testing the waters and with the 506(c) general  
25 solicitation, where we now have private offers that --

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1 public offerings that can be completed "privately," and  
2 we can have private solicitations that end up rolling  
3 into public sales. But, as a general principle, that was  
4 a device.

5 Let me try to bring this home to specifics,  
6 just tackle three typical situations to illustrate where  
7 some issues exist, and what can be done to fix them.

8 And the first one is on the slide. Just, you  
9 know, Company A completes a good, old-fashioned statutory  
10 4(a)(2) exemption or a 506(b) offering, or indeed, any  
11 other exempt offering that does not permit general  
12 solicitation like private 504, perhaps, as a state  
13 crowdfunding offering. And it now wants -- having  
14 completed that private offering, finds that it still  
15 needs more money, it has wonderful opportunities to  
16 expand, and now wants to do a 506(c) offering. And we'll  
17 say of a similar security and approximate time period.

18 And I think the question has been hanging out  
19 there, may it do so, you know, to simplify it, think  
20 about -- you go back to your existing investors, and you  
21 do your "private," and then you want to reach out to the  
22 public and do a 506(c). To what -- what's the relevance  
23 of the 5-factor test under 502(a)? And the question I  
24 asked -- maybe we'll get an answer -- is can you look to  
25 Rule 152, which says the commencement of a private

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1 offering does not prevent doing a public offering or  
2 registered offering. And lots of us had to go back and  
3 reread the rule to realize that it didn't just say apply  
4 to registered offerings, but to any public offering.

5 MR. ABERO: And Stan, Keith and I and others  
6 have been thinking a lot about this question for some  
7 time now.

8 There is some guidance that we put out this  
9 morning, which you haven't had the benefit of seeing yet.  
10 But I think it's guidance that I hope will be helpful in  
11 this area.

12 As you asked in your slides, it does look at  
13 Rule 152 as the basis for providing some guidance in this  
14 area. So I encourage everyone to take a look at this.  
15 As always, we welcome questions. I think part of the way  
16 we got to this was because of questions we had received  
17 from the public. So I do encourage everyone to take a  
18 look at that guidance. And if you have questions, reach  
19 out to us in the Office of Small Business Policy.

20 MR. KELLER: Here we have instant  
21 gratification.

22 (Laughter.)

23 MR. KELLER: We raise an issue, present a  
24 solution, and we have the solution immediately in hand.  
25 Thank you for that. And, as I read it, one could ask

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1 does it apply to 4(a)(2) offerings, but we can deal with  
2 that down the line.

3 Now, let me flip the situation, which, in a  
4 sense, becomes almost more important than I would have  
5 walked in -- walking in here, thought at least one of  
6 these was low-hanging fruit as I go on to it.

7 Do I control the slide? Yeah. I did it  
8 backwards. Let me go back one.

9 All right. Flip the situation. A company  
10 undertakes a 506(c) offering involving general  
11 solicitation, and it could be a completed 506, it could  
12 be abandoned, or it could be ongoing. And it now wants  
13 to do a 4(a)(2) or a 506(b) true private offering. And  
14 the question is, may it do so?

15 And the problem, of course, is that I think,  
16 under traditional principles, the general solicitation in  
17 the 506 offering of the similar security and approximate  
18 timeframe would be applicable, would be applied on a 5-  
19 factor integration analysis to the private offering that  
20 then follows. This is traditional. We have worried  
21 about this for years. We worried about it in the  
22 registered offering case, we have worried about it in  
23 those Reg A offerings that we did do.

24 And helpfully, the Commission in 2007 -- I  
25 think it was August 2007 -- in the proposing release -- a

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1 funny place to find important guidance -- but in the  
2 proposing release on Regulation D amendments, provided  
3 relief by saying in the case you have of a registered  
4 offering, yes, you can raise money privately, even during  
5 the pendency of that offering, if you can satisfy  
6 yourself or sustain the burden.

7 To put it in legal terms, that the investors in  
8 the bridge private offering -- think of it that way --  
9 were obtained through means other than the general  
10 solicitation arising from the public offering.

11 Since 2007, there has been the question. Is  
12 that limited to the registered offering context? Is it  
13 targeted relief? Or is it really a principle-based  
14 interpretation that says, yeah, we know about general  
15 solicitation, but there are circumstances where the  
16 relationship is such -- think of existing investors. The  
17 relationship is such where it's clear that it's not the  
18 general solicitation that brought those investors to the  
19 table.

20 And for years, the staff said, "No, it's  
21 limited. It's limited." I kept trying to pull more out,  
22 and I think I finally pulled more out in public forum.

23 And then, let's not forget that then-  
24 Commissioner Mary Shapiro, in addressing questions from  
25 Congressman Issa of California saying, "What have you

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1 done for small business," said, "Look, we've expanded  
2 this interpretation so it applies more broadly."

3 And so, I would ask, suggest that the staff --  
4 and I think they're in a position to do so -- really make  
5 clear that the 2007 Reg D proposing release guidance does  
6 have broader application. And in particular, yes, if  
7 you've done a 506(c), you can still do a 506(b) if you  
8 can sustain the burden of establishing that the  
9 particular investors in the 506(b) were not obtained  
10 through the general solicitation.

11 And I would say the same, David, to the  
12 question I think you raised about the Reg A. I find no  
13 reason to distinguish the Reg A certainly from the  
14 registered offering. So that's, I think, something that  
15 can be accomplished.

16 And then, third, which is what I really thought  
17 was the low-hanging fruit walking in, and I think now  
18 needs to be clarified in view of the new CDI, looking at  
19 the 506(c) as a public offering, what happens if a  
20 company begins a 506(c) offering and wants to convert and  
21 do a registered offering? To me it's unthinkable that  
22 152 should not -- would not apply to that situation  
23 because the whole notion is that, hey, registered  
24 offerings are to be encouraged, because that's the  
25 maximum protection to investors.

0073

1           So I think we can say that, for purposes of  
2 152, going from the private to the public, 506(c), that's  
3 fine. But I think you can also -- that doesn't mean  
4 "public offering" prevents you from then using a 506(c)  
5 and converting to a registered offering. So I think  
6 that's something else that hopefully we can get clarified  
7 and bring some rationality.

8           There are a whole range of issues. I've got a  
9 kind of outline that I updated and tailored for this  
10 program that's in the materials. But let me leave it at  
11 that.

12          MR. HIGGINS: Stan, can I ask a question? And  
13 then don't take offense at this. It sounds a little  
14 technical and professorial. And I'm just wondering, and  
15 particularly from our platforms, are these real-world  
16 problems, or are these problems that securities lawyers  
17 who think about these things find to be problems?

18          I mean, Ryan, Chris, do you --

19          MR. FEIT: I would -- we would never -- yeah,  
20 we would never advise a company to switch to a 506(b)  
21 after a 506(c), because the burden of proof would be so  
22 high to prove that any of those 506(b) investors did not  
23 find out about it through the general cessation. And  
24 surely it's theoretically possible, but we would just  
25 stay away from that.

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1           And the other way around, I don't really see  
2 much of an issue from a company that did a 506(b)  
3 transitioning to a 506(c). I've seen that happen a lot.  
4 And if a company accidentally trips up the (b), then  
5 they're in 506(c)-land, whether they like it or not. So  
6 that's, I guess, from our standpoint.

7           MR. KELLER: We do see the situation where the  
8 company does want to do a 506(b) after solicitation. You  
9 know, you have existing investors, and not all of them  
10 are accredited.

11          MR. HIGGINS: And you don't see people going to  
12 them first and then, failing that, going to -- I -- that  
13 I can -- that makes more sense to me than that you'd go  
14 out to do a general solicitation, recognizing that it  
15 could have the effect of causing you not to be able to do  
16 something under 506(b).

17          MR. KELLER: Why limit flexibility? You may  
18 chart a course to go out and do a 506(c), find that  
19 you're not successful, and then go back to your -- to the  
20 well, if you will, because you need bridge financing.

21          In fact, I have got a call coming up later  
22 today on just that issue, where they need the bridge  
23 financing in order to buy more time to raise money in the  
24 way they are -- had originally planned to, and need to --

25          MR. FEIT: Why can't they stick with the 506(c)

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1 offering to --

2 MR. KELLER: As I said, they may have some non-  
3 accredited investors.

4 MR. FEIT: Right. They should do Reg CF, then,  
5 probably. I would say use Reg CF --

6 MR. KELLER: 506(c) is not available if you  
7 have got non-accredited investors.

8 MR. FEIT: Reg CF is, though.

9 MR. KELLER: Well, you're not going to convert  
10 at that point to a --

11 MR. FEIT: Do a separate -- a new offering  
12 under Reg CF, I would recommend.

13 MR. FELDMAN: Keith, you -- it is a real-world  
14 problem with Reg A, because, you know, we're doing a deal  
15 on that, where there is a bridge that has been going on,  
16 pre-filing, and they're asking the question, "Can we keep  
17 doing it while we're in the review process?" And for Reg  
18 A there is not the clear guidance and the ability to  
19 necessarily rely on the 2007 advice.

20 MR. ABERO: David, I would encourage you to go  
21 back to the release. I think a lot of these questions  
22 that are coming up in the 506 area are things where the  
23 Commission did provide guidance in the Reg A context.  
24 And I think, in many respects, the Commission pointed to  
25 the 2007 guidance in the Reg A release itself to look at

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1 some of the guidance.

2 So I think, as Stan pointed out, I think these  
3 are a lot of the questions that are coming up in the  
4 context of 506(b), 506(c), and other offerings. But both  
5 in the context of Reg A and crowdfunding, the Commission  
6 has provided some guidance.

7 MR. KELLER: Yeah, let me add one thing that  
8 maybe broadens this. I think the Commission, to its  
9 credit, to the credit of the staff in the development of  
10 this range of alternatives -- crowdfunding, Regulation A,  
11 147, 147A -- really has focused on this integration  
12 problem and taken the approach of treating separate  
13 exempt offerings of those kinds as separate transactions  
14 -- the firewall approach -- as long as, when you look at  
15 each of the offerings separately, their requirements for  
16 their exemption have been satisfied.

17 So, I think there is a lot of helpful  
18 regulation out there that really does draw that  
19 separation among these. Where the problems are is in the  
20 more statutory-based exemptions like the 506 -- 4(a)(2),  
21 506(b), 506(c).

22 MR. ABERO: So I think the panelists have  
23 provided some very helpful questions to continue thinking  
24 about. But the audience does have some questions, too.  
25 So I wanted to use the last 15 minutes that we have to

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1 try to answer some of those questions that we have been  
2 getting.

3 Jeff, a question that came up is you mentioned  
4 the smaller size of IPOs, and the fact that the small  
5 IPOs that used to be the norm back then did not or have  
6 not come back, despite Title I. Anything that you could  
7 suggest as to ways to get that back? What is the  
8 challenge of bringing those small IPOs back?

9 MR. VETTER: Yeah. I think, if you take a look  
10 at the -- I guess it was the report that came out in, I  
11 want to say, 2011, the IPO Commission, you know, one of  
12 the things they pointed to was the decimalization of  
13 trading, and the rise of -- you know, a lot of the larger  
14 banks now focus more on the high-volume trading of  
15 larger-cap companies.

16 And so, there sort of effectively wasn't much  
17 of a good public secondary market for these smaller-size  
18 IPO issuers, because you just can't make any sort of  
19 money on the trade if you only have, you know, a penny  
20 increment here, versus in the old days there was, you  
21 know, the one-eighth spread between the bid and the ask.  
22 But I -- that seems to make a lot of sense to me, and I  
23 think that is, you know, probably the biggest thing.  
24 It's just kind of the lack of the market.

25 Because we consistently hear from the banks

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1 that, you know, you need to have, you know, a float of,  
2 you know, at least -- they will say often a hundred-plus  
3 million dollars, especially some of the larger banks. So  
4 I really do think that is playing a big part of that.

5 MR. ABERO: Just to follow up, do you think  
6 that's something that the tick size pilot could potentially  
7 explore?

8 MR. VETTER: I think so. And, you know, I know  
9 there is definitely some development there. I think that  
10 might be a useful exercise, if -- and see how that works  
11 out.

12 MR. ABERO: We got a couple other questions  
13 that deal on a subject that Commissioner Stein alluded  
14 to, and then a number of our panelists have alluded to.  
15 And I'm going to combine a couple questions here, because  
16 they are all in this same topic of outreach, how do we  
17 get minority women/veteran-owned businesses to be more  
18 aware of the capital formation options we have available.

19 One of the questions also pointed to the fact  
20 that there used to be Reg A offerings that were reviewed  
21 and handled by the regional offices at the SEC. So, just  
22 throwing those two questions out there, I know that we  
23 talked a little bit about it, but how can we get the --  
24 Doug mentioned the fact that the industry, when it comes  
25 to crowdfunding, the margins are so small, it may not be

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1 something that's attracting the bar as much, with the  
2 exception of potentially some of the bigger Reg A deals.

3 How can we get the bar, those companies --  
4 informing those potential issuers about the different  
5 options that exist? What are ideas here that you think  
6 could help?

7 MR. ELLENOFF: I mean I think the direct answer  
8 is, you know, it's part of the Fix Crowdfunding Act,  
9 which has raised a million to five million, so the  
10 platforms can make more money. Issuers' counsel. And  
11 it's cynical, but it's reality. If law firms who really  
12 are out there on the front lines coaching their clients  
13 are not espousing the benefits of Regulation CF, and a  
14 way for the law firms to make money and the accountants  
15 to make money, with all good intentions it's just not a  
16 conversation that they're engaged in actively.

17 In fact, I would say for the first several  
18 years it was the exact opposite. Reg CF was a waste of  
19 time. It was stigmatized, truthfully, in the media,  
20 which I think also -- there was some blowback from the  
21 initial politics with NASAA, truthfully. And it's been  
22 years of blocking and tackling on the front line every  
23 single day.

24 So I think the million to the five million is one. I  
25 think also Ryan alluded to the SPVs in the CF space is

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1 very important, just to get more money into the deals,  
2 whether or not it's a side-by-side deal, which Ryan is  
3 doing now -- but I think, even just doing it directly  
4 through CF, the million to five million is a good thing.

5 I was invited with the SEC in Salt Lake City  
6 two weeks ago, and those are the sort of private-public  
7 partnership outreaches that have to take place in every  
8 state, particularly not the coasts where the conversation  
9 is just not as relevant.

10 MR. HIGGINS: Doug, on the SPV point -- and,  
11 Chris, I would be interested in your view, as well -- one  
12 of the concerns, I think, is that crowdfunding is --  
13 it's really a democratic way of raising capital. And  
14 everybody sort of is buying the same security, and the  
15 crowd is informing one another.

16 The fear a little bit is that if you funnel one  
17 group into an SPV so that they're not going to be  
18 trouble, so their voice is stilled, if you will, and  
19 they're represented by someone -- and I'm not sure who  
20 that representative -- who is going to make the decisions  
21 that shareholders otherwise make in the SPV, how do you  
22 solve that problem in a crowdfunding world?

23 MR. ELLENOFF: I haven't really given specific  
24 thought to that, Keith. It's a good question. I think  
25 you start -- there is a problem where you have -- and the

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1 original piece is, as you're saying, is correct, that it  
2 was democratic. Those who want to participate in that  
3 deal show up and they have direct participation.

4 There is also the corresponding reality,  
5 whether it's the VCs or the angels who don't like the  
6 capital structure being polluted, and so you've got to  
7 accommodate for both of them.

8 Where I was going with it is, by having the  
9 SPV, I think unaccredited investors who could benefit by  
10 a sophisticated representation through the GP of that  
11 SPV, whether it's negotiating the valuation or  
12 structuring the deal, those are good things that can  
13 occur.

14 So, while it does undemocratize it to some  
15 degree, I think most retail investors want equity  
16 participation. They don't care about voting control. So  
17 we have toyed with other structures that accommodate for  
18 that through the preferred, where you emasculate the  
19 preferred, which you can do, but I still think the SPV is  
20 a good thing overall, because the retail investors are  
21 still participating in a deal that they want to be  
22 involved with.

23 And, really, the crowd benefit is that they are  
24 out evangelizing, outside of the investment, the virtues  
25 of that deal, whether it's a product or service, as well.

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1 MR. FEIT: Let me piggyback on that. So the  
2 SPVs, in my opinion, are actually a great investor  
3 protection. And it helps because, for one, we want these  
4 investors to get access to more good investment  
5 opportunities. And this will absolutely help with that.  
6 Secondly, their voices will actually be stronger,  
7 because what you're seeing right now is platforms saying  
8 that if you invest above a certain amount you can be on  
9 the cap table and get certain voting rights. If you  
10 invest below a certain amount, you're not going to get  
11 any of that.

12 So, by grouping them together in SPV, all of a  
13 sudden they get the same pro rata rights, they get more  
14 powerful voting rights because they're actually grouped  
15 together. So on the surface it might not seem that, but  
16 it actually will help have the smaller investors' voices be  
17 heard.

18 And then, lastly, in terms of how we get, I  
19 think, the message out to more companies that are not  
20 based in New York and San Francisco to more minority  
21 entrepreneurs, I think it's quite simple, and Doug  
22 alluded to this, as well. If we address some of these  
23 objections that companies have to using Reg CF, to using  
24 Regulation A+, with each company that does this -- like  
25 I mentioned before -- Monday we have a company, one

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1 company is going to do a Reg A+, testing the waters, and  
2 they're going to email 50 million people that had no idea  
3 that Reg A+ existed. The same thing is happening with  
4 Reg CF.

5 So, with each company you get this sort of  
6 ripple effect, which can really snowball and get the word  
7 out if we open it up for more companies.

8 MR. KELLER: Just two things. One, it seems to  
9 me on this question of SPVs -- I would ask the question.

10 Is this the exemption for that, or are you really  
11 talking about different considerations?

12 So, for example, Citizen VC letter opens it up  
13 widely for the formation of SPVs using non-general  
14 solicitation, general solicitation, but limited to not  
15 necessarily accredited investors, but more sophisticated  
16 or qualified investors. So it's a question of how you  
17 look at it.

18 Harkening back to earlier days in my practice,  
19 I mean, crowdfunding is local, and you need to look  
20 local. And there are still community economic  
21 development groups. And getting the message and the word  
22 out to them about what's available for their local  
23 community as a legitimate and effective way to raise  
24 capital for these ventures might be something worth  
25 looking into.

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1 MR. ABERO: Anya?

2 MS. COVERMAN: So, you know, I agree with Stan.

3 And, you know, it's -- I just wanted to make a point  
4 that it's really not uncommon for state securities  
5 regulators to have entrepreneurs in their state -- they  
6 may be minority or women-owned business or, you know, two  
7 college students -- to call the state and say, you know,  
8 "I really -- I've got a great idea," or, "I have an  
9 early-stage business. I'm looking to raise money. What  
10 are my options?"

11 You know, they may or may not have engaged  
12 local counsel. In many cases, they don't engage local  
13 counsel. So, you know, educating these sort of early  
14 entrepreneurs is really important. I think states are  
15 really focused on that, and thinking about how to do more  
16 of that.

17 And I was going to make a follow-up point based  
18 on something Stan said, but I can't remember. But I do  
19 think that, you know, there is definitely more to be  
20 done. And, you know, just from a state crowdfunding  
21 perspective, I mean, this is reaching a real local  
22 community.

23 Oh, the point I was going to make is in one  
24 state there is a non-profit that is really geared to  
25 helping educate local businesses, local entrepreneurs,

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1 about what they call direct public offerings, right, to  
2 the local community. And they've been really successful  
3 in helping that -- those local businesses tap into that  
4 state's crowdfunding options.

5 And again, you know, that might not be -- in  
6 another state, this other state had two young friends  
7 that had a business idea, and they came in, like,  
8 thinking that, you know, one option was sort of the best  
9 one for them, only to realize they were only hoping to  
10 reach out to friends and family, right? So they had  
11 other opportunities to think about. So that's a little  
12 bit of what we've seen.

13 MR. FELDMAN: From a Reg A perspective, you  
14 know, if you want to do outreach, then reach out. Let's  
15 put panels together, whatever we do.

16 There are a growing number of these kind of  
17 women's networking groups for business that are growing  
18 very quickly. You could go, you know, address to them.

19 We do pro bono work for veterans' groups. You  
20 can find them pretty easily. There are the local  
21 chambers of commerce, and so on. There is a group called  
22 Venture for America that we do pro bono work that puts  
23 new college grads into startup companies in disadvantaged  
24 areas of the country. So, finding them wouldn't be too  
25 difficult.

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1           And, you're right, I still get calls from  
2 people saying, "I want to do a reverse merger." And I  
3 explain Reg A; they knew nothing about it. And even the  
4 -- we're still educating Wall Street about all this. The  
5 investment banks are clamoring, "Can you explain it? Can  
6 you give us a white paper?" So, we need to let people know  
7 that these options are available.

8           MR. ABERO: So we are at the top of the hour.  
9 I want to thank all the panelists for their insights, and  
10 especially for teeing up topics that I think are going to  
11 be very helpful for discussion as we move to the breakout  
12 groups.

13           We did have other questions that,  
14 unfortunately, we didn't have time to get to. I  
15 encourage those who had questions that we didn't get to  
16 to reach out to us or to the panelists. I hope that many  
17 of them will be able to stick around a little bit for --  
18 during the breakout sessions so we can talk about those.

19           We are now going to take a 10-minute break, and  
20 then, at 11:10, we are going to come back here to the  
21 auditorium, where we have additional instructions on how  
22 to go to the different breakout groups. Thank you.

23           (Whereupon, at 10:58 a.m., the meeting was  
24 concluded.)

25           \* \* \* \* \*

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1 PROOFREADER'S CERTIFICATE

2

3 In the Matter of: 2016 SEC GOVERNMENT-BUSINESS FORUM ON

4 SMALL BUSINESS CAPITAL FORMATION

5 File Number: OS-1117

6 Date: Thursday, November 17, 2016

7 Location: Washington, D.C.

8

9 This is to certify that I, Christine Boyce,

10 (the undersigned), do hereby swear and affirm that the

11 attached proceedings before the U.S. Securities and

12 Exchange Commission were held according to the record,

13 and that this is the original, complete, true and accurate

14 transcript, that has been compared to the reporting or

15 recording accomplished at the hearing.

16

17 \_\_\_\_\_

18 (Proofreader's Name) (Date)

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