

# 2014 SEC Government – Business Forum on Small Business Capital Formation

## Secondary Market Liquidity for Securities of Small Businesses

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# Importance of Liquidity

- Promotes capital formation
- Permits redeployment of capital
- Provides benefits for employees
- Serves as safety valve to give companies more control over future and time to grow

# Current Structure – Securities Act

- All offerings must be registered or exempt
- Differentiation of primary offerings and secondary sales
- Differences between affiliate and non-affiliate sales
- Differences between restricted and unrestricted securities

# Current Structure-Securities Act Alternatives

- Section 4(a)(1) and 4(a)(4)
- So-called “4(1 ½)” exemption and proposed Section 4(a)(7)
- Rule 144
- Registered secondary offering
- State securities laws overlay

# Current Structure – Market and Regulation

- Emergence of secondary market trading platforms
- Status as exchanges/alternative trading markets
- Status as broker/dealers
- Issues surrounding adequacy of information

# Challenges for Smaller Companies

- Risk losing control over timing of becoming public
  - Section 12(g) registration threshold
- Creation of larger base of diffuse shareholders creates new issues
  - Need for information
  - Need for liquidity

# Challenges for Smaller Companies (cont.)

- Broadened fiduciary duty issues
- Threats to confidentiality
- Steps to control spread of shareholder base

# Regulatory Challenges

- Balancing increased liquidity with protection of investors and trading markets
- Distinguishing trading from distributions, especially by affiliates
- Absence of information regime
- Exchange-listed v. non-exchange listed activities
- Absence of pricing information and transparency