34th ANNUAL

SECURITIES AND EXCHANGE COMMISSION

GOVERNMENT-BUSINESS FORUM ON

SMALL BUSINESS CAPITAL FORMATION

RECORD OF PROCEEDINGS

Thursday, November 19, 2015

9:00 a.m. – 12:40 p.m.

SEC Headquarters

Washington, D.C.

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P R O C E E D I N G S

MR. GOMEZ: Good morning, everyone. I know that we're still two minutes early, but we have a lot to cover today. So I think I'm going to take advantage of the two extra minutes and extend our Small Business Forum presentation by two additional minutes.

Welcome to the 34th Annual Small Business Forum. My name is Sebastian Gomez. I'm the chief of the Office of Small Business Policy in the Division of Corporation Finance here at the SEC. This forum is being conducted by the SEC under its mandate under Section 503 of the Omnibus Small Business Capital Formation Act of 1980.

Before we begin the program today, I want to give the standard SEC disclaimer on behalf of each person from the SEC who will speak today. The views that are expressed are their own, and they don't necessarily represent the views of the Commission or the staff of the Commission.

I also want to express my gratitude to the staff in the Office of Small Business Policy in the Division of Corporation Finance for their tireless efforts to set forth this forum this morning, especially the work of Tony Barone, who many of you have come to know and is the key person behind establishing this forum every year. We'll give very brief introductions of each of the Commissioners and panelists because fuller biographies of everyone will appear in the program you receive this morning.

For those of you watching the webcast, there is an electronic copy of the program with their biographies as well posted on the SEC website.

I would like to introduce Keith Higgins. Keith joined the SEC in 2013 as the director of the Division of Corporation Finance. Keith has been actively leading the division staff on a number of initiatives, including many issues relating to small businesses and capital formation.

Keith.

MR. HIGGINS: Thanks, Sebastian. Excuse me. Good, I think I'm on.

Good morning. I'd like to also welcome everyone here, both folks that are here in the building as well as those who are joining us by webcast. Thanks for taking the time to be with us today to share with us your insights and your experience on these very important topics that we'll be talking about.

I'm confident that this will be an exciting day. The topics that are being discussed are very important not only to the Division of Corporation Finance, but to the Commission and to our capital markets. We have a very interesting day ahead of us, and we look forward to hearing the views not only of our panelists who are with us this morning, but also of all of the folks that will be in the breakout groups this afternoon.

As Sebastian already stated, the views that we express as SEC moderators throughout the forum panels today are our own and don't necessarily reflect the views of the Commission or any other member of the staff. Indeed, as moderators, we may often express views that aren't our own, but are often just put out to just get some debate going and get some spirited dialogue. We hope that our questions are going to contribute to a meaningful and constructive discussion.

So before we start, I'd also like to do my bit to acknowledge the great work and dedication of Sebastian Gomez, who is the chief of our Office of Small Business Policy. As many of you know, he is really the face of small business here in the division.

In addition to organizing today's event or events like today's forum, the office coordinates the SEC's Advisory Committee on Small and Emerging Companies. It -- which the Commission recently renewed -- and the office plays a key role in the Commission rule-makings:

Reg A+, crowdfunding, the 147/504 proposal that came out just a little bit ago.

They do a terrific job as well in day-to-day, handling questions from smaller reporting companies and businesses looking to raise capital, helping to provide interpretive guidance and guidance generally on how to comply with our rules. So thanks to Sebastian and everybody in the office for everything you do on behalf of small business.

With that, I'm pleased to start the forum by introducing Chair Mary Jo White. Chair White became the 31st Chair of the Commission in April 2013. She arrived here with decades of experience as a federal prosecutor and securities lawyer. Most importantly, besides bringing a sterling reputation and resume to the Commission, Chair White has brought a practical, commonsense approach to securities regulation and a deep commitment to the mission of the agency: investor protection, facilitating capital formation, and promoting fair and efficient markets.

Chair White.

CHAIR WHITE: Thank you, Keith, and thank you, Sebastian, and I echo all the kudos for, Sebastian, you and your folks as well.

This is our 34th Annual Government-Business

Forum on Small Business Capital Formation, the latest in what I think I would call a remarkable series of open and direct discussions that really have given the Commission critical insight into the impact of our rules on small businesses and on their efforts to raise capital. I think this forum can also be counted on to be another frank and productive conversation, and we really do welcome all of your perspectives as leaders of the small business community.

As Keith has alluded to and as you undoubtedly know yourselves, the Commission has been quite busy over the last year advancing initiatives aimed at facilitating capital formation for small and emerging companies. I want to just briefly highlight some of those efforts today, many of which, which is worth remembering, were discussed in the subject of recommendations in past forums.

I'll then step back just to provide a few brief observations on what we are seeing so far in the markets already impacted by the regulatory changes over the last couple of years. Let me begin with our work in connection with the JOBS Act.

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

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

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

These efforts have actually marked the end of our major work under the JOBS Act, and we have sought to refocus our own discretion to further enhance the ability of small businesses to raise capital. Most significantly -- and Keith alluded to this -- the Commission recently approved a proposal to modernize our Rule 147 for intrastate offerings and to amend the exemption in Rule 504 of Reg D to raise the permitted threshold to $5 million. We look forward to hearing your comments on these proposals and how they might facilitate capital formation by smaller companies.

While it's obviously too soon to assess the impact of these recent actions that I just mentioned, the Commission staff has been closely following the effects of regulatory changes where we now have at least a somewhat longer track record. One example is the Commission's implementation of the statutory mandate to change Rule 506 of Regulation D, a safe harbor for private offerings that prohibited general solicitation and advertising to the public.

In 2013, as you know, as directed by Congress, the SEC lifted the ban on general solicitation for certain Rule 506 offerings provided that all purchases are accredited investors and that issuers take reasonable steps to verify that status. At the same time, the Commission adopted rules to disqualify bad actors from participating in Rule 506 offerings and proposed rules to enhance our ability to collect information on such offerings.

So what have we seen? The staff has been following the market and making its results public. I think most recently, actually last month, they've observed that issuers are using the new rule to raise capital, but at a significantly lower rate than issuers using the traditional avenue that does not permit general solicitation.

They've also not observed to date widespread fraud as some had feared would occur, but we have received some tips and complaints, and we have some investigations open.

Another example of regulatory change under the JOBS Act was the creation of emerging growth companies and an on-ramp for initial public offerings. Since then we've observed some 1,000 emerging growth companies take advantage of that process and confidentially submit draft registration statements for IPOs. EGCs represent about 85 percent of the IPOs since the passage of the JOBS Act.

The staff processes these registration statements the same way they do others, and generally the staff believes that compliance has been on par with non-EGC registration statements.

You know, with all of these changes, investors and companies alike have new choices for both registered and unregistered offerings. And today's discussions will focus on the new options. As we work to implement and monitor these changes and consider potential new initiatives as well, we're focused on how we can best maintain investor protection and the integrity of the markets while also improving the ability of small businesses to access them in order to grow and drive job creation and economic growth.

So I would ask that your recommendations today take into account the investor protections that are so fundamental to market confidence and success. So let me just stop there and close really by thanking all of the panelists, the moderators, and participants in today's program.

I also want to just add again my commendation to the staff of the Division of Corporation Finance for their work organizing today's forum as well as our Office of the Investor Advocate -- Rick Fleming is here -- our Division of Economic and Risk Analysis, and the Division of Trading and Markets for their important contributions to the forum today. So thank you all for your time and efforts today. The staff, my fellow Commissioners, and I highly value and look forward to your input. Thank you.

MR. HIGGINS: Thanks, Chair White.

Unfortunately, Commissioner Luis Aguilar is sick and wasn't able to join us today. But fortunately, we have his counsel, Giles Cohen, here who will deliver remarks on behalf of Commissioner Aguilar.

Giles.

MR. COHEN: Thank you, Keith. To those of you who heard Commissioner Aguilar speaking at yesterday's open Commission meeting about enhanced transparency for ATS's. The Commissioner is not feeling well, and his efforts from yesterday have resulted in him being unable to participate today. As a result, as Keith just mentioned, as you can see, I will be delivering the Commissioner's remarks on his behalf.

Thank you and good morning. Let me start by extending a warm welcome to the panel members and other participants, including those viewing by webcast to today's Government-Business Forum on Small Business Capital Formation. I look forward to your discussions.

I also want to thank the staff of the Division of Corporation Finance and, of course, the Division's

Office of Small Business Policy for organizing today's forum.

As everyone participating in today's forum knows well, our nation's small businesses spur innovation, produce technological change, and drive job creation across the greater economy. In fact, from mid-2009 or what some pinpoint as the end of the Great Recession to mid-2013, small business accounted for approximately 60 percent of net new jobs.

More recently, statistics compiled through the first three quarters of 2014 show that our nation's 28 million small business owners have been responsible for an even greater share of overall job creation accounting for between 73 percent and 84 percent of net new jobs during that period.

There can be no doubt that facilitating an environment that nurtures and breeds successful startups and small companies is critical to the health of our greater economy.

The SEC's Annual Government-Business Forum on Small Business Capital Formation recognizes this fact and once again brings participants together to discuss how regulatory regimes may impact or facilitate the growth of small and emerging companies. After all, small companies need ready access to capital to grow and flourish. To that end, small businesses continue to rely heavily on owner investment, including loans from friends and family and traditional bank credit for their financing needs.

However, sometimes this traditional financing is not enough or is not available to help small companies make ends meet or expand their businesses. As a result, the Commission has used its statutory authority over the years to adopt rules to help small businesses raise money by issuing securities to both public and private investors. Indeed, as today's agenda highlights, since the passage of the JOBS Act, the SEC has implemented multiple rule makings intended to facilitate the ability of small businesses to access the capital markets, and some of our efforts go beyond what the JOBS Act mandated.

For example, less than three weeks ago, the Commission adopted rules permitting small businesses to raise capital from investors in crowdfunding transactions. Under these rules, qualifying crowdfunding transactions will provide an exemption from federal registration for internet-based offerings of up to one million in a 12-month period.

On the same day the Commission adopted the crowdfunding rules, the agency also proposed various amendments to the intrastate transaction safe harbor under Rule 147 and to Rule 504 of Regulations D. These proposed amendments aim to revitalize Rule 147 and Rule 504 securities offerings by increasing their efficiency and usefulness for small businesses.

Earlier this year, the Commission adopted rule amendments to Regulation A known as Regulation A+, which permits companies to raise up to 50 million in any 12-month period without requiring registration under the Securities Act provided certain requirements are met. And in July 2013, the Commission adopted final rules amending Rule 506 of Regulation D to remove the prohibition against general solicitation and advertising provided that all purchasers are accredited investors and also proposed amendments to enhance investor protections.

Together, these Commission rule makings are intended to form a tapestry of options for small businesses to obtain financing from investors in our capital markets. However, these rule makings alone are not a panacea for the financing challenges faced by small and emerging companies. As I have mentioned on other occasions, a vibrant capital formation process requires a vibrant secondary market for the securities of smaller businesses.

For investors to make money, buying the securities is just the first step. They also need to be able to sell them. The long-existing problems in the secondary market for small company securities are well known. With the new and expanded exempted regimes, they are likely to get worse as more unregistered and unlisted companies will find themselves with a larger number of shareholders than ever before.

Moreover, these shareholders will need to find liquidity in the secondary markets, markets which, as of now, are less fair, less liquid, and less transparent than the secondary markets for listed securities. Ultimately, if investors in these companies are unable to transfer their shares in an active secondary market, then small business issuers may find less appetite from investor for future offerings.

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

I have previously suggested that reforming Rule 15c2-11, commonly referred to as the broker-dealer piggyback exception, would enhance the integrity of market quotations for small business securities and thereby lend an assist to the secondary market for these securities. Would such reforms be enough to address abuses in the microcap securities market sector and facilitate trading in such securities, or are other reforms also necessary?

In addition, as I have suggested before, finding a path for smaller company securities to gain access to the depository trust company services and for improving the regulation of transfer agents with respect to such securities could enhance the capital formation ecosystem for these companies. If so, how could these goals best be accomplished?

There are, of course, other aspects of the ecosystem for the offering of the securities of smaller companies that warrant attention. For example, developments in the investment banking industry have resulted in fewer investment banks focused on underwriting smaller offerings. Accordingly, what can be done to sufficiently incentivize investment banks to participate in these offerings, such as Regulation A+ offerings? In essence, what are feasible and cost-efficient ways to encourage investment banks to underwrite more of these deals?

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

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

MR. HIGGINS: Thank you, Giles.

We'll hear next from Commissioner Kara Stein. Commissioner Stein has served on the Commission since August of 2013. Prior to coming to the Commission, Commissioner Stein was legal counsel and senior policy advisor to Senator Jack Reed and was the staff director of the Senate Housing -- Banking, Housing and Urban Affairs Subcommittee on Securities, Insurance and Investment.

Commissioner Stein.

COMMISSIONER STEIN: Thank you, Keith. It's an absolute pleasure to be with you again this year for the Annual -- that's a very long name -- Government-Business Forum on Small Business Capital Formation. A lot has happened since we gathered a year ago, including, as was mentioned, Regulation A+ and crowdfunding, two pivotal pieces of the JOBS Act, and they've now been completed. And we have proposed an expansion of intrastate securities offerings under Rule 147.

As I've been speaking about small business capital formation over the past year, I've been talking about creating continuum of capital raising options for small businesses of different sizes, different business models, and different capital needs. Whatever the stage or the type of small business, it should be able to get the capital it needs to grow in a form that it is willing to live with as it grows. So strings attached to all of this capital, but being able to choose what strings you're willing to live with.

Hopefully the new options that we've put in place over the last two years will allow an entrepreneur's good idea to develop into a thriving, successful enterprise and hopefully at some point a registered public company.

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

The JOBS Act and our recent rules have certainly expanded the pallet of options for investors to tap outside capital. Have we created a rationalized continuum of capital formation for businesses? I'm not sure. We may be overly broad in some areas and too narrow in others. What is clear, though, is that these new options expose retail investors -- the retiree, the working mom, the college student -- to new risks in unprecedented ways.

How will investors fare? Some things worry me more than others. Only time is going to tell. In some ways all of these initiatives are experiments, and as with any experiment, one must transition from the design and implementation phase to the data collection and evaluation phase. That's why I think today's meeting is so important. Your input will be critical in helping the Commission evaluate what we've done so far both for small businesses and investors.

Help us think through the tough questions. For example, what data and metrics should we be using to evaluate whether our experiments are working for small businesses, and what about for investors? I think we should also be monitoring how those experiments are working in different regions of the country, sectors, and communities.

For example, are the new capital raising options being deployed more effectively in some regions in the country than in others? Do some options work better for some sectors than for others? And what about for different types of investors? And critically, is capital formation working for entrepreneurs and investors from diverse backgrounds?

I hope the answers to these questions can help us improve our continuum of capital formation to maximize healthy opportunities for small businesses and for investors. So I look forward to your input today. Let me know what you think. My office door is always open, and thank you again for joining us today to share some of your thoughts and insights with the Commission.

MR. HIGGINS: Thanks, Commissioner Stein.

Last, but not least, I'd like to introduce Commissioner Michael Piwowar. Commissioner Piwowar also joined the Commission in August of 2013. Prior to that time he was the Republican Chief Economist for the Senate Committee on Banking, Housing and Urban Affairs, worked on the Dodd Frank Act and the JOBS Act. He also served in the White House as a Senior Economist on the President's Council of Economic Advisors.

Commissioner Piwowar.

COMMISSIONER PIWOWAR: Thank you, Keith.

Last month, I visited a number of cities in Asia to visit fellow regulators, business groups and other market participants. One of the main topics of significant concern was how to facilitate the creation and its success of what they call small and medium-size enterprises or SMEs.

Many of the meeting participants recognized that an economy conducive to SMEs was an important factor for innovation, business development, job creation and overall economic growth. They expressed admiration for the Silicon Valley-like culture that not only fosters startups but rapidly grows the successful ones. They asked many questions as to how they might replicate that environment in their own jurisdictions. And one of the key topics, of course, in those discussions was the Commission's implementation of the JOBS Act.

Now since this forum convened -- last convened a year ago, the Commission has taken a number of steps to fully implement he JOBS Act. My fellow Commissioners and one of the Commissioner's understudies here has already sort of listed all those, so I won't go through all those.

Today's agenda calls for a discussion of post-JOBS Act implementation of both exempt and registered offerings. I hope that the morning discussions will stimulate ideas that will be used during the afternoon breakout session to develop recommendations. Those recommendations are reviewed by many people, including members of Congress who are constantly looking for new ideas as how to further improve the regulatory environment for small business capital formation.

In fact, just yesterday at the House Financial Services Committee hearing examining the SEC's agenda and budget, Congressman Scott Garrett, Chairman of the Capital Market Subcommittee said in his opening statement, "Tomorrow the SEC will hold its Annual Government-Business Forum on Small Business Capital Formation. As in previous years, I expect this forum to produce a number of valuable ideas that will help small enterprises access capital and grow our economy. As in previous years, I expect the vast majority of these recommendations to be promptly ignored by the SEC."

Now given your tremendous efforts to develop thoughtful recommendations, I believe that the Commission should respond to each one. By statute, the Commission is required to respond to each recommendation provided by our Investor Advisory Committee. It should not take a law to require the Commission to respond to this forum's recommendations. It is more of a matter of common courtesy and good government.

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

MR. HIGGINS: Thanks, Commissioner Piwowar.

Now I'd like to turn it back over to Sebastian who is going to introduce our first panel.

MR. GOMEZ: Thank you, Keith.

As you know, the JOBS Act made significant changes to the landscape for exempt offerings under the federal securities laws. For example, as was noted before, the Commission adopted final rules that mandated by the JOBS Act to modify the provision against general solicitation and general advertising under Rule 506. In addition to that, the Commission implemented another JOBS Act mandate by amending Regulation A to increase the size of the offerings up to $50 million over a 12-month period.

Most recently, the Commission adopted final rules that allow securities-based crowdfunding and proposed rules to modernize Rule 147 and establish a new exemption for intrastate offerings and also to amend the Rule 504 of Regulation D.

On this panel, the first panel this morning, we're going to discuss exempt offerings post-JOBS Act implementation and focus on the expanded and modernized options now available to small businesses considering an exempt offering.

I am pleased to be joined today by an great panel. I am going to introduce the panelists, but as I noted before, my introductions are going to be very brief. There's additional biographical information for each of them in your forum package.

First to the left or your right is Vlad Ivanov. Vlad is a Senior Economist in the Office of Corporate Finance in the SEC's Division of Economic and Risk Analysis, which it's also known as DERA.

Next to Vlad is Sara Hanks. Sara is the Co-Founder and CEO at CrowdCheck in Alexandria, Virginia.

Next to Sara is Anya Coverman. She's the Deputy Director of Policy for the North American Securities Administrators Association, also known as NASAA.

Next to Anya is Kevin Laws. He's the Chief

Operating Officer at AngelList.

Next to Kevin is Chris Weekes. He's the Managing Director for Capital Markets at Cowen & Company.

And finally, but not least, Rick Fleming, who is our Investor Advocate from the SEC's Office of the Investor Advocate.

For those of you in the audience, as the panel gets started, if you do have any questions, inside your forum package, there is a notecard. There will be people through the aisles collecting those. So to the extent that you have any questions, feel free to note your question there and it will be passed onto us.

For those of you who are watching the webcast over the internet, if you send an email to smallbusiness@sec.gov, we'll get your question and then we'll be able to pass it onto the panelists.

So without further introductions, I would like to now turn to Vlad. DERA recently published a report on what we are seeing in the context of exempt offerings.

Vlad, could you tell us a little more about it?

MR. IVANOV: Yes. Sure. Thank you, Sebastian.

And good morning, everybody. I'm going to present to you some statistics on the Regulation D market, one of the most important markets for exempt offerings, and also discuss some of our most recent findings on Rule 506(c), one of the major changes in this space that was introduced by the JOBS Act.

So if you have seen our study you're probably familiar with this chart. This chart shows you the dollar amounts raised through Regulation D offerings annually from 2009 to 2014 and also compares it to capital raised through other types of private offerings, like Rule 144A and also compares it to the market for public offerings, public debt and equity offerings.

And as you can see, the Regulation D market is a vibrant market, large, both in dollar terms and also compared to the markets for registered offerings. Last year, 2014, issuers in that market raised close to $1.3 trillion dollars, which dwarfs anything else raised in other private offerings or via the market for registered offerings.

And the other important point to note is that if you add up Regulation D, Rule 144A and the other types of private offerings, this private offering market becomes very sizeable compared to the market for registered offerings. We still have no data on Reg A+ offerings since, you know, the rule was passed recently, but in the future we're going to track that market as well as the market for crowdfunding offerings.

Who are the issuers that use the Regulation D market? The bulk of money in that market is raised by pooled investment vehicles, what we call funds: hedge funds, private equity funds, and other types of funds. Operating companies, companies that are of interest to this forum, have raised about half a trillion dollars in this market from 2009 until 2014. On average they raise about $100 billion.

And we think this underestimates the amount raised, first because, as you know, there is no final Form D. So the amount reported on the Form D doesn't often report the final amount raised by an issuer. And also, anecdotally, we hear that some issues don't file Form D. So all of this leads us to believe that the amounts that I'm showing you here, the statistics would tend to underestimate the amounts raised in this market.

If you look at the chart on the bottom, by far the largest number of offerings come from operating companies. So operating companies that access this market tends to raise money through a lot of offerings, but smaller offerings; the medium-sized offering is about $2 million.

Now less than two years ago, we made changes to securities laws to adopt the Rule 506(c) which allows general solicitation, and that was a rule eagerly anticipated by issuers and investors and given the year or so of data, this table shows you how much capital has been raised in the 506(c) market compared to 506(b). And as you can see, the amounts raised through the 506(c) market between September 23, 2015 when the rule became effective and the end of 2014 are small, I would say tiny, compared to the amounts raised in the 506(b) market.

Issuers, all issuers, funds, non-funds raised about $33 billion using 506(c) offerings, whereas issuers relying on 506(b) raised about a trillion and a half. So again, it's a short -- it's a relatively short period of time for proper inference to be made, but that gives you an idea about the popularity of 506(c) versus 506(b) and offerings in 506(c) tend to be smaller than the offerings in 506(b).

What is interesting regarding the 506(c) market, though, as you can see from these two pie charts, there is a larger fraction of non-operating firms that access the 506(c) market. If you see at the chart to your left, the 506(b) market is dominated by funds. Operating companies raised only about 13 percent of the capital raised in 506(b). If you go to 506(c), operating companies actually raise about 36 percent of the capital. So for various reasons, again, based on the limited amount of data that we have, 506(c) tends to attract more operating firms compared to funds.

Next I'm going to show you some of the characteristics of issuers that use the Regulation D market. As you know, 99 percent of the capital is raised using 506(b) or (c). Very few companies -- very few issuers rely on 504 and 505. So most of the issuers, the operating companies, non-fund issuers that use the Regulation D market over the last five years came from the technology sector, which probably is not surprising. Significant fraction of them came from healthcare, energy, also a fair number of banking and real estate issuers relied on this market.

About the size of the issuers that use Regulation D, well, about 60 percent of the issuers don't disclose their size. They check the "decline to disclose" box on Form D. But from the issuers that disclose their size, we see that it's mostly small, young companies that tend to rely on Regulation D. A lot of companies don't even have revenue when they access the Regulation D market. A lot of them also have revenue up to a million. So generally small non-operating firms tend to rely on this market with the caveat that more than half of the issuers don't disclose their size.

Where do these issuers solicit and where is their place of business? So most of the Reg D issuers come from states with significant entrepreneurial activity, like California, New York, Texas, Massachusetts. A lot of them solicit also in these states. And the state of Delaware, obvious, is the outlier for state of incorporation.

Who are the investors in this market? So we're able to get some idea how many investors participate in this market annually. So for the period of a year and a few months since September 23, 2013, about 230,000 investors have invested in non-operating -- sorry, in non-funds in operating companies. And there is a double-counting here since we don't know the identity of investors. So if investor invests in several offerings, we'll count them each time. But significant number investors invest in offerings by non-operating -- sorry, non-funds, by operating firms, small firms.

And lastly, I want to say a few words about the use of intermediaries in this market. Unlike markets for registered offerings, intermediaries are not frequently used in private offerings. As you can see, on average, issuers in the Reg D market use intermediaries in maybe 20 percent of the offerings. Non-operating -- sorry, non-financial -- non-fund firms, operating companies tend to use intermediaries only about 15 percent of the offerings. It's mostly financial companies, banks, and real estate firms that rely on intermediaries.

And what is the cost of intermediaries? So we're able to calculate total commission paid based on data disclosed in Form D. Probably not surprising, non-financial firms, operating firms, tend to pay the higher commissions when they rely on intermediaries, about 6 percent compared to let's say hedge funds or private equity funds who pay less 2 percent.

And that's not surprising because usually commissions are -- the size of the commissions is inversely correlated to the size of the offering. For higher -- bigger offerings, so they pay lower commissions, non-operating -- sorry, non-funds, operating firms have smaller -- tend to have smaller offerings, and they tend to pay also higher commissions.

And with that, I will conclude. I will turn it over to Sebastian.

MR. GOMEZ: Thank you, Vlad. I think it's always interesting to get an update on what we're seeing in the market, and I'm looking forward to data on Reg A and crowdfunding as those exemptions continue to grow and we continue to collect data on that.

I'd like to now turn it over to Sara.

Sara, as you know from the multiple introductions, the Commission was busy over the last year finalizing rules for Reg A, crowdfunding, and also proposing rules to amend 147 and 504 under the Securities Act. Could you walk us through what the Commission did and your thoughts on those?

MS. HANKS: Okay. I love the fact that I've got just a few minutes to canter through some of the most important things that have happened, at least in this forum in, what, decades, however long that --

MR. GOMEZ: Well, maybe, Sara, we'll learn from you as to how to reduce 680 pages into a three-minute presentation. (Laughter.)

MS. HANKS: Well, let's have a go anyway. So first thing: Is Regulation A already effective? Changes went into effect June 19th. We have two tiers in Regulation A. The first, Tier I, lets you issue up to $20 million a year. It is subject to state and SEC review. You've got an exit report but no ongoing reports, and the SEC doesn't require audits of financial statements, but that's a kind of specious distinction, because so many states do actually require audited financial statements.

Tier II, you're allowed to offer up to $50 million a year as subject to SEC review only. The price you pay for that convenience is ongoing annual and semiannual filings.

I've been keeping track of the filings that are made, and it looks to me like there's something like 25 public filings. You might think: Why can't I count a simple number like that? And that's because a number of issuers have pressed the submit button several times, and then not filed enough withdrawal statements to cover the multiple filings that they made, and I would say it is difficult to operate EDGAR.

In my old life as a partner at a law firm I would just go, "Hey, paralegal who does EDGAR things, make this thing happen." Dealing with it on a day-to-day basis and making all of the little validation steps that you have to make, that is difficult. So I can see how people have failed to make filings sometimes. Like I say, roughly about 25 filings of incredibly variable quality.

Some of them have been absolutely standard, S-1 formats, clearly this is a company represented by a decent law firm on its way to NASDAQ just using Reg A as an easy way to ease into the full reporting system.

At the other end, there are some absolutely abysmal filings where companies claim to be reporting and non-reporting within the same risk factor, have checked the wrong box in all sorts of different ways, have totally failed to disclose anything that's meaningful, and in some cases have used the old forms to file under the new system. I think the lesson that we learn here is that you really do need a securities lawyer; that is a securities lawyer with a current license to practice as a securities lawyer in order to file under these forms.

Going into my -- I'm going to give you some of my own personal experience with some of these filings. We've made five filings so far, two public, three stealth mode, and I think that there's probably a lot of filings that have gone in stealth mode, and really had a terrific experience. The SEC has certainly come through in not giving nitpicky comments. The comments that we've had have been prompt, they have been useful, they have been constructive, they have made better documents. So I'm really pleased with the substance. There's a light touch, but there is a knowledgeable light touch going on there.

With respect to Tier I, I think you have to have a bit of a death wish to do, which we have done, which is file Tier I with all 50 states. It's a challenge. It's a huge challenge. You don't have to file all 50 states, and you might think about it before you do so, but to the extent Tier I is going to work, I think we've got some issues on the wish list. It would be great to have all of the states, not just 50 -- or 46 states into the coordinated review process.

It would be nice if all of the states who are in the coordinated review process agree that they're in the coordinated review process. And we've had some discussions with the regulators about that, and I've got to say the regulators both at NASAA and Washington State have been tremendously helpful when we've run into problems.

But the problem with doing a Tier I through the coordinated review process, which, as you may know, is coordinated by Washington State, is you're decoupling registration, review, and payment, which means there's three separate streams of things that can go wrong. And if you're one of the first companies to do a 50-state review, all of them will go wrong. Believe me.

So just want to give a shout-out to the guys at NASAA and Washington who are helping us go through these. To make this work, we've really got to have a single filing form accepted by all the states and a single payment process that all of the states accept.

So moving onto Regulation Crowdfunding, Regulation CF as we call it, effectiveness will be May 16, 2016. The conditions, of course, set out in the statute, a million dollars, you have to use intermediaries, which can be funding portals or can be broker-dealers. There are investment limits and disclosure and filing requirements.

The SEC, of course, was constrained by statutory parameters. They can't change things like the million-dollar limit, but they have been very clear about the integration or non-integration of concurrent offerings. So it is going to be possible -- and I'm saying this as me, and I'm not expecting the SEC to bless this -- if you have a good securities lawyer, you may well be able to do concurrent offerings to accredited/non-accredited investors using a combination of offering exemptions.

My favorite changes from the proposals from a couple of years ago in Regulation CF is that audits are not required for first-time issuers, although a review by a CPA, which is going to be required if you're raising more than $100,000, it is no small thing. And companies who use QuickBooks and keep their accounts in -- on a cash basis are going to find that any decent CPA is going to put them through the wringer a little bit in making their financial statements actually work under U.S. GAAP. And U.S. GAAP is required. So the audit thing is good, but it's not going to be -- it's still going to be a piece of work.

The other things that I like about the changes, we can now make PDF filings in EDGAR. You have to understand how difficult it is to do EDGAR on your own to see how excited I am that we don't have to EDGAR-ize bits of documents. We can just create a PDF and then upload it and validate it and crosscheck it and then press the submit button, but only once, not too many times, and wait for it to go round and round and round until you get the submission notice. But that's a huge improvement.

The other thing that's super good is the ability for portals to have some subjective analysis in whether they will accept offerings onto their portals. They're not going to have to take absolutely everyone who comes whether they think that they are good companies, legitimate companies or not.

Least favorite, exemption from 12(g). As you know, 12(g) -- Section 12(g) of the '34 act requires that you become a full-registered and reporting SEC company when you hit a certain threshold of shareholders. A lot of these companies are going to hit that fairly soon. The proposals had a permanent exemption, the exemption from registration under 12(g), followed the securities. The exemption now is conditional, and there's one condition I'm very worried about, which is being up to date with annual filings.

At CrowdCheck, every spring we come across a whole bunch of companies who have just forgotten to file their Delaware franchise taxes. It is super easy to do even if you have a filing agent who is sending you emails all the time saying, hey, Delaware's due, Delaware's due, Delaware's -- now, really we mean it. Even with that happening, it's so easy for small companies to fail to make a filing, and it's going to be very important that companies be encouraged to comply with the filing and possibly get some kind of relief from the SEC in the event EDGAR goes wrong.

So small company on the filing deadline, it's nearly 10 o'clock, they're pressing the button, everybody's pressing the button, EDGAR freezes up, we're going to have to have some relief from that because that's going to be interesting.

MR. GOMEZ: So Sarah, could you expand a little bit more on that? So the conditional exemption is conditioned on the company filing the SEC-required reports. Could you explain how, for example, the failure on the tax franchise filing could impact that? Because it seems like it wouldn't go --

MS. HANKS: No, it doesn't. It's just an example of how screwed up small companies could be. So small companies by their nature fail to make filings when filings are due.

MR. GOMEZ: Thank you. I just didn't want everyone to get an impression that our -- the 12(g) condition exemption is also conditioned on -- not that the companies shouldn't file everything that they're required to file with respect to their tax franchise laws, but I just wanted to clarify.

MS. HANKS: Yeah. That's a good point. And of course all though if you offer securities when you are not in good standing because you have not paid your Delaware franchise fees, that is a serious issue. It's something that you can recover from. You can get back into good standing in Delaware, and maybe there would be some way of companies being able to get back into good standing because they filed a few days late, just throwing that one out.

The other least favorite changes that I have from the proposal is that the individual investment limits were lowered. The JOBS Act sets two different levels of investment for people having income or assets less or more than $100,000. The way that the JOBS Act was drafted was a bit unclear. Originally, the proposal was that -- from the SEC was that you could take the greater of. Now it's been changed to the lesser of. I don't know how much of an impact that's going to have. That remains to be seen.

MR. GOMEZ: Sara, do we have any data -- or maybe, Kevin, do we have any data from current investors or foreign markets that might be helpful to provide some insight as to what impact that would have, or is it too early to tell and we just need to see as the rules develop and maybe consider as part of the three-year lookback that the Commission asked the staff to do?

MS. HANKS: Well, I can answer part of that, which is you can look at some of the statistics that are kept by platforms like Crowdcube, and I think you'll see smaller investment amounts to a certain extent, but part of the problem with any of the data that comes from the UK is that distorted by the tax treatment that they have there, so the amounts that you invest are going -- are not going to be necessarily -- have a direct correlation to what people would do here.

Have you got anything to add there?

So going onto the last bit that I was asked to talk about, which is the proposed changes to 147 and 504, pay attention to these, folks, on a couple of points here. Number one is nobody made the SEC do this. They saw that there was a need for rulemaking in this area to make it more efficient, and they have made this proposal. And then secondly, this could be very, very useful. I mean we are now ending up with a whole bunch more options for capital raising for small companies than we've had in many, many years. So Rule 147 is the safe harbor and Section 3(a)(11), which is a statutory exemption for offerings in which offers and sales are made in-state.

Rule 504 is an exemption which is a bit complicated for offerings that are made in one or more states or at least one state has reviewed a substantive offering document. And I'm summarizing that, by the way. It's a bit more complicated than that. The proposal for Rule 147 is to create new standalone exemption for intrastate offerings.

So instead of having what it used to be, which is a safe harbor explaining what 3(a)(11) means, which is constrained by some of the things within Section 3(a)(11), including that you have to be incorporated in the state in which you're offering the securities, which is a pain, because then you can't use Delaware to make an offering in Texas.

So instead of being a safe harbor under that statutory exemption, it's a proposal for a new statutory exemption that would permit companies organized out of state to make offerings in a particular state. It would permit intrastate solicitation, which means using social media, using the internet, so long as the sales were only made within the particular state, and there's an analogy there to Rule 506. And it gives a lot more clarity and flexibility on what it means to be a business organized in the particular state.

Rule 504 used to be -- it is limited to a million dollars. The proposal would increase the limit to $5 million, impose a bad actor disqualification which would be consistent with the other parts of Regulation D, Rule 506 that we've been talking about. And as the SEC says in the proposal, it gives room for the states to modernize their regulation for early stage financing.

And so the end result of all of these, especially since, as we see in Tier I filings, it looks like -- it would be nice to get some input from you, Sebastian, on this. It looks as though in Tier I filings, in general you're saying we're deferring to the states. We don't see anything absolutely crazy weird. We're going to let Tier I be run by the state process. And so what we have, which you've got to love, is this huge experiment where small companies can choose federal or state regulation and see which one works out best for them.

MR. GOMEZ: So to your point, to your question, Sara, I mean the staff is looking and reviewing both Tier I and Tier II companies. We are keeping a number of considerations in mind as we do that review. For all of the filings, we are focusing on a lot of the threshold issues, is this a company that's actually able to use the exemptions, some of the threshold questions and some of the very key items like, for example, is the company legally authorized to issue shares, is there a legal opinion and those type of things, so certain key issues relating to the exemption as well.

With respect to the differences between Tier I and Tier II, there also one of the considerations that we have in our review is the fact that Tier I offerings are also being reviewed at the state level. Tier II offerings are being reviewed only at the SEC itself. So as far as the type of comments that you will see from the staff, there may be some differences between Tier I and Tier II based on some of those factors.

MS. HANKS: Thanks.

MR. GOMEZ: I think this is probably a great segue to go to Anya. And Anya, if you could tell us -- I mean there's -- I think rule 147 and 504 is a good segue to what we are seeing at the state level with respect to different capital formation opportunities, if you could tell us a little more about that.

MS. COVERMAN: Thank you, Sebastian.

Thank you, Sara.

So my name is Anya Coverman. I'm the Deputy

Director of Policy at NASAA and NASAA represents state and provincial securities regulators. I do have a disclaimer. The views and the points that I'm expressing today are not the official position of NASAA or its members. They do represent my own.

Okay. So what I wanted to talk about today is just to give a landscape of state-based crowdfunding. There's a lot of questions. What is going on across the states? So I thought this would be a great opportunity to really just go over that.

So what is intrastate crowdfunding? State-based crowdfunding is something that started before the JOBS Act. If you think about crowdfunding not as a regulatory matter but more as a concept allowing small businesses to reach out to small, local investors and access capital, something that is really about community-based offering affinity purchasing, that has been around a long time in states. States have had limited offering exemptions for many years.

So -- but what we do think about is, in particular, and when we think about crowdfunding, state-based crowdfunding, is IKE, which is the Invest Kansas Exemption. This is an exemption that was passed in 2011 and this is a great opportunity for me to say it was actually drafted by Rick Fleming when he was in the state of Kansas. Not many people know that.

But the purpose of this exemption was to accommodate real community-based offerings, not broad-based internet offerings that we think about today when we use the word "crowdfunding." And the challenge was letting these local, small businesses solicit their customer base without violating rules against general solicitation under federal law.

So the method that was created was to build an exemption that would coordinate with an existing federal exemption, the federal intrastate offering exemption that Sara mentioned, because, of course, as we know, to offer shares that are not registered, you do need to meet exemptions at both the federal and state level.

So what are the conditions of these exemptions? This is just a side-by-side chart. The pre-2012 JOBS Act exemptions, Kansas being a great example, are tied to the federal intrastate offering exemption. Issuers and investors must be in-state.

It is a purely intrastate exemption; an offering cap of a million dollars a year; investment limits of 2 to 10,000, but really 5,000 is where most of them land; a notice filing, but no specific disclosure document mandated. But of course, under the antifraud provisions of the securities laws, you still need to provide material information to investors. If you're going to use an intermediary, they need to be a registered broker-dealer, and a bad actor disqualification.

So after the JOBS Act in 2012, a lot more states were picking up on this concept of building another tool, a state crowdfunding exemption with really use of the internet in mind. So we see that they're either tied to the federal intrastate offering exemption or Rule 504 of Regulation D. Rule 504, as Sara mentioned, it allows an intrastate offering or more of a regional approach to state crowdfunding, and there's a lot more details, and happy to talk about them with 504.

But what we are seeing in these new exemptions is the internet-based offerings allowed. In some states they even mandate the use of the internet. Offering caps do range from as low as $100,000 to $5 million a year. The range for most states is between $1 to $2 million, investment limits of $100 to $100,000.

The higher amounts are very similar to federal crowdfunding scaled by net worth and income. Notice filing, I should mention these are not self-executing exemptions. They are -- they do require notice filing and the later exemptions include a short-form disclosure document.

Compensation either of a registered broker-dealer or an internet platform, sometimes called a website portal, which is really just an intrastate broker-dealer and a notice filing or sort of a registration light filing, bad actor disqualification and short quarterly reports to investors.

So this next slide is a map. It is available on line. There are 30 jurisdictions, so 29 plus D.C., that have created an exemption for state-based crowdfunding by legislation rulemaking or order. But they are -- they have been passed, and they're effective today in 24 jurisdictions, so 23 plus D.C. There are four additional states that are investigating state-based crowdfunding in their state, and last year there were 13 additional states that had legislation pending.

So this lists the effective dates of intrastate crowdfunding exemptions beginning with Kansas's IKE exemption in 2011. Some statistics as of September 2015, the total number of offerings that have been filed across the country are 119. And the total of those that were approved or cleared is 102. Just to keep in mind, sometimes a filing may be incomplete. And in other cases, issuers withdraw for voluntary business decisions or in what particular instance I can think of they wanted to use a different limited offering exemption because, of course, this is not the only exemption available in this state.

MR. GOMEZ: Anya, I --

MS. COVERMAN: Sure.

MR. GOMEZ: -- will continue. We're getting a lot of questions live. As we get questions -- and I think they're related to the topic -- I'll take advantage to interrupt a little bit and ask the question. We got a question about the D.C. intrastate exemption and maybe for -- maybe not just for D.C. but for any of those other jurisdictions that are listed in your chart as already being in effect, if people have questions with respect to what's required under those, is there information on the NASAA website, or is it best for them to contact their local regulator? What suggestion do you have for people who want more information?

MS. COVERMAN: I would definitely recommend contacting the local regulator. I mean we have information available at NASAA and always happy to answer calls, but if you'd like to learn about the details of a particular state or jurisdiction's exemption, the regulator is there and available to provide that information.

Okay. So the next slide is -- are the types of businesses using intrastate crowdfunding. You know, I've heard this a lot, and it is quite true, these businesses are really consumer-driven businesses. Investor motives are really beyond just a profit. They usually have a relationship with the company. They may have the same philosophy with the company.

And so we see a lot of breweries, general store, exercise studio, there's one that's a music real estate venue, a lot of different farming operations. It really depends on geography as well. And again, these are the types of businesses that have been using crowdfunding in states that have effective crowdfunding laws.

So those that maybe have been recently -- have recently become effective, we will continue to look and see what types of businesses are using them. There are some real estate firms, a hair salon, some entertainment groups, in one state an over-the-air digital TV station, definitely restaurant -- there's a restaurant sort of theme, a baseball bat maker in one state, a senior care facility, a manufacturer, there are some family-run businesses that are using it as well.

Okay. So next steps, Sara talked about this, but of course the SEC's open meeting on October 30th, they voted in favor of proposing amendments to Rules 147 and 504. I just listed a few different things, but it is -- there are quite a number of questions that are asked and considerations. But one, of course, is eliminating the restriction on the manner of offering, focusing on the sale; eliminating the residence requirement for a focus on principal place of business; and updating the doing business standard, using more of a disjunctive -- and I think I put this incorrectly -- using -- excuse me, I'll have to fix that -- using a disjunctive rather than conjunctive approach.

So the last slide -- I didn't want to not touch on the coordinated review program. This program was launched in May of 2014. It's -- we do have a lot of -- for issuers that are interested, there's information on the website in terms of the timeline, the protocol, the coordinated review application and requirements and contact information if you're wanting to reach a particular state.

Just -- I don't want to end without responding to Sara, but coordinated review is also a relatively new program. And NASAA and the state of Washington and our members absolutely appreciate the feedback, and please get in touch with us to talk through anything that you may want to address as an issuer interested in the program. So again, it's relatively new, and we're seeing the uptick in filings, some of which will want to use a coordinated review program. So as that happens, we encourage everyone to reach out to NASAA.

MS. HANKS: And they are very responsive.

MS. COVERMAN: Thank you. Thanks.

MR. GOMEZ: Thank you, Anya. We haven't yet touched a lot about -- on Reg D and 506(b) other than -- and 506(c) other than Vlad's very helpful information. So with that, I wanted to turn it over to Kevin and see if you could tell us a little more of what you're seeing in this market. We did get a lot of questions about Reg D so far. So I will chime in at times to ask some of those.

MR. LAWS: Great. Thank you. I'm Kevin Laws. I'm the COO at AngelList. AngelList is an online platform that serves as kind of a LinkedIn between startups and angel investors so that they can meet and finance the very early stage companies.

What had happened prior to AngelList is a technology company used to take an investment of maybe $5 million to get started. But with a lot of the changes in technology recently, the amount of money a technology company needs to get started, it dropped from about 5 million to about $500,000.

VCs weren't writing $500,000 checks, and so the angels stepped in, but the angels were writing $50,000, not $500,000 checks. And so in order to get to the 500,00, the angels were combining into groups offline.

They referred to them as syndicates -- we've adopted that term online; I'll talk about it a little later -- in order to invest in these companies. But by the time you get up to trying to coordinate between that many investors, it really wasn't feasible without some online tools to do that.

And so AngelList in its current form exists because of some provisions in the JOBS Act, 506(c), the 201(c) platforms provision that governs what platforms can do for online matchmaking so to speak and the no action letters that the SEC issued covering syndicates and SPVs to AngelList and Funders Club.

So I've been asked to talk about some statistics of what's happened within AngelList with the 506(b) and (c) as well as to cover some of what syndicates are as in the no action letters and how that's working out. So just some recent metrics on AngelList so you understand the scale of what we're talking about here.

AngelList since the -- all of this has become legal has put about $200,000 from investors into the -- $200 million from investors into startups. That sounds like a tiny amount. I mean Uber alone is raising a billion dollars right now. But it's into over 700 startups, including Uber. So Uber raised their early money on AngelList as did many of the brands you may know today that are up and coming like Postmates and many others.

So it's the number of companies that we're financing because we're making this feasible to give these tiny companies access to capital. So I'm going to talk about some of the statistics for the online fundraises in the last 12 months. And so that's what I'll cover with the -- what's going on here.

So the first that I think might surprise some people is I do use the term "online fundraising," because most of the online deals do -- they do have more investors than they used to. It used to be about 10 offline. That's anecdotal. I don't have data on that. But on the -- in the online investments, most of them are still limited. The majority are under 40 investors, for example.

You can see in the graph that there are some that I would consider kind of what people use the term accredited crowdfunding, larger -- must larger numbers of investors going into the deal. Because of the mechanism and it being an LLC, it's capped at 100, so you won't see anything that goes beyond that.

So I mentioned online fundraising is not the same as crowdfunding. It is a necessary component. It needs to be that efficient before you can do crowdfunding, but online covers a lot of deals, and that gets to the use of 506(b) and (c). So almost all the deals are private of one form or another. So in the last 12 months, only 3 percent of the deals have used 506(c). It's very interesting to me that my data matches pretty precisely what Vladimir is putting up. We're mirroring the offline market.

MR. GOMEZ: So Kevin, one of the questions we got and directed to you -- and I don't know if Vlad would have anything else to add on it -- is whether this 3 percent we see, and even though it's a small amount, does this represent new capital, or are these issues that if 506(c) would not have been there would have used 506(b) anyway?

MR. LAWS: So it would -- they definitely have used 506(b). I don't think the companies that are using 506(c) would have raised as much capital without it. Similar to what Anya covered with crowdfunding, the ones that are using 506(c) tend to be the consumer businesses. So they are looking for investors among their customer base, which is not something prior to 506(c) that really would have been possible.

To give an explicit example, one of the early companies was Shyp, which is an app on your phone. You can take a picture of -- I don't know why you'd want to send the water bottle to your mother, but they would show up five minutes later, wrap it up in a box and send it off to the address, bill your credit card, you don't need to wait in line anywhere. They were one of the early companies doing that because they had a passionate customer base that said this is great.

So they put it out there and used it to both generate more customers and generate investment from their customers, and they've gone on to be very successful. They've raised a very large round recently from a top tier VC. But that's the kind of company that tends to use the 506(c).

MR. FLEMING: I do have one question about that.

MR. LAWS: Yeah.

MR. FLEMING: I mean if we go back to Vlad's chart about the investors and 506 offerings, under 506(c), he shows that the median number of investors in 506(c) offerings is only two investors. That's astonishing to me. I don't know, Vlad, if you have some idea of why that is. I don't even know why they're doing a 506(c) offering instead of like a naked 4(2) or 4(a)(2) I guess now. But it's just -- that really stuck out to me that more than half of these offerings have two or fewer people in them.

MR. IVANOV: Yeah, that's what I -- yeah, I don't know why -- what is the reason for that. We do find that most of these issuers that use 506(c) have not relied on 506(b) before, so it suggests that they might be new issuers coming to the market. But I don't have a good answer why, so few investors participate in those.

MR. LAWS: Yeah, and I can say we have not seen that. The 506(c) deals are the ones with the larger numbers of investors on our platform.

MS. HANKS: I think it's because you just need to make the first filing 15 days after the first sale, and those sales kind of roll on and on and on. You're only seeing the -- there's the point you made earlier.

MR. LAWS: So this has actually gotten -- I'm actually surprised, but there's been a little bit of a move away from 506(c). It's now going from 3 percent to 2 percent, looks small, but the other part of this is we're also seeing more use of the invite-only rather than a broad, private distribution only to investors.

This I think has been driven primarily by the advice that the law firms have been giving their clients that there are additional things that may scare away investors about 506(c).

I personally -- we run an accreditation

service, and it's not been that much of an issue once the investors come through it, but the law firms are concerned, well, if you've got 20 investors, if two don't come through, they might be the two with the largest checks because they didn't -- and it's generally not because they're not accredited, but because the data they're asked to provide they don't want to provide.

So that's -- the main reason for it has been the law firm advice, whether -- I can't opine as to whether it's good advice or not.

And I actually wish, given Commissioner Stein's interest, we had included a geographic distribution slide. We do see a broader geographic distribution than you generally see in tech in early stage that had been very concentrated in just a few geographies in the U.S. We are actually most excited when we're able to bring ones from other geographies, you know, Billings, Montana or smaller places that don't have access to -- direct access to the VCs and angel network into that VC and angel network and bring capital to where it wasn't previously. So next time I'll bring a map of where all the financings were.

The -- finally, the angel list has always allowed companies and investors to meet online. This online close that I'm giving statistics for where we have all the data about exactly how it closed and so forth is only when investors use our syndicates product, which was the one that was allowed by the SEC no action letters. However, since we have released that product, in the last year we are seeing a strong shift of the same investors moving away from doing the offline closes to doing the online closes just because of the efficiency and a number of other means. It reduces costs quite a bit and actually more important for angel investors than cost is the friction of what they have to deal with since most of them are not full-time angels.

So this has all happened through what we call syndicates. And so I had been asked to speak a little about what this syndicates thing is that was covered in the no action letter and how it's used. Syndicates is essentially the way that the SEC had said was okay to regulate this concept rather than as a broker dealer, but that these one investment funds are regulated as venture funds just with one investment. And so that's basically the way to think of these as kind of pop-up, online venture funds that invest in one investment.

The way that looks to the people using the site is there is a syndicate lead. This is the person who offline would have led the investment and invited their friends into the deal, but they're the ones that vet the company, make sure that everything's okay, vet the terms. There's a lot of ways, especially in early stage startups that things can get complicated even if the company is good in terms of the terms and so forth. '

There are 38 investors who want to back Elad Gil for $150K for each deal he does; they'd just indicated an interest at this point. Elad Gil is a lead on the site. He was VP at Twitter and had sold many companies, was head of mobile at Google, he knows what he's doing, he's invested in Airbnb and a number of other -- Square is about to IPO. He was one of the first investors in each of those as well as a number of other high profile startups.

So he finds a company that he's interested in investing in. In this case, this is an actual transaction that happened, the Patients Know Best, he wanted to put $175,000 into that company. So he puts a $25,000 check in personally. He's leading the investment, it's his money, he's got skin in the game, and then the syndicate puts in their $150,000.

Elad gets compensated for being the syndicate lead just as a general partner in a fund does, and AngelList gets compensated as advisor to the fund as well, which is where AngelList's business model comes in as a carried interest on what goes through. There are no management fees on this, which is important both for an incentives-aligned issue so that people don't have the incentive to just raise as much capital as possible, and just as a principle of AngelList that as much of the money as possible goes directly to the company to build. Only if it's successful will the people get compensated.

So that's the simple version that people see. This is the lawyer version. So what's happening is Elad is writing his $25,000 check directly into the company. The investors invest $158,000 -- I'll get to the difference in a minute -- into a -- this pop-up venture fund, which is advised by AngelList advisors, which is an exempt reporting advisor, out of which actual expenses get paid but that's it.

So this is the Blue Sky filings with each and every state, the formation costs, tax and accounting for the lifetime of the syndicate, etc. So all of that's covered and is low cost because it's completely automated and standardized. And then the $150K goes directly to Patients Know Best. So that's the structure of syndicates that's going on behind the scenes.

The key elements of syndicates, it's the skin in the game I mentioned, so our leads 16 percent of the investment personally, and then people are following after that lead investor. The insider vets the deal in terms, and it's much easier for the other investors who are investing online to understand the credibility of an insider with a repeat track record than an individual company.

Ongoing deal monitoring and decisions by the lead, that I'll skip for now because it's a little bit inside pool with the pro ratas. Online and automated accreditation checking, closing funding, and tracking of the deal for the investors, and the big characteristic that has led to what we believe the larger number of investors per deal is the desire among the angels on AngelList to diversify their portfolios much more. When they were doing individual deals, they didn't have enough diversification given the extreme return patterns of startups.

And finally, the -- at this point we are starting to see more institutional capital follow on behind these angels to go directly into these small, small deals that didn't use to have access to institutional capital before. You may have seen the announcement, but we've got a number of funds that we now are forming. The most recent was a $400 million fund that can go anywhere in the U.S. anytime. There's a good deal with a good lead to invest in those companies and get them to grow.

There are a few issues that we're still grappling with on syndicates, particularly one related to this institutional capital as we'd need clarity from the SEC that VCs, who many of these funds are, can invest through these SPVs if they share an advisor and still have that be a qualifying investment. Right now we're having to -- they can do 20 percent of their money there and then do some direct investing and things. It's very similar to the offline scouts program that VCs run, it's just online. But the mechanism right now, it's unclear so we need to work that out with them.

And the second point I'd like to make, because we've done a lot of work and applied these learnings toward syndicates over time, is there's a number of investor protections and so forth that are built into these that still have most of the money going to the company. Unfortunately, given the way the crowdfunding law was written -- I realize the SEC was constrained by the text of the law -- those would not -- cannot be carried over to crowdfunding because they can't use SPVs and there's no incentive compensation to the credible lead, so there can't really be a lead investor that the crowd follows.

So that's pretty much it on the 506(b),(c), and syndicates.

MR. GOMEZ: Kevin, another question that we had received: What impact do you foresee the Title III crowdfunding rules having on this area of 506(b) and 506(c) offerings?

MR. LAWS: That's a really good question, and I'll give you two answers. The short answer is I have no idea because so far like with the -- you just saw from the data on the intrastate, it's been slow uptake just because I think people are unsure of it. The law firms aren't really advising their -- the companies to do that right now or explore it. The -- on the intrastate.

On the intrastate crowdfunding, I suspect what will happen is you'll see within the technology sector companies that would have used 506(c) might now use crowdfunding because they want their customers to participate to give them a stake, et cetera. I would be surprised if we see much activity outside direct consumer businesses in crowdfunding just because I think they'll find some of the characteristics that Sara mentioned earlier onerous if they can still take advantage of 506(b) and (c) and reach enough capital. So I suspect that's how it will work out given the current state of the regulations.

MR. HIGGINS: Kevin, one question I have is: Do the syndicates have any sort of standard package of information that they expect companies to provide to the syndicates both on an initial and an ongoing basis?

MR. LAWS: Yes. So on the initial basis, every syndicate fills out the -- every company fills out the AngelList profile which has a bunch of information that's made available to the investors. That's based on the information that would go in a typical venture pitch that would go to a VC or an angel.

There is a second lead note that the syndicate lead overlays about their investment thesis and also providing the warnings to the companies in disclosures of anything unusual. The ongoing is really up to the syndicate lead and the company. The -- most of the companies fail and when they are in the mode of trying to turn things around, reporting is not top of their -- of mind, right? So putting anything formal on it is difficult.

That, again, is where the role of the syndicate lead comes in, is they are the ones who are having lunch with the founder and finding out, hey, there's some issues and then encouraging the founder, and we do see these updates flow through. We have an update tool where people can update their syndicate. But I can say from data that most of the time the updates come from the companies that are starting to hit their stride. The ones that are still iterating might update periodically, and then we'll get the I'm-sorry-we're-out-of-business notice.

It's an important characteristic most people -- I think most people understand if you deal with small businesses a lot, but if what you're dealing with is mostly public markets and late stage, most companies lose all the money. It's the few companies then that make up for all the difference to make it a profitable investment. So it's very -- a lot of what we do is intended to put the costs on the companies that are succeeding, like carried interest and things like that rather than the more burdens on the ones that are struggling.

MR. GOMEZ: Chris, I wanted to continue this conversation with you and thoughts on this and then also in addition thoughts --

MR. WEEKES: Sure. Actually I just had a quick question on that. I mean we've seen a lot in the public marketplace and the technology sector recently of overvaluations in the private sector and early raises. I'm curious about -- and sort of live in later stage and public markets. But I'm curious about the due diligence and, to your information packet, process how valuation comes into play in these transactions, and who is -- is it the lead investor who is determining with the company the valuations? And from our perspective it's very hard to value private companies, even late-stage private companies. So how is it done early stage?

MR. LAWS: Yes, so we should have an hour discussion on valuation sometime. But the 30-second answer is, yes, it's the lead and the company that determine that valuation. The lead of the syndicate is not necessarily the lead of the round. So Elad Gil, for example, one of his deals was led by Sequoia, a well-known VC. He had an allocation into that. Sequoia was the one who negotiated the terms, et cetera.

The -- as a practical matter, the valuations of these very, very early stage companies tend to be more of you look like this, this is roughly what market is for those, and we have done what we can to help the transparency there. You can go to angel.co/valuations. We have a bar chart you can break down by geography and sector and et cetera of what the recent closes are and what valuations they were and what they're driven by.

Just another observation that's kind of interesting is the valuations at these very early stage companies have not moved nearly as much as the valuations at the later stage companies. It's less than 2X from bottom to top, whereas you see much more than that at the later stage.

That said, the amount of activity has increased instead. And I suspect what's happening if you look at market dynamics is we're at the end of the market where you actually can increase supply in response to price, so to speak, because more companies can get started. When you move towards later stage, a company is either there or not. If the demand goes up, the price goes up as opposed to the supply.

MR. WEEKES: Right. And then just a follow-on. You've mentioned institutional capital starting to come into this space. Obviously that's somewhere where we care a lot about. This -- you mentioned a $400 million fund. Do you have any anecdotal evidence or who that is? Is it a -- is it long pension fund money? Is it individual investors aggregating into a fund?

MR. LAW: Oh, it's not -- so it's not individual investors. We do have funds that we run for individual investors, and that's more of a -- has to do with our mission and allowing the individual investors to connect in. But we push them towards the funds because they're managed on behalf of the investors, but those are tiny. That's just a service of the platform. The institutional money is -- call it money that would typically go into venture funds.

So the investors are investors in the Sequoia and Andreessen Horowitz and things like that. They are now invested -- this gives them an avenue to invest broadly in seed which is very difficult to find these days. You can find small funds that get you 20 deals, but investing in large amounts broadly is difficult.

MR. WEEKES: Okay. Can I steal this from you?

MR. LAWS: Yeah.

MR. WEEKES: I, too, have a disclaimer, but not one that's required by Cowen & Company, my employer. It is simply that I am no, nor have I ever been, a lawyer. So if you would just please refrain from asking me any questions on your index cards that are going to put me well out of my comfort zone, that would be great.

I did want to thank the Commission today. We -- it's not often that they get credit for interacting and engaging with market participants such as Cowen through the JOBS Act and Reg A+ and over the last two years it has been a very good relationship. Cowen as a company and our CEO and President Jeff Solomon has been very -- has been actively engaged with the Commission and supportive of many of the initiatives that have taken place, most notably the ECF Taskforce.

We also jointly wrote an opinion for -- or commented on Reg A and Jobs with Andreessen Horowitz. So we have a number of relationships with other market participants both in the private and the public market. And we also commented on market structure, which I think is a very serious issue that we can talk a little bit about.

So I'm very happy to be here. I represent an investment bank. It's called Cowen & Company. As such, my perspective is a little bit different than my fellow panelists. We -- just to give you a little bit of context around who Cowen is, it will help frame the perspective.

We're a hundred year-old investment bank that's a public filer. We trade on the NASDAQ. We've got three primary businesses. The first is servicing through our broker-dealer on the investment banking side institutional investors, and we do that by providing research, sales, trading, investment banking, advisory service, M&A, debt and equity capital markets, you name it. We -- with the -- however, we don't lend. That's one of our -- so we're not a commercial bank.

But the second is advising corporate clients, and those are public and private issuers of -- that typically are below -- if it's a public market -- $750 million in equity value.

And then the third business is we also manage and invest capital on behalf of our limited partners through a fund called Ramius Capital, which currently has around $13 billion in assets. So we feel like we're in a really unique position both as an investor and a service provider to corporate issuers and investors, institutional investors as well.

So just a few quick stats to frame this. We had -- since 2014, we've done 250 equity transactions, raising a -- just over $240 billion in proceeds. We've done 81 IPOs since 2013 of which we were a lead manager on more than half of those, and 30 or so private transactions, which includes registered directs, PIPEs, crossovers, which we coined the term crossover, which is just public investors coming in and investing in private rounds with the intent on participating in a potential IPO within 12 to 24 months following that round. So a Series C round with a public investor.

100 percent of the aforementioned placements went to all institutional investors, so I want to just highlight that and the majority of which were below $700 million -- excuse me, the issuers were below $700 million in market value. So our work and my job is to advise issuers on their capital structure, introduce them to known sources of capital that we have, but typically unknown to them, sources of equity, both equity and debt capital and

ultimately manage the process whereby we successful execute a capital raise.

So how do we do it? And the way that we think about this, there are -- and on Friday there was a -- Morrison Foerster did a -- there was a very interesting session on are there too many exemptions, have we gotten to a point now where there are just minute nuances to each exemption and should there be some sort of, as called in the industry, consolidation. We don't necessarily think so. I don't necessarily think I need to opine on that either, but it would be because for Cowen, we do something that's very specific.

And so, you know, you've seen the preponderance of transactions, Regulation D and 506(b), that's really where we -- excuse me, 506(b), which is that's really where we live. And so where the statutory exemption 4(a)(2) privates are somewhat similar to 506(b), for Cowen it's very important there are two things that distinguishes. One, we don't really require and we never have general solicitation. We have -- we cover and have active dialogues with over 1,800 institutional investors that manage north of $10 trillion.

We are very, very serious about the bad actor provision. We know we are not one, and we want to make sure that our issuer clients are not one as well. So we tend to rely on 506(b). They are some of our larger brethren banks that don't have that option anymore, but we -- from our perspective, 506(b) is the most important, and that's what we use the most. 95 percent or so of our transactions on a private basis have been through 506(b).

Regulation D 506(c), so it doesn't, from our perspective, we likely will never use it just because general solicitation being the key ingredient there, we don't necessarily need to go down that path, nor do we want to.

Rule 144A, I won't really discuss that today. It really is more of a debt capital markets exemption, and so we haven't seen from an equity perspective this exemption utilized. FBR was very good at this. There was a time -- I guess it was 2007, 2008 where there were a number of equity 144A transactions. However, there's just a -- there's a significant amount of documentation that doesn't necessarily give you the outcome that is required.

And then Regulation A we think is really important, and in fact, we are a relatively large institution ourselves, and we're excited about the opportunity to use Regulation A. And so we do have some ideas on it.

We think that there are tremendous benefits for

-- not necessarily for institutional investors, but for issuers in our wharehouse, which are, again, those issuers that are below $750 million that we deem small and microcap. And so when we think about how Regulation A will be utilized, one, up to $50 million in proceeds in any 12-month period seems like a reasonable start. We could see that.

There are often issuers that, certainly in the biotech space and the live science space, where we have a relatively large presence that need to raise capital more than just once and it would be nice to see them have the ability to rely on Reg A more than once in a 12-month period. Some of the great benefits, obviously, are preempting Blue Sky, streamline SEC process, test the waters. It's an incredibly important thing in our process when we're raising capital.

The ability now to confidentially have a dialogue between the issuers and the investors, giving investors, one, the opportunity to do their -- sharpen their pencils, as we say, do the work, and get up to speed on the company without, one, market exposure for the issuer, and, two, exposing any proprietary information.

And really having any -- the investors having an open dialogue with the issuers as to valuation, which is why I asked, and also the growth prospects for these companies. And so unfortunately, Tier I and II there is no requirement for a financial intermediary. However, when we think about thoughtfully -- or thoughtful analysis of issuers at an early stage. Investment banks and research analysts play an incredibly important role.

And so we've seen recently -- and specifically it's sort of even as of yesterday with Square -- private valuations, it's a very complicated business, and it's becoming more complicated with more fluid and larger amounts of capital coming into the markets.

And so from our perspective, we are advising issuers that if they are going to go, and they're going to utilize Reg A Tier II or even Tier I, that they do at least have some engagement with an investment bank, whatever size it may be, on some level to discuss the analysis, to discuss valuation and to have at least a good third party check on how you're messaging your -- story, the growth prospects, et cetera.

And then finally, freely tradable securities. That is absolutely essential in our business. Institutional investors, whether by charter or by choice, have a very, very difficult time today investing in private securities that are restricted securities. There is definitely a market for it, and there are plenty of investors that are comfortable with it.

But if you have the ability to go and tell a story and be able to check the box that says your shares are freely transferrable, it is a much easier discussion. Some of the considerations -- so limited to non-reporting companies under the Exchange Act. So I'll talk about it on the next page, but it is something that we think could be potentially extended to microcap exchange filers.

Limited to U.S. and Canadian issuers, we actually believe and we commented on this that foreign private issuers, we should explore further affording this to foreign, private issuers. One, there are a number of publicly traded companies on foreign exchanges that have relatively large businesses here in the U.S. And, in the spirit of the JOBS Act, understanding that that is something we're trying to provide, which are additional jobs here in this country, maybe there's a benefit to having foreign, private issuers that have either businesses here in the U.S. be afforded this ability.

Limited to the -- and as I said, the $50 million in any 12-month period, again, there are a number of small cap issuers and microcap issuers that will utilize this exemption that would like to be able to do this more than once.

MR. GOMEZ: So Chris, if I may just chime in on that, as you may know, the Commission is required to look at the thresholds for Reg A. And if you had -- depending based on your experience, if $50 million is not the right amount, what do you think the right amount would be?

MR. WEEKES: I don't really know where $50 million came from. I guess it's somewhat of an arbitrary number to begin with. I think that if we look at average capital raises in the private world today or frankly the median, it's around $85 to $90 million capital that's being raised for issuers that are below $750 million in market cap. And so while I don't necessarily have a prescription for the exact number, it's really more the being able to raise additional capital more than once in 12 months. So you can probably leave the $50 million but just have it be accessed on multiple occasions.

So I don't -- this is my general counsel putting this in. So I'm not going to opine too much on this. But the safe harbor from Section 12(a)(2) for liability on research reports, research reports, as I discussed, is an incredibly important part of developing and supporting our corporate clients. And so that also bridges the gap between issuers and investors and investors given the number of investment opportunities that are out there rely heavily today on investment bank models and investment bank analysis. And we believe that that should be there.

Liquidity, as I said before, is absolutely paramount. And freely tradable securities are necessary. Market structure is something -- and we're not going to talk about it here, but we do -- we talk about it a fair amount in decimalization. But where are these securities going to end up, and where are they going to trade, and how is the liquidity going to be driven? Are these going be securities that are going to have a -- mostly find a home on OTCQX? Are they going to be on the pink sheets?

Are they going to -- are issuers going to use this exemption as an on-ramp and to essentially just becoming an exchange filer but you just have the efficiencies on the front end of an IPO? That's to be determined. We have a -- there's not enough data obviously out there to really make that determination. But one thing that is paramount, there needs to be a concerted effort around finding and facilitating a liquid trading market for these securities.

And so unfortunately we don't have necessarily a recommendation yet, but it is something that we're certainly watching and looking for. And then from a liquidity perspective, one of the impediments that is there today is restriction -- Blue Sky restriction on resale. And so from our perspective, that will continue to be an impediment on illiquidity growing.

I do think that broker-dealers will not have an issue filing Form 211s with FINRA -- but I'm not necessarily certain -- and this was brought up earlier in the comments. I'm not necessarily certain that that's the trigger for increased liquidity. The sort of orderly and efficient market places which are driven by broker dealers and market makers, the backdrop is what is important, and that is market structure. And so we, too, are very much looking forward to what comes out of the pilot in terms of decimalization.

And so just to wrap up, I did -- we did actually put these on paper. Now this is -- the source for these -- these are not my original words, but this is Cowen & Company's and Andreessen Horowitz's letter to the SEC under Reg A and then the exemptions under Section 3(b) of the '33 Act. And I'll just quickly read through them.

One, our first proposal would be that Tier II Regulation A should apply to public microcap companies enabling them to raise sufficient capital needed to grow their businesses in a cost-effective manner. We think it's appropriate to consider conditioning the availability of this on a microcap company being current for the last two years in its reporting obligations, so a check and a balance there.

Secondly, we propose microcap companies should be permitted to incorporate by reference their Exchange Act reports into their offerings circular. This is important just by reducing the time and the cost of the Regulation A offering.

Thirdly, as I mentioned before, we think foreign private issuers -- should be allowed to conduct Tier II Regulation A offerings. We have a number of foreign private issuers that are coming and listing ADRs and listing their ordinary securities now on the OTCQX market. And so we do see Cromwell Coulson and the OTC developing a home for many of the Reg A listings. And so incorporating the foreign private issuers there we think would be -- we would support that.

We propose there also again be a safe harbor from Section 12(a)(`2) for liability on research reports. And then finally Regulation A should go further and preempt state Blue Sky laws for resales to facilitate liquidity in these markets. That's it for me.

MR. GOMEZ: Thank you, Chris. We talked a lot this morning about new ways of companies accessing capital, but I guess it's very important to remember that, even though if there's new ways to access capital, if there's no investors to purchase that capital, then there won't be capital formation. So with that, I wanted to turn it over to Rick and hear from you, Rick, as to what you are seeing in this area.

MR. FLEMING: Thank you. It's good to be with you all this morning. Good time to wake up. We're on the home stretch now. Last speaker.

So first of all, I'm glad Anya mentioned that I actually wrote the Invest Kansas exemption when I was General Counsel in the Office of the Kansas Securities Commissioner because, you know, I'm not down on crowdfunding, never have been. I think it's a pretty good tool for the right companies and for the right investors.

But I do want to sound a bit of a note of caution, I guess to help issuers and portals and others try to keep their expectations in check in terms of what type of demand might be out there amongst investors for these types of securities, particularly in crowdfunding and Reg A offerings. And to illustrate my point, I want to show you -- start by showing you how many people are really -- how few people are investing directly in securities today. And so I've brought along just a couple of charts.

These are charts that are put out by the Fed.

They do a survey of consumer finances every three years. And I basically just plucked some of their charts, copied and pasted for us today to take a look at them. But I think if you think about it, if you stop and think about it, most people that invest, they start out by investing in an employee-sponsored pension plan of some sort or then they get into mutual funds or other types of pooled investment vehicles.

And it's only after they've started to build some of those types of assets that they get into investing directly in stocks and bonds. And so I want to look today at sort of the number of people that have gotten to that point where they're actually investing directly in equity investments. And if you look at this first chart, it shows us that if you look at the figure for 2013, that's the latest available data from the Fed.

Just less than 14 percent of households are directly investing in stocks. Now we could look at bonds. Bonds are about 10 percent of these figures for stocks, so that's why I picked the stocks out, because they give us a better illustration of the amount that households are actually directly investing in securities.

So I guess my query for us today is that if 86 percent of American households are not currently directly investing in stocks that are -- where a person can get online, open your Schwab account and go to town buying some shares of Apple or Coca-Cola or whatever you want, freely tradable, highly liquid securities, if they're not doing that, then what are the chances that they're going to jump to an offering under Title III or Title IV that maybe are less liquid, certainly are going to be more risky for a startup type of operation. So that's what I want us to consider today.

Now if you think about this, you might actually look at this and go, well, 14 percent, that's a pretty good pool. If there's 300 million people in America, 14 percent of that's -- you know, I don't know, Vlad would have to help me with the math, but 40 million-plus. So it doesn't sound so bad. But unfortunately if you actually break down the numbers further, the challenge for issuers is even worse.

And that's why I bring this second chart along, because it breaks out the investing of households into different categories. It takes each quartile of the population basically by wealth. Okay? So by net worth of the household. So if you're looking at the chart, the bottom line there, the blue line would represent the poorest 25 percent of the population in terms of their net worth. And then it goes up from there.

So the next line up, the red line would be the

25th to the 50th percentile of American households in terms of their wealth. The green line goes up to 75 percent. Now the -- you'll see there's two other lines above that, and the reason for that is they've actually broken out the top quartile in the Fed data.

So the orange line goes from 75 percent to 90 percent, and the green line on top is actually the top 10 wealthiest households -- top 10 percent of wealthiest households in America based on net worth. So if we look at that top line for a second and you go over to the 2013 data point, it shows us that about 50 percent of these households within the top 10 richest households in America, about 50 percent of those invest directly in stocks. Okay?

The problem though for our purposes today if you're looking at JOBS Act fundraising, those folks along that top line are mostly accredited investors already. So they're not the -- they're not what the JOBS Act was designed for. The JOBS Act was actually designed to open up capital raising for -- initial startup capital raising for investors below that top line. So that's what I really want to focus on today.

So let's go back down to the bottom line, the blue line which represents the poorest 25 percent of the population. If you follow that over to the 2013 data point, what it shows you is that 1.6 percent of those households within that bottom quarter are invested directly in stocks. But that doesn't tell you the full story because of those people, that 1.6 percent of that category, when they do invest in stock, the median of that investment is $1,500. So very few people are investing at all, and when they do invest, they're investing a very small amount.

If you go up to the next line, kind of a dark red line, again, in the -- from the 2013 numbers, we see that 5.2 percent of this next quartile, 5.2 percent of the people within that group invest directly in stocks. And again, if you look at different data from the survey, of those that do invest, the median investment is $5,000. So you take those two categories together, that represents half the population of the U.S.

The lower half of the U.S. populations and in terms of their net worth, only about 3 percent of those households invest at all in any kind of a direct purchase of stock. And when they do invest, they invest less than $5,000.

So with -- if that continues to be the case, it's going to make it very difficult for people to build any kind of diversification within a portfolio of securities.

If you go up, I'll just kind of finish out the numbers for you. If you go up to the green line, that's the third quartile. So from the 50 percent to the 75 percent of wealth based on net worth, the number there is 11.4 percent of that group invest directly in stocks. And when they do invest, the median investment amount is $10,000.

Now the next line up, the orange line, is probably the sweet spot. These are the people you're looking for because they're just below being accredited, right? So they got some money to invest, and about 28 percent of that group invests directly in stocks today. But again, when they do, the median investment is only $20,000.

So I think -- I don't know about you, but for me those are pretty eye-opening statistics that show us that for the vast majority of Americans, they're not necessarily inclined to invest directly in securities, in stocks, equity securities. And when they do, they're certainly not throwing a lot of money into it.

So, you know, again, I'm not down on crowdfunding. I wish these numbers weren't this bad to be honest with you. I hope that we can encourage more Americans to save and invest, including in securities of startup companies, but I do think that issuers and portals need to be realistic in terms of their expectations. You know, as I say, unfortunately most people are not prone to invest in equities to begin with, but I also have a couple of other concerns.

I wonder about, you know, for many of those that do invest in a Reg A offering or a crowdfunding offering, you know, if they don't have enough money to diversify at all and they put their money into one deal and that deal goes south, you've probably lost a crowdfunding investor for any future deals.

If there's much fraud at all in this space, I think that's going to greatly damage the market and the ability to attract people into this marketplace.

If -- one of the things I worry about the most is if investors are treated poorly when they pick a winner, that's going to do great harm. And what I mean by that is the angels, they invest in a lot of different things. They lose on most of them. Most of them are dogs. But once in a while they hit the homerun.

Well, what I'm afraid is going to happen with crowdfunding is when an investor hits the homerun or picks the one that's going to be the homerun, in comes the angels or the VC round and out goes the crowdfunders, and they'll get jettisoned early on before they ever see these riches that they might expect when they hit a winner. That's my concern. And if that happens, I think that will be damaging to this marketplace as well.

But I do think that there is an opportunity for successful offerings in this space. I go back to what it was that got me to write the Invest Kansas exemption in the first place, which was I had a couple of cases where the issuers were doing general solicitation. It knocked them out of any available exemption, and I thought to myself what's the harm here.

The two offerings in particular I had in mind, one was a local dairy that was still selling milk in glass containers, had a lot of very dedicated customers. They needed to raise money to buy new equipment to expand, and so they wanted to solicit their customer base.

Another company -- or another offering involved a movie theater in a small town. Well, you know, these investors in this small town wanted to invest in the movie theater not because they expected to make a lot of riches. It was because they wanted a movie theater in their town for their kids to go be able to, you know, do something.

So I think those are the types of offerings as Anya mentioned and others have mentioned, the community-based offering where people have not just a profit motive to put their money into it but other types of motives as well. I expect those will be the ones that have success.

MS. HANKS: Don't forget the breweries.

MR. FLEMING: Definitely the breweries.

MR. GOMEZ: Thank you, Rick. We have just a few minutes. We did get a lot of questions, but unfortunately we only have a few minutes. But I wanted to touch upon some of those.

And the first one, I wanted to just throw it to the panel and see if there's any thoughts on this, and then question relates as to whether there's a concern as to confusion in the market as to what crowdfunding is. We've heard a lot about accredited investor, crowdfunding. We hear about crowdfunding under Title III of the JOBS Act. We hear about intrastate crowdfunding. We hear about Reg A crowdfunding.

Do you think we need to be concerned about confusion as to what crowdfunding is or from the standpoint of an investor it doesn't make a difference what the underlying exemption is.

MS. COVERMAN: There's definitely a definitional issue with crowdfunding, and I don't know if it's a cause for concern, but there is a confusion around it as a regulatory matter specifically defined, for example, by Title III of the JOBS Act or what intrastate crowdfunding is and as more of a concept, even confusing donation-based crowdfunding. And a lot of what has been talked about today is lumped together under the umbrella category of crowdfunding.

MR. LAWS: So I think it's absolutely the case most investors won't really care. I think this -- when the intrastate crowdfunding becomes legal, I think you'll see it more that they're reading and educating themselves from whatever portal that they end up using and relying on that. The only thing I do worry about a bit with all the different forms of crowdfunding is the investors not understanding what set of protections apply in this case, because there's going to be so many different options that they're under.

That's where I -- that's why I suspect it will move to the portals is like, okay, if I'm in this portal, it will delineate for me what I'm doing, how this is being done. So I suspect that will be only possible at a scale that ends up being intrastate. So I think it will be resolved, but it is a worry in the back of my mind.

MR. GOMEZ: We got another question. This one's specifically for you, Chris.

At Cowen, what is the smallest private placement that Cowen would be interested in? (Laughter.)

MR. WEEKES: I guess it depends on the sector and the company. And it's -- we run a very serious due diligence process. We've done $5 million placements, and we've done $500 million placements. So it's a pretty broad, pretty wide range.

MR. GOMEZ: Thank you. We did get some questions about the data that was presented, Vlad, and I know that your slides just capture a sliver of the data that was released on the white paper. Some of the questions, I think, relate to additional data, and I wanted to post them to you to see if this is data that you could confirm whether it is in the report or whether it's something that DERA has access to this data or not.

The first of the questions deals with something that Chris mentioned that Cowen focuses both on 4(a)(2) offerings and offerings that rely on 506(b). Your charts in the presentation today, Vlad, dealt with 506 offerings. Do you have data about 4(a)(2) offerings, and if so, is that data available in the paper?

MR. IVANOV: Yeah, that's a good question. We do not really have access to 4(a)(2) data, and mainly because issuers don't file anything with the SEC when they use this exemption. There are a few data providers out there that collect some of this data, but generally very little is available. So we -- Section 4(a)(2) offerings we completely -- I mean we don't have really any access to date on those. It's better with the 144A and Reg S, but not for Section 4(a)(2).

MR. HIGGINS: Oh, we've had a couple of questions on the litigation that's filed against the Commission on the Regulation A+ rules, and of course we won't comment on the litigation from the SEC's standpoint. But to Anya, we don't ask you to comment on it either, but does anybody else on the panel have any comment, or Sara or Kevin? Do you see any -- Chris, any impact?

MR. LAWS: I didn't know about it, so --

MS. HANKS: We hear anecdotal evidence that some people are being discouraged by law firms because of the litigation, but then that's consistent with a story I hear a lot of the time, and I think it's something that Kevin hears. There's a lot of very, very conservative law firms out there.

Don't do a Reg D because there's the -- those proposals from a couple of years ago might still come back. Don't do a Reg A because what happens if the SEC loses and then somebody is going to arrest you for having made an illegal offering, which is definitely not the case.

And then to build on the comment we just heard about 4(a)(2) and the lack of visibility in 4(a)(2), we're seeing a lot of law firms say, oh, since 506 of Reg D now has a bad actor provision, let's do a 4(a)(2) instead. And so that's moving data from the visible world to the invisible world. So I think the message is that, yeah, there's a lot of law firms out there who are too conservative.

MR. WEEKES: I'd read an article actually on that this morning and very quickly the title of it was "Suing the SEC is a Fool's Errand."

MR. GOMEZ: So the audience, you've been great at providing comments and sitting patiently there. I think one of the things that I love about the forum is that we give you an opportunity to also network with each other. So I wanted to give you the next 20 minutes to stretch your legs and network with each other and then come back at 11:30 and we'll get started with our second panel. Thank you. And thank you to the panelists on this first panel. (Applause.)

(A brief recess was taken.)

MR. GOMEZ: So time flies when -- hello? Hello, hello. We'll get started here in a couple minutes with the second panel.

MR. HIGGINS: Okay. A hush has fallen sufficiently over the crowd that we'll get back started again. Thanks for coming back. We'll go ahead and get the second panel underway. It's going to focus on registered offerings. I'm sure -- as all of you know, the JOBS Act has made significant changes to the way the registered offerings are done and the way they're filed confidentially, the exemptions that are provided for various disclosure provisions under our rules and other requirements. It can last up to five years.

The second panel will explore how smaller reporting companies are adapting to this new regulatory regime and what frictions remain still in the system that the breakout group in the afternoon can talk about. So with that, I'd like to have Sebastian please introduce the panels so we can get the discussion started.

MR. GOMEZ: Thank you, Keith. And like I did for the first panel, I'm going to provide very, very brief introductions so that we can get started. But like I'd indicated before, the full bios of each of our panelists is available in your forum package.

On your right is Spencer Feldman. Spencer is a partner at the law firm of Olshan Frome & Wolosky in New York.

Next to Spencer is Will Waddill. He's the Senior President and Chief Financial Officer at -- Calithera? Calithera, thank you, Biosciences, Inc. Even though I spend probably over a year working with biotech companies when I first started at the SEC, I still struggle with some of the names.

And last but not least, we are pleased to have Professor Michael Guttentag from Loyola Law School in Los Angeles.

Thank you all for participating today. And we are going to start with Spencer.

Spencer, I now that you practice a lot in this area. You have a lot of clients, and could you tell us about your thoughts as to the JOBS Act and what you've seen in friction point?

MR. FELDMAN: Thank you very much. Again, I'm a securities lawyer in New York, and I deal mostly with smaller reporting companies. So when I talk -- I know we're talking a lot about EGCs or emerging growth companies, so I'm going to be talking about the smallest of the EGCs or the smaller reporting companies. And also to sort of set the stage, we've talked previously about exempt offerings.

Just what I've noticed over the last year and a year-plus is actually there have been more and more fully registered Form S-1 IPOs than I've seen in a while, and that includes 2014 and really a good part of this year. And as the SEC Chair said earlier today, 85 percent of those EGCs -- of the IPOs are EGCs, and I've certainly noticed an uptick on SRCs doing IPOs in a fully registered, underwritten fashion, sometimes firm commitment and sometimes on a best efforts basis.

There are two takeaways I'd like to discuss now in connection with doing an SRC EGC IPO, and it relates to sort of the front end of the IPO. The thorny issue that I've been dealing with recently on almost all of these transactions with SRCs in registered offerings is: What happens when testing-the-waters conversations, which are permitted under the JOBS Act after a confidential IPO submission and pre-IPO bridge financing conversations collide? And whether SRCs have special concerns in this regard, and I believe they do.

The collision occurs because SRCs always need financing, and in our repeated experiences with smaller IPOs, SRCs often lack the cash resources for their normal operating activities plus the considerable IPO expenses needed along the way, whether it's a 4-6 or slightly longer time duration.

After an SRC makes a confidential submission for an IPO, it may still need additional pre-IPO bridge financing. For SRCs, unlike larger companies, that financing frequently comes from individual accredited investors and smaller investing entities.

At the same time, the SRC and its underwriters may want to test the waters after its confidential submission. As you know, the testing concept allows companies the option to see if its IPO would be viable based on discussions with potential investors. So the question is that I'd like to talk about is: Can you bifurcate after the confidential submission those investors who are pre-IPO potential investors or those who are testing-the-waters investors.

Some history, looking back at bridge financings, we moved past the black box decision in 1990 where only QIBs and a limited number of institutional accredited investors could participate in concurrent public and private offerings to the SEC's proposing release in late 2007 when an investor with a substantive preexisting relationship would be permitted to invest in a pre-IPO bridge financing.

For SRCs, Section 5(d) of the Securities Act, which restricts testing-the-waters investors to QIBs and institutional investors has the effect in some cases of throwing SRCs back to the black box days. In our experience, SRCs typically rely upon retail and high net worth investors for both pre-IPO bridge financing and for a testing market check.

So without clarity, it's too easy for pre-IPO investors to step over the line and be considered testing-the-waters investors. For SRCs, a retail non-institutional, pre-IPO investor that is found to also be a testing-the-waters investor could doom an IPO. This would be considered a Section 5(d) violation.

If the company wishes to maintain the integrity of its IPO as compared to pivoting and doing another transaction, for example, a 506(c) or an M&A transaction, it would need to include a risk factor that the private placement and IPO could be deemed integrated and give rise to a right of rescission.

It's also possible that any different disclosure provided to investors in the bridge financing may need to be included in the IPO prospectus. This could increase the exposure of the company undertaking an IPO if, for instance, this disclosure included financial projections.

Given the significant costs that SRCs must endure, we believe there should be more flexibility for SRCs to raise money during the pre-IPO process. There should be an accredited investor exception for individuals and smaller entities in Section 5(d) for SRCs because QIBs and institutional accredited investors are not the typical investors for SRCs. The optionality built into the testing-the-waters concept allowing issues to pivot away from going public should also be available for SRCs. To do this, Section 5(d) needs to be amended by Congress with the help from the SEC.

For pre-IPO bridge financing, we think the SEC should give some thought about providing a C&DI update so a collision of these two activities does not occur. We think that so long as an issuer does not engage in general solicitation under Rule 506(c), the terms of a bridge financing can be quite flexible and if an issuer can sell securities to an accredited investor under these circumstances, it should be able to engage in testing-the-waters discussions with the same investors.

Here are some suggestions that were often asked by our clients, and these are real situations. First question with respect, again, talking about bridge financing and testing the waters: Can the issuer provide the draft registration statement to potential pre-IPO bridge investors?

Can the pre-IPO bridge financing include convertible preferred stock or convertible notes that are convertible at a price tied to the subsequent IPO price?

Can the price or number of the pre-IPO shares be adjusted -- this is like sort of for the Square transaction -- can be adjusted by the IPO terms pursuant to a true-up or MFN provision or include a warrant issuable upon the IPO closing at the eventual IPO price?

Can the pre-IPO investor consideration be payable in installments upon the issuer satisfying milestones tied to the IPO such as the first public filing or even the effective date of the IPO?

And the next two relate to placement agents and underwriters in smaller deals. If the pre-IPO placement agent and the IPO underwriter are the same investment banking firm, can the firm acknowledge its dual participating rule in both transactions, and can it provide any details of the offering terms, like the pre-money valuation of the company to the potential investor short of taking an allocation?

Can the investment banking firm use the same potential investor list for both the pre-IPO bridge financing and the IPO itself? Is it practical to assume that this would not be the case in smaller deals by small-cap investment banking firms?

So this issue is very real because smaller companies need financing during the IPO process and need to bridge both their normal expenses plus the expenses of going public. Conducting current pre-IPO bridge financing and testing the waters is currently confusing to issuers, and counsel like us need a lot of time to devote to ensure that the various rules are complied with.

We think that clarity will help the small IPO market and enable free communications with accredited investors for both pre-IPO bridge financing and testing the waters. And as a practical matter for the SEC, it will lead to more transparent responses to the staff's standard section 5(d) comment to provide testing-the-waters written communications. Thank you.

MR. HIGGINS: Well, Spencer, you have a lot of questions, and those are good questions. I think we may not answer all of them, although hopefully we'll have a dialogue about them. I think the one thing -- the way I think about it is -- and I think the perspective that you need to think is whatever you could have done before 5(d) was enacted you can still do today.

5(d) was a permissive provision, which allowed testing the waters in limited circumstances. Congress determined it was only for QIBs and institutional accredited investors. But that's permissive. It's not a prohibition. Any prohibition on pre-filing offers are still the same for SRCs approaching high net worth individuals and the like as they were prior to the JOBS Act being enacted.

So I guess the question I'd ask is: What were you advising before the JOBS Act was enacted when companies were out trying to raise money in a bridge financing when they knew they were on the cusp of going public?

MR. FELDMAN: Was there a TTW then? Are you referring to before --

MR. HIGGINS: Before 5(d) -- 5(d) wasn't in place, but I'm assuming companies still needed to raise money while they were preparing to do an IPO and maybe even raising money after they had filed they'd looked at black box in that instance, but same could be done today, I think. So I guess what is it that you think you can't do today that you were able to do before?

MR. FELDMAN: I think the question is whether those permitted activities that we were doing before now can collide and conflict possibly with some of the testing-the-waters discussions that are going on because, in essence, isn't that what happens in a bridge financing discussion? Isn't that also a testing-the-waters? And --

MR. HIGGINS: Well, I guess that --

MR. FELDMAN: -- you're not allowed to do --

MR. HIGGINS: Let me turn it back and ask you the question. If you go and say I'm raising -- I need to raise money, I have a plan to do an IPO in the future, I need to raise money for this financing, would you say that that's a solicitation of interest in buying in an IPO?

MR. FELDMAN: Why would they invest in the bridge but for some reasonable expectation that there's going to be a completed IPO?

MR. WADDILL: I was in that situation. So I was fortunate enough to take two companies public post-the JOBS Act. First IPO we did not do any financing sort of midstream. Second company we did, and that was -- to put it into context, the company had raised certain funds in what we called a crossover round. So public investors came in in a different way than venture capitalists did for us.

And we expanded that financing after we had originally filed. So we were in a combination of the test-the-waters and should we expand this. And the reason that we expanded it is that we had no assurance that we were going to go public, right? We didn't know whether the market was going to dry up and we'd be stuck. And then if we had not gone out and done this expansion, would have raised an additional $16 million.

But we had to be particularly careful about this since this expansion of the round, the $16 million was under the same terms that were disclosed in our documents. Right? So that was beneficial to us. And then in our industry, we deal with real-time data. We're doing clinical trials, we're treating cancer patients, trying to save people's lives or extend people's lives. And as those trials are going along, we're getting certain amounts of data that could be impactful. So it is one thing that we're very conscious of.

And when we have data that could have an impact on an investor, we get it out there as quickly as we can. So when we're in this period of time when we're expanding to get that $16 million, we were very careful that if we brought people in, they -- we made it clear that this is not testing the waters. This is from our prior financing under the same terms, and we're going to give you data that is under confidentiality.

We're going to give it to you, and then once we get to the point where we're going to try and go effective, the data that we give you will be in our S-1 filing. Right? So we would make sure that we kept a level playing field for everybody, and everything that they had seen would be in the public filings. But we had to be very careful to explain that's the situation going in.

MR. GOMEZ: So, Spencer, you mentioned if a potential expansion of 5(d). Do you feel like if 5(d) was expanded to capture the accredited investors that are not QIBs or institutional credit investors that perhaps some of these challenges of testing the waters, bridge financing would go away by virtue of the fact that you would, in essence, be able to reach out to the same type of investor both for purposes of the bridge financing the private offering and with respect to testing the waters? So in essence, would a lot of these issues go away in your mind if 5(d) was actually expanded?

MR. FELDMAN: I do. I do. Plus it will give SRCs a better opportunity at using the testing-the-waters concept.

MR. GOMEZ: Well, I think from your standpoint, having taken two companies public after the JOBS Act, could you tell us a little more about how that went and the friction points and what you're seeing in your companies and in the biotech industry more broadly?

MR. WADDILL: Certainly. So the first company I took public, the company's name is OncoMed, and we had -- I'll give you sort of the background story between them both. We originally filed for that in May of 2012 which was soon after the JOBS Act had been passed. And then that has its own story.

The second company, my current company, Calithera, we filed in 2014, about May of 2014, so -- and went public in October of '14. And the tie -- I wouldn't say it was apples and oranges between the two IPOs. What was different is when we originally filed for OncoMed back in 2012, no one quite sure knew how to interpret the law. Right? We talked to our attorneys, we talked to our auditors, we talked to everybody. We wanted to make sure that we were keeping this as clear as possible.

So when we entered into test-the-waters, talking a little bit earlier, our counsel had said, well, we think -- we're comfortable letting you go and do this for 12 to 15 meetings. And we said okay. So that's our guideline, that's how we'll do it. Turns out that company, the first IPO, OncoMed was under registration for 13 months. So it was a very long process, and we ended up doing more than 50 test-the-water meetings because we could.

So that -- there was a certain sense of uncertainty with the public investors, the qualified investors. When we went out there and had those test-the-water meetings, we would show up and they would say: Is this, in our terms, a non-deal roadshow? No, it's not. And is this one of these test-the-water meetings, and we would have to clarify and say, yes, this is it. And we're under specific instructions. We can't give you any -- at the time, we can't give you any written material. We can show it to you and like pull it back across the table, and so that sense of uncertainty back in 2012 going on 2013 was certainly there.

By the time I took Calithera public, people understood what the parameters were and what the intent was. And they understood confidential filing versus non-confidential filing. And they understood that if this is test-the-waters, there's no complete assurance that the company is going to go public because you are, by definition, testing the waters. And so I think that time healed the uncertainty of the legislation, and I think it was to both companies' benefits.

The initial company I took public, OncoMed, we did not file confidentially. We felt that we didn't need to. It was a very high profile biotech company. We had been talking to investment banks and potential investors for a number of years, and there was a high degree of anticipation that this company was going to go public.

So one of the benefits for the test-the-waters is to be able to go out there and see whether your story was sticking, whether people were going to invest in the company. And we had already answered that question. We felt confident enough that if we filed non-confidentially, then we could get the story out there, we could just go.

Different story for my second IPO. We were a much earlier stage company, great science, great prospects for the science, but there was that certain degree of uncertainty. And we did file confidentially and took advantage of that to try and fully vet whether the story was going to entice investors. It did, you know, we got the IPO done, but it was having that ability and compare and contrast between the two IPOs was pretty interesting to go through.

MR. GOMEZ: So do you -- I know that you have some slides if you want to go ahead and start with those and tell us additional thoughts about the JOBS Act.

MR. WADDILL: Sure. So thanks for inviting me. This is great to be here. I'm happy to be here and not only represent my industry, which is biotechnology, but also Calithera. So as I said, I've been doing this for a while. I started in the industry back in 1991, previously was a CPA and, you know, fell into doing this type of work. And the context of those two IPOs is interesting in terms of the actual marketplace and the values that were being recognized. So it was a sort of a contextual opportunity.

So one of the things that is important and we have to bridge between our industry which is very unique with those other industries, other sectors out there, companies that are going public is we're all in a position where we're raising capital, and that capital we want to have dedicated to the first dollar that's going to come in for a product.

Now our products can take seven to twelve years and can cost over a billion dollars to develop. So we have to raise a lot of money over a long period of time. So for us, it's also about innovation and that innovation hopefully leads to companies growing and our sector getting better, and most importantly for patients getting some solutions for their medical conditions.

So that is the background of my industry and what we have to do. And I had gone out and actually testified for Congress twice in support of the JOBS Act before it was passed. And really what we were trying to do was enable these companies that are using those early stage dollars to be able to not have them burdened by doing reporting and regulations that would cause us to spend somewhere around a million dollars a year to comply with these regulations where we'd rather take that million dollars and put it into product development.

And what we found very early on is that argument holds true even though we're -- we have these hungry animals that need to be fed in a very big way, it's applicable across all companies whether it is a biotechnology company that's trying to develop a drug and is going to cost us a billion dollars or it's a mom and pop store down the street that is trying to get established.

And what that -- the consequence of that is there's a delineation when it's the appropriate time for the regulations to kick in. And let me be very clear that I think the regulations as written are quite good. I think they're well thought out, I think they've been legislated appropriately, and if my current company, for example, gets to the point where we are earning revenue from a product, I would be the first one in line to day, okay, it's really time at that point to have these regulations in place because what is important to me is that all investors are informed and there's a certain level of comfort that they get in the financial statement that our auditors review and opine on and so I -- at some point I'll talk about that it's really a question of timing. So that's me, and that's the -- where I am.

You know, the cost of an IPO is -- can be staggering. The cost of a failed IPO can be doubly staggering because you're going to go off and do it again. And I will tell you that it does create a barrier, specifically -- put this in context. If we think about the recession we just slogged through collectively, in my industry there was no IPOs from about 2007 until 2012, no capital coming into the industry from the public markets.

And during that timeframe, we were funded by collaborations we did with large pharmaceuticals to try and bring in money -- they would pay us to work on our science -- and also through venture capital investing. So those were our two sources of capital. The owners of the company were the venture capitalists and the discussion during that time frame was certainly, you know, don't go public. We'll just see if we can get more money for you, and we'll expand a little bit on where we'll try and reach out and get that money.

But it was certainly -- it had an effect on what we considered was the appropriate timing to go public. So for OncoMed, my first IPO, we went -- you know, filed it recently in May of 2012. Back in the fall of 2011, we were sitting around and talking with our board and saying, okay, we think that this is going to be the cost to go public. To do this, to pay for the attorneys, to pay for the auditors, to pay for the banking fee is going to be a substantial cost. Should we do it, or should we not do it?

And that question changed over time. So back at the end of 2011, it was a big topic of discussion, and much debate happened. When the marketplace turned around and IPOs were much more prevalent, that discussion went down because we all knew that there was capital there available and you should try and get out there as quickly as possible.

Another consequence of that cost of the IPOs is companies were being built to sell. So instead of hiring professional financial people, they would start these companies and try and get them to a certain point in time. Say, you know what, we're never going to take this company public. We're just going to build it and try and sell it. And that does not provide for a sustainable industry because those technologies can go off to larger companies that oftentimes will shelve those technologies because it's in competition with what they have, but they're just buying it to put it away.

So interesting context of what we've gone through and really what we're chasing for with the dollars within the marketplace.

One of the notions that we wanted to put out there is that the idea -- and this was a big challenge for us even when we're talking to -- doing the -- talking to Congress about this -- is to take a broad approach to what we wanted to end up in the law, right? We're all constrained. I mean you're all constrained in having laws that are applicable for all industries all over the place. That's a very difficult thing to do. And we tried to think about what was the appropriate size when it comes to the JOBS Act when you would -- the term that you would be -- avoid doing 404 compliance and whether we could sort of nail that properly.

So in the current legislation of the JOBS Act, with the $700 million in floating market cap and the billion dollars of sales, that seemed to be appropriate under the idea of all industries are putting their early capital towards trying to having their first dollar of revenue. So we wanted to make sure we had the idea out there in that legislation that it seems perfectly appropriate to tie this as much to revenue as anything else and that $700 million number is one that larger filers really had to comply with.

So when we look at post-JOBS Act in the current legislation and the requirements of much lower numbers for the public float of $75 million, that seems like a wholly inadequate number to use and doesn't appropriately factor in what's most important is revenue. So something that we continue to look at and the question again because timing, that any company that's building -- trying to build widgets or trying to make monoclonal antibodies to treat colorectal cancer or whatever it's going to be, they're all searching for that first dollar. And from an investor's point of view, that's where a lot of the risk is involved.

So on this next slide is -- really lays out definitionally what the requirement is and the public float of $75 million, what I've just talked about, and also on the next slide more in detail what the reporting requirements are. So I'm not going to spend a lot of time with those.

But what's important is when we look at those, if those thresholds changed, right, if the $75 million threshold changed to a different number or what does that $75 million threshold cover?

So the folks at bio have gone through and taken a look at for the SRCs under this current paradigm, the $75 million float which was, I guess, originally intended to be tied to inflation, right, and that still remains at $75. Under the $75 million, how many -- by value, how many companies are covered? And what's listed on here is the 0.2 percent.

So if you actually look maybe on the next slide, here we go. This is an analysis that was done to look at under the market float number based on value in the marketplace, how many companies by value are going to be covered at the various levels, so $75, $250, $700 and on down the line. And you can see that at the $75, the 0.2 percent is a very low number in terms of value. Now the flip side of that argument, obviously, is, well, how many companies does that entail, right? You have to look at both sides of the coin there.

And we've thought about that, and in terms of keeping that level playing field for all companies, are you going to be still covering enough companies from a protection point of view, which clearly is the mandate of the SEC, and provide adequate coverage in terms of the risk?

So it's a slightly abstract notion that you're not just picking a number and saying $75 million, boom, you're all of the sudden subject to the requirements. But think about it in terms of the value of these companies. The earlier stage companies can have tremendous value that is embedded in future selling of a product. And larger companies have very large values because they are selling products. And so there's a certain -- we live in a paradigm of caveat emptor in the smaller companies which can be a large number of companies.

There's a need to make sure that those investors are informed on what's going on. We think that in the financial statements the requirements that we have, to have them audited once a year, reviewed three times a year up to a certain level of disclosure provides them with a baseline information understanding of the company. But you have to extend pass that to understand the underlying business for the company. The financials are retrospective as to what's going on, and when we talk about the future value of the company, which is what investors tend to bet on, right, those sources of information specific to my industry are different.

For example, we have traveled to 13 different conferences this year just to get the latest data out, what's going on scientifically in our programs. And that is paramount for us to keep that out there and to the extent that that is meaningful enough that an investor needs to know it, we use those forums to make sure we get it out there. And then we'll make sure that in our next public filing -- formal public filing that data is in there.

So it extends past of what is in the requirements for filing. And that's just a fundamental difference. So we think that looking at it based on a value metric is much more valid.

And so one of the things that is going to be proposed is raising that value from $75 to $250. And this is something that even this forum, if you look at the slide here going back for a number of years has also made that one of their recommendations, and we think that that will open up the ability for earlier stage companies like mine to still keep our cost of filing low enough but at an adequate level that we can dedicate that capital into clinical development. If we spend a million dollars a year complying with the regulations, that's 10 to 20 patients in the clinic that I'm not going to treat, period. That's just how it's going to work for me because I have to manage my cash carefully.

And those 10 to 20 cancer patients that I'm not treating are what are going to lead to that first dollar of revenue. So it's -- in our instance it's a very extreme example, but it is a very tangible one that you can see that I want to dedicate my dollars into development of the products that are going to get that first dollar in revenue.

MR. FELDMAN: Does his situation get solved if he's an EGC and there's no five-year limit on being an EGC?

MR. HIGGINS: Maybe ask him. If there weren't a five-year limit -- of course the statute says five years -- but if there weren't a five-year limit, you could -- and you didn't hit the $700 million, which would be -- but you're looking for a raise of the SRC from $75 to -- either $250 or if you have -- if you had less than $100 million in annual revenues.

MR. WADDILL: In annual revenues, exactly.

So --

MR. HIGGINS: And, Will, one thing I'm interested in is precisely -- and we don't have to go into great detail, but the differences, the scaled disclosure versus a non-SRC and an SRC, you know we know no CD&A, you only have three executives in the tables, two years of financials. What other things that have a meaningful impact on regulatory cost?

MR. WADDILL: So certainly those disclosures are easier. But somehow there's a lot of securities lawyers in the room, so I'll be careful here. They seem to find other ways for us to spend our money on them, so it's nice that the level of disclosure is lower. I think that net -- I think even Michael's data shows us that cost is about the same, right? That is the cost to get the filings done, but it’s also, on an external basis, dollars I'm spending for attorneys, right? I love attorneys, okay?

MR. FELDMAN: And accountants.

MR. WADDILL: And accountants, right. I fall into that category. And we have to do -- we have to have internal resources. So that's a cost that's not always captured that the time and effort to produce those expanded disclosures are going to take company time, right? So any company time or any company resource internally that we're doing and burning capital to do that, again, translates into money that I'm not going to spend for clinical development.

MR. FELDMAN: Yeah, I mean obviously one of the wonderful things about SRCs and EGCs, in particular the EGC in the JOBS Act, were lesser disclosure in a number of different ways, including the auditor had to station the management evaluation after the first two years, the two years of fiscal -- the scale, the executive compensation.

But I'd be curious to see specifically what else can be done to reduce -- which disclosures you're referring to. You indicated at the beginning that you thought that there should be significantly scaled disclosure prior to biotech companies, for example, having revenue. Is there anything in particular?

MR. WADDILL: Risk factors never change, right? Again, I'm in a slightly unusual position in our industry because it is the development of products is based on biology. It is the biggest rate-limiting factor out there. And so when it comes to describing the risks and travails that we go through, that is not going to change. But the other disclosures, the reduced disclosures for compensation, those just make it easier for us to go and keep the number of our staff lower.

MR. GOMEZ: I think this is a great segue to Michael because I think the -- on the one hand we hear a lot about the benefits in potential reduction on cost, but I think you have some very interesting data on that, and I'm going to get your slide.

MR. GUTTENTAG: Okay. I'll wait a moment. While they get my slides up, I want to thank the SEC, thank Tony Barone for reaching out to me. As a securities regulation professor, that's what I do, I teach this. Part of my job description is being highly critical of everything the SEC does. So I'm very grateful of this opportunity.

I do want to just clarify, I'm basically sharing here today data that other people have collected and reporting on it. This is not research I've carried out myself.

So I want to highlight the -- as the title says that the regime, the mandatory disclosure regime is actually working and working surprisingly well for reasons we don't quite understand. So just to get to the conclusion: What are we doing tearing it down when it's working and we don't know why it's working?

So what's the evidence we have? Well, I think we all agree that the objective is to balance costs and benefits. We don't want to force companies to disclose information that investors really don't care about. Right? That seems like a waste. The problem is it's hard to do the calculation. It's fairly easy to identify the costs. It's all that money wasted on lawyers. I'll say it since I'm a lawyer. Wasted on lawyers, but not accountants.

But the benefits go to ethereal ideas like protecting investors more, facilitating capital formation. And we have precious few opportunities to really determine the extent of this trade-off. We really need sort of what I call a quasi-experiment, situations where we impose these rules on a large enough group of companies to study what happened.

And so I'm briefly going to review -- because time is limited -- three times when we've been able to run this experiment -- there were other times -- and when we run this experiment what we found and briefly reviewing -- and I guess I should focus mostly on the third, but we've run this experiment in 1964 when we forced hundreds of companies that were not otherwise public to become public and comply with the full panoply of disclosure requirements.

We ran this experiment in 1999 when we said if you want to stay on the OTC bulletin board you now have to comply with mandatory disclosure requirements. And most recently with the JOBS Act, we ran this experiment when we said to -- as Chair White said, to a large sector of companies when you go public you now have disclosure obligations that look more like those that had been reserved to SRCs prior to that. And so what are the results? Well, let me again, talking quickly, so that I don't bore you. See, my students pay to listen to me, so I'm allowed to bore them.

You all know in this room that starting in 1934 we forced companies to disclose certain information publicly. In '34 it was companies that were trading on the national exchanges. In '36 we added companies -- many companies that carried out IPOs and that left a loophole that a growing number of companies were using in the early 1960s, which was to trade on the over-the-counter markets. And then so in 1964 we put in what's called the 500 shareholder rule. And we forced hundreds of companies to, as a result, comply with these rules for the first time.

Now the naïve economic analysis would be -- would say this is a bad thing. Right? These companies could have been complying with those rules beforehand. They could have joined the New York stock exchange, the American stock exchange, or they could have just selected to disclose this information. So you'd expect there to be a cost imposed on these companies. They now had to prepare all this information.

What happened? Well, what happened was in general the shares of these companies went up by 10 to 20 percent. So net effect, cost against benefits, share prices went up, and it was an imposition. It was not the choice of the company; it was the choice of the federal government, and the result was a creation of value for shareholders.

And with respect to the type of companies we're talking about today, I would point out that the majority of these firms had a market capitalization of under $75 million. And I've adjusted that. That's $2,015. So these were smaller firms that -- using the $75 million, not the $250 million, that benefited by being forced to comply with disclosure requirements. Now a little caveat, obviously they did not have the same compensation disclosure requirements we have today. I recognize some things have changed.

Quickly, a second example of where we ran this quasi-experiment and we saw unexpected benefits was in 1999. There were thousands of companies on the OTC bulletin board at the time that were not filing public disclosures but were still actively traded. And we put in you, the SEC, Keith's prior people in your position, required that these companies either disclose or exit the OTC bulletin board.

In this case, the cohort that I want to focus on are the companies that were already making disclosures. There were over a thousand companies that were already complying with disclosure requirements at the time. What should the effect -- again, taking sort of a naïve economic analysis -- what should the effect have been on companies that were already making disclosures? Nothing would be the naïve estimate or the simple model.

But in fact, companies that were already making disclosures benefited. They were, in the economist term, positive externalities when other companies started to meet higher disclosure requirements. Why? Again, unexpected benefits. I don't -- we could talk for hours to try and figure out why, but the disclosure regime is working. Let's get to the -- well, and again, just as -- I include some of the data.

The point is, again, these were smaller firms. In this case, the majority of the firms that started to disclose for the first time had a market capitalization under $40 million, and it was those firms that created this positive externality, their disclosure practices. So benefits from disclosure, it's from smaller firms flowing over to other firms as well.

Okay. The JOBS Act, and I don't know that anyone's gone through the details, but let's just -- rather than go through the details of this slide, let me just summarily state the JOBS Act lowered certain of the disclosure obligations for companies going through the IPO process as you're well aware.

So what's the effect been of lowering the regulatory -- the mandatory disclosure burden on this cohort of firms? And we only have a couple of years, and it's a more complicated economic analysis. But what would you think the effect would be? Well, you already have sort of foreshadowed my data -- or again, not my data, but other people's data. The intent of this particular aspect of the JOBS Act probably -- I don't want to say this is the JOBS Act because there was a lot going on obviously. The intent was to lower the cost of going public.

That's what President Obama said the reason for the JOBS Act was, make it cheaper to go public. And in fact, it looks like based on the data we have so far that the opposite has happened, that companies that use the EGC provision for those companies, the cost of going public has gone up. So it's data that's come from four or five different studies, different methodologies. I don't claim to sit here today able to explain why that's happened. It could be a complicated story.

But let me just briefly review the data, and I guess I cite one study a colleague of mine, Professor Berdejo. I misspelled his name, my apologies. Professor Berdejo found that and other people have all found the same thing. Direct costs of going public after the JOBS Act as compared to the JOBS Act, unchanged. If anything, there's some evidence that direct costs have gone up for a subset of companies using the big four accounting firms. So -- and there I can't talk about some of the theories about why this has happened.

But the JOBS Act has not been a cost-reducer. But there's -- as we all know, there's a major -- on major indirect cost of going public, which is that when you go public because of industry practice or a variety of reasons, you tend to sell those first shares at a discount. That's why we get a price jump the first day of an IPO.

So usually when a firm goes public, let's say the share is worth a dollar, we'll sell it for 90 cents. And we'll effectively be giving a dime away to make sure that we have an effective IPO process. And that underpricing measure, that underpricing discount has gone up by a nominal 10 percent for the EGC firms post-JOBS

Act.

So whereas before let's say in my example a firm would sell chairs for 90 cents, the evidence we have is that an EGC firm post-JOBS Act is now selling those shares for 80 cents on the first day. So that's the evidence that the process has gotten more expensive. Okay?

So what are my conclusions from this? The first is on the -- in the few situations where we've had an opportunity to look at this to some extent or as best perhaps we can from an evidence-based perspective, the evidence suggests that the panoply of disclosure regime is doing something and doing something in ways that we don't really fully understand. And that's -- my scholarship and other scholarship is working to try and understand better why that's happening.

The second thing I want to be very clear about, I do not think the rules need to remain unchanged. I'm sure there are lots of things that we require. Keith's efforts are not all for naught over the last year and a half. I'm sure there are a few things that are required to be disclosed that are unhelpful and wasteful, a few.

But the third point is we don't understand how the system's working that well. We're trying to figure it out. It is working. We should be very cautious before we start pulling things away. If anything, the message from the JOBS Act data is maybe there's something about the SRC reduced disclosures that is more problematic than we may have realized previously.

If I can use an analogy in my last minute or I've probably gone over, apologies, Tony, the engine that sort of seems to be working and now we're sort of trying to take out pieces that don't seem to be doing anything, it seems like we should be a little cautious in that exercise. This one doesn't seem to be doing anything. We don't need that. So anyway, thank you -- again, thank you for your time.

MR. WADDILL: Sure. So I read this data beforehand with great interest in -- we can sit here for hours and talk about you're absolutely right. I tried to think of some from my experience in the two different IPOs and living through this in the last couple of years, what were the factors in the environment that could have led to this change.

Two things, so your historical data is great data that I'll take back to my boss and I'll say, listen, when we do this stuff, I should be paid a lot more. Right? She will be hesitant to accept that.

But the other one is --

MR. GUTTENTAG: I think you should be paid more.

MR. WADDILL: Well, okay, fine.

MR. GUTTENTAG: You're doing an excellent job.

MR. WADDILL: We're in agreement. But the other piece of this is the cost pre- and post-JOBS Act I think is an interesting conundrum to try and figure out how you measure that because what we found, at least in the two IPOs was we went from an environment that we were coming out of the back end of a horrible recession and all the auditors had excess capacity. All the attorneys had excess capacity. So they were willing to give us a discount up to that point. Right?

MR. GUTTENTAG: So let me answer that question. So there have been four -- as I think I understand your question, saying how do these academics control the -- for the historical context the fact that the situation has changed. And there have been four studies on the JOBS Act that I'm -- that I've reviewed recently, and they've -- two of the methodologies -- two of the studies control for that.

So what we do is when we're running one of these studies, we don't just say, oh, look, it costs more, or, oh, look, it costs less. We're always looking -- that's why we call it a quasi-experiment. We're always looking for a control group. We're always looking to measure it against costs more as compared to what. And what we -- so it -- and we've used in these JOBS Act -- what -- the authors have used different control groups. So one study -- my colleague's study used the non-EGC issuers before -- during the period from 2009 to 2012 and then 2012 forward.

So the cost -- that acts as a control. So we've got a historical control. Another study used the SRCs as a control group, because they also -- even though it crossed this historical period, they were not affected by the JOBS Act because they were already recognizing those benefits. So in at least two of the studies, there's an appropriate control group to take into account that historical trend.

Just for completion's sake, the other two studies did use a methodology where they matched companies back in the historical time, so they might be more open to that criticism. But the picture is filling out surprisingly.

MR. WADDILL: Yeah, I mean it's -- from -- so I used to work in public accounting. I was a CPA at one point. I'm sorry. So I know that industry really well and having dealt with them in my industry for 24 years, they ebb and flow, I mean just like you guys do. You go through times where you've got excess capacity and you try and plan for it, and it goes up and down. I can definitely say just at my own -- my data is two companies. So I don't have the --

MR. GUTTENTAG: N of 2.

MR. WADDILL: N of 2.

MR. GUTTENTAG: As we would say.

MR. WADDILL: With that, those two companies, I saw a fundamental change in what was happening in the service provider environment, right, that the auditors were scrambling to get bodies into the United States to service all these companies. You know, just in my sector, we had 180 companies go public.

MR. GUTTENTAG: Congratulations.

MR. WADDILL: Well, good for us. At the end of the day, good for patients, but what that created was an environment where when these guys would show up to our office, they were charging full boat.

MR. GUTTENTAG: But that is -- you know, you and I know markets rise and fall, and that's generally -- I've seen -- I've lived through enough ups and downs to say that's true. But I don't want to distract that from the main point. Whether costs have gone up or down, really the main point is as, again, the indirection, the indirect costs, that 10 percent additional underpricing is a major economic cost.

The changes in terms of these direct costs are really, really trivial. I mean that we paid accountants more or less, in the scheme of the economics of the IPO process, that has been the important change that we really need to understand.

MR. GOMEZ: Commissioner.

COMMISSIONER PIWOWAR: Yeah, so there's actually an academic study I think that reconciles I think both of your -- the points that you're making. There's a paper by Michal Dambra, Laura Field and Matt Gustafson forthcoming.

MR. GUTTENTAG: That's unfair. I don't know that paper.

COMMISSIONER PIWOWAR: It's a good -- so -- no, but I think it reconciles exactly what you guys are talking about. It's forthcoming in the Journal of Financial Economics. And what it points out is the IPO onramp was really about two things: potentially de-burdening, they call it, or reducing costs, the direct cost of going public and de-risking, getting rid of the risks of going public, right?

And what they find is that there's mixed evidence on the cost side, but the real benefit from the IPO onramp was on the de-risking provisions. These are the confidential filings and the testing of the waters.

What it does is it reduces the risk of a company starting the filing process and not getting enough investor demand and having the stigma of having a failed offering going public.

And where would you expect to see the biggest action for the risk of companies going public? Companies with the most proprietary information that they don't want to give to either, A, to their competitors, or, B, that's very difficult for investors to understand except for when you do the testing of the waters ahead of time. And so the fact that you see so many biotech companies taking advantage of the JOBS Act and it being such a benefit for them is evidence of that effect.

And so I think that is what -- one potential way to sort of reconcile these two.

MR. GUTTENTAG: Can I respond or --

MR. GOMEZ: Of course.

MR. GUTTENTAG: I think that's an excellent point, and that goes to the deeper complexity that there may be some powerful selection effects. And, right, and you're talking about a different mix that could easily -- and I think that nothing I'm saying resolves these issues. And I think confidential filing looks like it may be an interesting and promising aspect.

And I will say on the biotech side, it is a little bit anecdotal because there has been a lot of growth in that industry sector generally. So using that as evidence of certain types of companies being able to go public is -- remains to be determined. Okay?

MR. WADDILL: Well, I mean, in biotech, since we had that long drought of IPOs and no access to capital, value was being pent up. And the way I view this is when the JOBS Act was enacted, it just opened the floodgates. It did de-risk these companies because I could -- they had a mechanism to get out there, and our intellectual property is the heart and soul of our companies in the worst way that we don't want to share that unless we have to.

And the unleashing of all these companies, these 180 companies, the value went through the roof in a pretty remarkable way, and I think the legislation certainly led to that.

MR. GOMEZ: Well, I want to thank you all for participating, very interesting discussion.

It's time for lunch. We're going to break for lunch and come back at 2 o'clock. When you come back at 2 o'clock, for those of you that haven't been here before, we are not going to be meeting in the auditorium. But when you come down the steps, you will be guided into a room that's actually under the stairs. The door is under the stairs to your left. We're all going to gather there. There's going to be three different breakout sessions.

From that point you'll be able to go to the breakout session that you're interested in participating. I've got some questions. If I registered for one, do I have to go to that one, or can I go to a different one? You will be able to go to whichever one you prefer. So even though you might have registered for one of them, it doesn't mean that you have to necessarily go there.

But we'll all be rejoining there in the multipurpose room, and then from there go to the different breakout sessions. Thank you.

(Whereupon, at 12:37 p.m., the forum was adjourned.)

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PROOFREADER'S CERTIFICATE

In The Matter of: 2015 SEC GOVERNMENT-BUSINESS FORUM ON SMALL BUSINESS CAPITAL FORMATION

File Number: OS-1119

Date: November 19, 2015

Location: Washington, D.C.

This is to certify that I, Nicholas Wagner, (the undersigned), do hereby swear and affirm that the attached proceedings before the U.S. Securities and Exchange Commission were held according to the record and that this is the original, complete, true and accurate transcript that has been compared to the reporting or recording accomplished at the hearing.

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