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GOVERNMENT-BUSINESS FORUM ON

SMALL BUSINESS CAPITAL FORMATION

RECORD OF PROCEEDINGS

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PROCEEDINGS

CALL TO ORDER

MR. LAPORTE: Good morning, everybody. I think we are ready to go. We have some people listening to the webcast.

Welcome to all those physically present here in the SEC auditorium in Washington, D.C., and those who are present virtually through the webcast of these proceedings.

My name is Gerry Laporte. I'm Chief of the Office of Small Business Policy in the SEC's Division of Corporation Finance, and I am here today to call to order the 31st Annual SEC Government-Business Forum on Small Business Capital Formation.

This Forum is being conducted by the SEC under its mandate in Section 503 of the Omnibus Small Business Capital Formation Act of 1980.

Before we begin the program today, I want to give the disclaimer on behalf of each person from the SEC who will speak from this stage today. You should know the views they express are their own and don't necessarily represent the views of any other person from the SEC or the views of the agency itself.

Because we have a heavy agenda this morning, I'm going to leave it to others to give the audience warm up jokes and things like that. I'm going to get right to

business and start with the introductions.

We are going to give very short introductions of all the Commissioners and panelists this morning because fuller biographies of everybody who appears on the program can be found in the program booklets which were available in the back in the room as you came in.

The program booklets are also available -- an electronic copy of the program booklets is available -- to those of you listening by webcast from the home page of the SEC on the Internet at www.sec.gov.

You can peruse those fuller biographies as you have time.

The person that I am here to introduce today is Meredith Cross, who is sitting to my right. Meredith has been the Director of the Division of Corporation Finance for a little bit over three years now.

She came to the SEC from the law firm of Wilmer Hale, where she had practiced law for 11 years. Previously, she had spent eight years on the SEC staff, and since she arrived, Meredith has been very active in leading the Division's staff on many issues, including many issues relating to small business capital formation.

Meredith?

INTRODUCTION OF CHAIRMAN AND COMMISSIONERS

MS. CROSS: Thank you very much, Gerry. Good

morning, everyone. I'd like to also welcome all of you and thank you for taking the time to be here with us today and sharing your experiences and insights with the Commission and with the public.

This is a wonderful event, addressing topics that are very important to the Division of Corporation Finance and to the Commission as a whole.

I think you have a very interesting day ahead of you. I know the staff in my Division are particularly interested to hear your thoughts on the issues at hand.

In a moment, I will have the pleasure of introducing Chairman Schapiro and all the members of the Commission.

First, I would like to take just a moment to acknowledge the important work done by Gerry and his office, the Office of Small Business Policy, in the Division of Corporation Finance.

As many of you know, that office is the SEC's main point of contact with smaller companies. In addition to organizing events, such as today's Forum, the office coordinates the Advisory Committee on Small and Emerging Companies, and is playing a key role in the Commission's rulemaking under the JOBS Act, and does a terrific job through its day to day work of reaching out to smaller companies.

Thank you, Gerry, and everyone in the office for all that you do.

With that, I will turn back to today's Forum. I am very pleased to introduce Chairman Mary Schapiro to get us started.

Chairman Schapiro re-joined the SEC in January 2009, having previously served as a Commissioner in the late 1980s and early 1990s.

I was fortunate to work with her then, and I have been so pleased to be working with her again now.

Chairman Schapiro has navigated the agency through many challenges, changes, and important initiatives during her tenure. I can't say enough about her energy and leadership as we have worked on an agenda designed to restore investor confidence in the markets, which is crucial to ensuring that our markets provide access to capital for small businesses.

Chairman Schapiro?

REMARKS BY SEC CHAIRMAN AND COMMISSIONERS

CHAIRMAN SCHAPIRO: Thank you very much, Meredith. That was a very lovely introduction. I want to thank you as well for all the work you and the Corp Fin team have done to make this Forum a success, and helping to ensure that the distinct needs of small businesses are front and center at the SEC.

Thanks as well to all of you who are joining us today as participants in the discussions. These are designed to help the SEC better understand how we can support small businesses' efforts to raise the capital they need to grow.

Your expertise and practice experience are important assets for us as we consider regulations and policies that may have far reaching effects on emerging businesses at critical moments during their growth.

I would like to welcome all those who are attending here in Washington, viewing by webcast or listening through out teleconference.

I'd like to extend a special welcome to those representing other state and Federal agencies and others who have joined us from offices on Capitol Hill, who share our goal of ensuring that small business is heard during the regulatory and legislative process.

Of course, I'd also like to thank Gerry Laporte and the staff of the Office of Small Business Policy for their work in organizing this meeting and for being strong voices on behalf of small businesses within the SEC.

Small businesses are important to the SEC. You can get a sense, I think, of just how important by the fact that my colleagues on the Commission will all be speaking today, something that rarely happens outside of formal Commission meetings.

We recognize the uniquely important role that small businesses play in economic growth and job creation in our country, and that regulation can have a disproportionately burdensome effect on companies with limited resources to devote to regulatory compliance.

This Forum is a great example of our commitment to working with small businesses, to help make capital more readily available, and remove regulatory obstacles to investment in emerging companies, while maintaining our focus on investor protection.

I thank everyone who has taken the time to participate in this Forum, and assure you that your ideas play a very important part in our role here.

This role of the Forum in our regulatory process is especially important today with the number of JOBS Act rulemaking projects and studies underway.

With passage of the JOBS Act earlier this year, the SEC was asked to do what we have been doing across the agency in a number of areas, embrace the current state of technology in the financial markets, and chart a course that would allow us to protect investors while appropriately calibrating the regulatory requirements on small businesses.

In some ways, these efforts represent two sides of the same coin. A small business preparing an IPO is asking a potential investor to make a leap of faith far greater than

in an established company whose shares have been traded for many years.

Creating a regulatory arena in which investors feel their interests are being protected makes them, I believe, more likely to take on the financial risks inherent in any investment.

Our goal is to create markets in which investors are confident enough to contribute capital to growing businesses within a regulatory framework that works for small businesses.

This is not an easy task but is one we are taking very seriously and are very committed to.

The JOBS Act, of course, was enacted at a time when the staff and the Commission were very busy on rulemakings to implement the Dodd-Frank Act. But, fortunately, our staff is already exploring a number of avenues for improving small business capital access, and this helped us to begin our implementation efforts quickly.

Each part of the JOBS Act presents different challenges. Some became effective immediately upon enactment while others require Commission rulemaking.

The day the bill became law, we posted procedures on the Commission's website explaining how emerging growth companies planning an IPO could submit draft registration statements for confidential non-public review.

We continued to work to simplify that process, implementing an EDGAR based system that provides for the electronic transmission and receipt of confidential submissions.

We also provided guidance on the implementation and application of the new IPO rules in light of the Commission's existing rules, regulations and procedures through the issuance of extensive interpretative guidance in the form of frequently asked questions.

We also prepared and posted guidance on the JOBS Act changes to the 12(g) threshold for public reporting requirements.

Companies are taking advantage of these provisions. Since enactment, I understand we have received just under 100 confidential submissions and 70 bank holding companies have relied on the changes made by the JOBS Act to de-register.

We have also heard from companies, banks and their advisors that the guidance the staff provided on the implementation of those provisions that were immediately effective was practical, timely, and "spot on."

At the same time, we have been working on rulemaking recommendations for the Commission to implement those provisions of the JOBS Act that require rules.

Knowing how important these rules would be to investors and small businesses, we duplicated a process

utilized after passage of the Dodd-Frank Act designed to support an expansive dialogue between the SEC and market participants.

We created a web address that allowed the public and interested parties to comment on JOBS Act rulemakings in advance of the formal comment period, which beings when a rule or amendment is officially proposed.

Today, we have rule writing teams in various stages of the process on each provision that requires rulemaking.

As you know, we issued a proposal in August to implement the general solicitation provisions, and we have teams working on the proposals for crowdfunding and Regulation A+ and others.

Our goal in implementing the JOBS Act has always been to take a practical approach writing rules and issuing guidance that is true to the statute and workable and that carefully balances investor protection and capital formation.

Not surprisingly, a key part of doing so has been through consideration of the comments we have received from the general public and market participants.

We are looking carefully at all of the comments, trying to be responsive, and taking what we have learned into account as our rulemaking teams move forward.

This is a deliberate process, but it is important that we get these rules right, striking a balance between

investor protection and the facilitation of capital formation.

With your help, we are working to build a regulatory structure that supports small business growth, recognizes recent changes in the way securities markets function and people communicate, and ensures that markets are fair and secure for every investor.

Thank you.

MS. CROSS: Thank you, Chairman Schapiro.

It is now my pleasure to introduce Commissioner Elisse Walter. I've had the privilege of knowing Commissioner Walter since I first joined the staff in 1990, when she was a Deputy Director in Corp Fin.

I will note she was a wonderful boss then and continues to be a great mentor today.

Commissioner Walter re-joined the Commission in 2008 and also served as Acting Chairman during January 2009.

Commissioner Walter?

COMMISSIONER WALTER: Thank you, Meredith, for that overly kind introduction.

I'd like to extend my thanks to the SEC staff who helped plan this event, and particularly to Gerry Laporte and the Office of Small Business Policy.

I would also like to thank all of you who have come today in reality or virtually to participate in the ongoing

dialogue on small business capital formation.

Of course, this is a very important issue before us today.

Since I spoke with you last year, the Jumpstart Our Business Act has changed the landscape of the dialogue on helping small businesses raise capital.

The Commission and its staff are working to implement the Act, as you know.

Today, I'd like to speak specifically about one of the Act's provisions, the removal of the ban on general solicitation for certain private offerings.

This is part of a larger question that I have wanted the Commission to consider for some time. That is, what it means today to "offer" securities. After all, the world is barely recognizable from the world of 1933.

As the ways people communicate to one another change, so too must the regulations governing those communications, including in the securities market.

As you know, the Commission has proposed a rule that would end the ban on general solicitation in sales to accredited investors. We have received a number of very helpful comments from a variety of differing perspectives.

Many comments, including ones from the small business community, strongly support ending the ban as a step toward facilitating capital raising.

Other comments have focused on potential consequences to investors of lifting the ban.

I feel strongly that we must take those potential consequences seriously. I think everyone can agree that removing the ban on general solicitation, essentially allowing public offers in private security transactions is a fundamental change in the securities markets.

We must be vigilant about the potential consequences, particularly unintended consequences of a significant change like this, and consider ways to mitigate potential harms to the investor while preserving the rule's intended benefits.

People often frame this discussion as balancing the desire for easier capital formation against the need for investor protection. I see this as presenting a false choice, and I hope that you do as well.

A vital prerequisite to efficient capital formation is a market in which investors have confidence. If allowing general solicitation results in an increased incidence of fraud or sales of securities to investors that do not have the sophistication to understand the risks and merits of a particular investment, we will have failed not only investors but small businesses as well.

In other words, regulations that protect against these risks without placing undue burdens on businesses will

benefit all participants in the capital markets.

On the other hand, we should not block this change because we are afraid that harm will result. It is the responsibility of regulators and market participants as well to determine how to obtain the benefit of the change while safeguarding against the down side risks to investor protection and the public interest.

Accordingly, I hope that in your sessions today you will discuss and consider various safeguards that some commenters have suggested in response to the proposed rule.

In particular, please take a look at the recommendations of the Investor Advisory Committee. For example, does it make sense to place some limitations on the forms of solicitation? To reconsider our definition of accredited investor? To include in the rules specific methods that issuers can use to verify accredited investors? To condition, on a permanent or temporary basis, the availability of general solicitation on the timely filing of the Form D?

I am confident that we can find some common ground between the business and investor communities on these issues.

Also, once a rule is effective, it will be crucial that the Commission staff carefully review the effects of permitting general solicitation. There are many aspects of

the new rule that we will need to analyze--its effects on capital formation; whether the rule is accompanied by an increase in fraudulent activity, and what types of solicitations are most often associated with fraudulent activity, what techniques issuers use to verify accredited investors and whether they are effective; and whether investors that enter the private offering market have sufficient financial sophistication and information available to understand the risks of their investments.

In order to engage in a meaningful study, the Commission staff will need data. Studying the private market has been a huge challenge for Commission staff in the past, particularly because of the limited nature of the current Form D informational requirements and issuers who choose not to file their Form D's.

Although our Division of Risk Strategy and Financial Innovation provided very helpful analysis to the Commission earlier this year based on the data we now have, we need more information to give us a clear picture of this market.

This might result in requesting information we need from issuers, but for us to help protect the integrity of the private market, we must understand it as it evolves.

I hope that I've given you food for thought as you proceed today, and again, I'd like to thank you for attending

and helping us to further our mission.

And as I have said on many occasions in the past, my door is always open, and I look forward to hearing from you.

Thank you.

MS. CROSS: Thank you, Commissioner Walter.

I am now happy to introduce Commissioner Luis Aguilar, who is on video, who joined the Commission in 2008, and was reappointed in 2011.

Prior to joining the Commission, he was in private practice, specializing in securities law, and many important positions in Atlanta.

Commissioner Aguilar represents the Commission as its liaison to both the North American Securities Administrators Association and the Council of Securities Regulators of the Americas.

As a former Atlanta attorney myself, I can attest to his prominence in the Atlanta Securities Bar.

Commissioner Aguilar?

COMMISSIONER AGUILAR: Thank you, Meredith, for the nice introduction. Good morning.

I would like to add my welcome to the panel members and to the other participants in today's Forum. I also want to welcome the members of the public in attendance, as well as those viewing by webcast.

Small business is a powerful engine for economic growth. Independent businesses with fewer than 500 employees account for half of all private sector jobs and more than half of non-foreign private gross domestic products.

Growth in small business helps fuel the U.S. economy, generating opportunity, competition and demand. Small businesses are essential to sustain a strong economy, strong communities, and a strong middle class.

Today's Forum reflects the Commission's continuing interest in capital formation issues for small businesses. Indeed, the Commission has had a long term focus on small business and has utilized multiple avenues to regularly and consistently seek input from small business stakeholders.

For example, today's program marks the 31st annual meeting of the Forum of Small Business Capital Formation. Also, the Office of Small Business Policy, which helps to organize this annual Forum and was established in 1979, regularly participates in rulemakings and other activities affecting small businesses.

This office also interacts with government agencies and other groups concerned with small business issues.

Moreover, since 1996, the Commission has appointed a Special Ombudsman for small business to represent the concerns of smaller companies within the SEC.

More recently, just last year, as has been

previously mentioned, the Commission established an Advisory Committee on Small and Emerging Companies to provide advice and recommendations specifically related to privately held small businesses and to publicly traded companies with less than $250 million in public market capitalization.

In addition, among other statutory protections for small businesses, the Regulatory Flexibility Act requires that the Commission consider the impact of all of our rules on small entities.

This Forum provides an opportunity to discuss how the environment for small business capital formation can be improved, consistent with investor protection and other public policy goals.

Of course, any discussion of capital formation must recognize the needs of investors. Investors are the capital providers. They provide the funding by writing the checks to facilitate capital formation.

As such, their perspective is particularly important to this discussion. To that end, it is essential to recognize that while bloated or unnecessary regulations must be avoided, fair disclosure rules and investor protections help to promote capital formation.

This happens in various ways. I'll mention just three this morning. First, disclosure rules promote capital formation by providing investors with the information they

need to make good investment decisions.

The transparency resulting from clear disclosure enables investors to better price risk and determine value, which increases the likelihood that capital will be invested productively.

Capital formation is much more than just capital raising. True capital formation requires that funds raised be invested in productive assets. The more productive the assets, the greater the capital formation facilitated by those investments.

Second, disclosure and other market safeguards help provide investors with the confidence they need to invest their savings. Investors in small businesses, like all capital providers, want to know that company management has treated them fairly and has properly disclosed the risks, as well as potential rewards of their investment.

Moreover, they want financial statements they can trust.

Third, small and workable securities regulations can help improve long term investing. Investors who truly understand both the risks and potential rewards of their investments may be more likely to provide the long term capital that private capitals need to succeed and grow for the long term.

Today's Forum will discuss securities offerings,

crowdfunding, and other topics related to small business capital formation.

I urge Forum participants to realistically consider the needs of investors in their deliberation. Providing a transparent and level playing field can help create a context in which investors feel confident entrusting their capital to an entrepreneur or growing business.

These are important issues, and I look forward to hearing your views.

Lastly, I join my colleagues in thanking the hard working SEC staff who are responsible for today's program. I wish everyone a productive day.

Thank you. I look forward to today's discussions.

MS. CROSS: Thank you, Commissioner Aguilar. I would now like to welcome Commissioner Troy Paredes. Commissioner Paredes joined the SEC in 2008, and prior to that, was a tenured professor at Washington University School of Law in St. Louis, where he taught and researched extensively, primarily in the areas of securities regulation and corporate governance.

As you can imagine, Commissioner Paredes puts the staff through our paces in testing our securities law analysis when we present ideas and recommendations to him, but always with good cheer.

Commissioner Paredes?

COMMISSIONER PAREDES: Thanks, Meredith, for the kind words.

A special "thank you" is due to Gerry Laporte and everyone else at the SEC who had a hand in organizing this terrific event. I also want to thank our distinguished panelists.

The success of this gathering depends on your willingness to explore with the Commission what it takes for entrepreneurs and small companies to access the funding they need to startupand grow.

Let me begin with the bottom line. Now more than ever, we need to take concrete steps to promote small business, particularly with the present state of our economy. Small business capital formation must become a leading priority of the SEC.

We need to promote small business because start up's and growth companies create jobs and foster the opportunities that allow individuals to achieve their goals and aspirations.

We all benefit when the economy is doing well and when individuals are able to fulfill their ambitions.

We also all benefit when emerging enterprises innovate and spawn new technologies. Technological advances increase our standard of living by empowering us to work more productively; transact more efficiently; access information

and knowledge like never before; and communicate with each other in previously unimaginable ways.

As if this were not enough to justify promoting small business, there are the breakthroughs that lead to new treatments for devastating illness and disease.

All of this--including the chance to back startups and other dynamic small businesses, also serves the interests of investors by affording them a wider array of investment options for putting their money to work.

However, we cannot just assume that good ideas will bear fruit on their own. For small business to thrive, more is needed than an entrepreneur's ingenuity, hard work and determination. To prosper, small business needs capital.

It is, of course, a positive sign that discussions continue to center on how best to promote small business. But, as I said at last year's Forum, we cannot just talk about promoting small business; we need action.

Not surprisingly, I'm encouraged by the JOBS Act. The JOBS Act--given its goal of spurring economic growth and job creation by making it easier for businesses to find funding--is a significant step in the right direction.

The SEC also needs to take significant strives to promote small business. The Commission needs to move forward with a small business agenda that stresses small business capital formation as one of the agency's key priorities.

Year in and year out, this annual Forum has resulted in specific recommendations for facilitating small business capital formation, and I have every reason to expect that the recommendations coming out of this 2012 Forum will warrant our serious consideration.

In addition, I look forward to continuing to consider input from the SEC Advisory Committee on Small and Emerging Companies and its suggestions for promoting small business.

Furthermore, a meaningful retrospective review of the Commission's rules could reveal still more opportunities for regulatory change that makes a tangible difference for a small business by opening up lower-cost pathways to capital.

We need to be willing to reduce for small business existing regulatory burdens that create barriers to entry and that unduly hinder new and smaller companies when they try to get the funding they need to invest, hire and compete.

Even as new ideas are advanced for promoting small business, proceeding with our current rulemaking obligations under the JOBS Act should be at the top of any small business agenda.

Entrepreneurs stand ready to get their enterprises off the ground and growing with the benefit of crowdfunding, and businesses await the opportunity to raise capital more efficiently once the ban on general solicitation under Rule

506 is lifted.

Thank you again for joining us and for helping us consider how we can best fulfill the SEC's mission, a fundamental feature of which is to facilitate capital formation.

MS. CROSS: Thank you, Commissioner Paredes. Last but not least, I'm happy to welcome Commissioner Dan Gallagher. Commissioner Gallagher re-joined the Commission as a Commissioner just over a year ago, having previously worked at the SEC from 2006 to 2010, during which he played a key role in the agency's response to the financial crisis.

I have worked closely with Commissioner Gallagher in private practice and as a fellow staff member, and it's a great pleasure to have him back at the SEC as a Commissioner.

His deep expertise from the regulator’s and private practice perspective in trading and markets issues is of great benefit to all of us.

Commissioner Gallagher?

COMMISSIONER GALLAGHER: You have continued the trend of overly kind introductions. Thanks very much, Meredith.

Thanks to the staff of Corp Fin for everything you do to facilitate this Forum, in particular, Gerry Laporte, your tireless efforts to focus on small business issues are a benefit not only to investors, not only to small businesses,

but to the Commission, and we appreciate it very much.

To repay you, Gerry, for all you do, I am going to have not only informal but very brief remarks to keep you on time. I know you are very interested in keeping this on track.

This is a great Forum. It's great to see all the folks attending today. I know there are others watching on the web, which is great.

It couldn't be more timely. Unfortunately, as I walked down the stairs today, I saw the news, very unfortunate jobs numbers, 439,000 applications for unemployment, which far exceeded expectations.

And so, I'd like to echo the sentiment of Commissioner Aguilar when he talked about how important small businesses are for job creation, and therefore, how important these efforts are to address joblessness. Indeed, I think we all would agree that joblessness is the current war we are fighting.

Unfortunately, the Commission is mandated in many ways to focus a lot of time and attention on the last war through Dodd-Frank mandates, some more targeted than others, and so it's imperative that we not only use this Forum, but the mandates in the JOBS Act, to focus our attention and time on small business issues to facilitate capital formation and indeed, to focus, I think too, on investor choice.

Investor protection isn't only the notion of keeping things away from investors but providing choice that enables them to put capital at risk in a market that they are confident the SEC is policing for fraud.

I also want to echo the sentiment from Commissioner Paredes on the importance of the Commission prioritizing a small jobs' agenda, and I am glad to see there seems to be general agreement on that point.

With that, I will turn it back over to Gerry and Meredith. I will thank them again for facilitating this, and I wish you guys a great seminar today.

Lastly, I want to echo one more colleague, Elisse Walter, by reminding everybody our doors are open, each of us. Indeed, looking down here at the front row are some folks we were talking to yesterday.

You can't assume that we, the Commissioners and our staff, get the type of learning that you can provide on a daily basis without you coming in the doors.

We really appreciate you doing that, and we look forward to more and active interaction with you going forward.

MS. CROSS: Thank you, Commissioner Gallagher. I understand that the Commissioners have another meeting they must attend this morning, so we want to thank them all again for being here.

PANEL DISCUSSION: JOBS ACT IMPLEMENTATION

MS. CROSS: Now we will move forward directly to our first panel discussion on JOBS Act implementation. I look forward to a lively discussion.

First, I'd like to thank Greg Yadley, to my right, for agreeing to moderate this panel with me. Greg is a partner and Chair of the Corporate Practice Group in the Tampa, Florida office of Shumaker, Loop & Kendrick LLP.

He represents clients in financing transactions, mergers and acquisitions, contract negotiations and disputes, strategic planning, legal compliance, and general corporate matters.

Greg is also a member of the SEC Advisory Committee on Small and Emerging Companies, and he's a great supporter of the staff's efforts in the small business arena.

I can't think of a person better qualified to lead this discussion.

I will turn it over to Greg to introduce our panelists and get things started. Greg?

MR. YADLEY: Thanks again. You're a great introducer as well as a great leader of Corp Fin and a friend to small business.

Clearly, we all think it's important, and it's great, Chairman Schapiro, to have you and the other four Commissioners here today to listen to what you, members of

the public and the small business community have to say.

I would also like to add my thanks to Gerry and Tony and Johanna and the rest of the staff. It's been great.

We have, I think, a terrific panel to kick off our JOBS Act discussion. I'm going to introduce them, and then make some comments.

I'm going to introduce them in the order in which they will speak. To my right, Sara Hanks, Co-Founder and CEO of CrowdCheck here in Alexandria, Virginia, a very dynamic company that is working in and around the areas of crowdfunding and larger offerings for all kinds of interesting, innovative, wacky things. Pretty cool.

She is a lawyer, has practiced here and in London, also worked on Capitol Hill where she was General Counsel of the Congressional Oversight Committee for TARP. Pretty impressive.

She also was Chief of the Office of International Corporate Finance here at the Commission.

Sara is going to talk about--not surprisingly--crowdfunding.

We have Jean Peters to her right, who is a Board Member of the angel Capital Association and Managing Director of the Golden Seeds Fund, which is a network of around 250 men and women, angel investors from around the country.

She also has quite an active past in finance, was

Vice President of Genworth Financial, Senior Vice President at John Hancock Financial, and spent her time in Washington as a policy analyst in the House Budget Office on Capitol Hill.

She is going to talk about general solicitation and the effects of the JOBS Act on limiting and eliminating that prohibition.

Next, Mike Lempres, who is the Assistant General Counsel and Practice Head at Silicon Valley Bank in Palo Alto. Mike is a former White House Fellow and actually was appointed to positions by three Presidents.

He was a senior official at the Department of Justice, Vice-President of the U.S. Overseas Private Investment Corp., and General Counsel of the Pacific Exchange.

He's going to talk about emerging growth companies and Regulation A+.

Finally, also joining us from the West Coast, Bill Beatty, who is Director of Securities for the Washington State Department of Financial Institutions.

A real veteran there, started as a staff attorney and worked his way up to the top. Bill is very active in the regulatory association, NASAA, where he heads the Corporate Finance Section.

Meredith is going to chime in and bring us some

kernels of wisdom on what the staff is seeing as they do their work, and also what many of us have written in as a result of the Commission's solicitation of pre-rulemaking comments, and also talk about the status of some of these.

There will be--you have in your packet some yellow question cards. If we can, we will try to address your questions. Please write legibly, and a member of the staff will pick them up and give them to us.

MR. LAPORTE: Whoever is controlling what is on the screen, please change to the slides, please.

MR. YADLEY: While that is happening, the slides are not all that interesting, but they are better looking than me. Please get the slides up.

Let me just talk about the process today. I think all of you who have been to the Forum before understand this. This truly is a way for members of the public to come and express their ideas.

MR. LAPORTE: Excuse me, Greg. The slides are up. You also have copies of the slides in the program booklets that were distributed. Sorry to interrupt.

MR. YADLEY: Great; thanks. After the two panels this morning, there will be breakout groups this afternoon. Those of you in Washington and those of you who have pre-registered throughout the country can participate virtually.

We are going to keep track of the comments. We are

going to bring them together, try to put them in language that satisfies the majority of the group, and then prioritize them and publish them.

This provides a real basis for the Commission and the staff to listen to you and work to try to make sure that regulation is both effective for protecting markets and investors, but also focuses on capital formation.

At last year's Forum, there were 25 recommendations. They had several themes. One was that we need an easier way to raise money without requiring registration under the 1933 Act, while reporting under the 1934 Act.

Second, state law preemption may be desirable and necessary in certain areas, and at least has to be considered with some of the new types of capital raising.

Third, companies shouldn't be forced to go public prematurely.

Also, about a year ago, just a few weeks before the November 17 Forum, the Advisory Committee on Small and Emerging Companies had its first meeting.

This effort was part of the implementation of the SEC's mission to facilitate capital formation. The Chairman mentioned this several times in testimony last May. The committee was officially organized last September.

The focus is on the interest and priorities of

emerging businesses and smaller public companies. The committee is here to provide advice and recommendations to the SEC on its rules and regulations and policies.

It has 21 members from throughout the country, not heavily weighted towards any particular group. It's a good mix of investors of all stripes, from angel investors to Government officials who are responsible for investing on behalf of their states, to entrepreneurs who have started and sold companies, to professionals who work in the area, including a representative of the broker-dealer community, an accountant, and only three lawyers, two of whom are in private practice. That's a pretty good thing.

MS. CROSS: Luckily, we have you.

MR. YADLEY: Yes. We have been looking at a number of things, the general solicitation prohibition, which we have talked about. Triggers for public reporting. New capital raising strategies and modification to existing rules that will make it easier for smaller public companies to access the public markets.

We have had five meetings and one telephone meeting, and made three recommendations.

Not surprising, perhaps, the themes that we have struck in our recommendations mirror those at last year's small business capital formation Forum.

One of them was that the Commission should take

immediate action to relax or modify the restrictions on general solicitation and general advertising, and permit both of those in private offerings under Rule 506, where the securities are sold only to accredited investors.

This was the number one recommendation of the 2011 Small Business Forum. It was the first recommendation of the Advisory Committee.

The next two recommendations of the Advisory Committee had to do with Exchange Act thresholds for reporting and a small offering registration/exemption under 3(b).

We recommended that the Commission adopt interim amendments to Exchange Act reporting thresholds, specifically increase the number of record holders to 1,000, 2,000 for banking institutions, and then have the reporting obligation cease when you got down to 600, 1,200 record holders for banking institutions, and employees holding securities subject to transfer restrictions not be counted in determining thresholds.

This also mirrored the Forum's recommendations last year. Recommendation three had two parts. One was to increase the threshold to 2,500 holders, and another recommendation, which was the ninth ranked, was to change the $10 million in assets threshold to $100 million.

The third had to do with a new exemption modeled on

Regulation A for public offerings up to $50 million. We recognized that additional information should be provided to investors if you're moving all the way from $5 million to $50 million, including audited financial statements, and other investor protections should be considered, but had to calibrate the terms and conditions of this filing to recognize the fact that smaller companies have more limited resources.

Again, as I said earlier, this was part of the third ranked recommendation of last year's Forum.

We also in February discussed crowdfunding, but at the time, felt we needed more information and study before considering whether to endorse a particular approach.

The Forum, similarly a year ago, was quite interested, but it was only ranked number 14.

Since those recommendations, the Advisory Committee has focused on market structure issues, their impact on IPOs and disclosure for smaller public companies and, particularly, how that might be scaled appropriately.

As this is happening, a bunch of bills that were filed for the most part last September and October started gaining traction, and then in March of this year, really hit the road, and by April, we had the JOBS Act.

I think many of us were pleased that folks on Capitol Hill seemed to be listening and coming up with some

of the same conclusions that you at this Forum in past years have proposed and that the SEC Advisory Committee had also proposed.

There is a lot of work left to be done, and it should be said that in those final weeks, although I think the SEC had the opportunity for some input, particularly in crowdfunding, as a result of the Chairman's frank remarks about what was really practical and doable, the bill is better than it might have been.

This was not an SEC effort per se, so there are lots of loose ends and there are a lot of inconsistencies and things that the panelists this morning will bring out.

Depending on your point of view, the JOBS Act can be considered a coherent approach to capital raising in the 21st Century or not.

I think what we need to talk about is who is covered by the new law. It is companies of all sizes. An emerging growth company, I don't know what you think that is, but Congress says that is somebody that has revenues of up to $1 billion. On that same token, a crowdfunding company can only raise $1 million.

The JOBS Act also attracts investors of all sizes, not only accredited only offerings.

What does the new law permit and what does it foster? It makes it easier to go public. Mike is going to

talk about emerging growth companies. It makes it easier to stay private. We have talked about the changes to the 1934 Act reporting thresholds.

It also makes it possible to sort of do both, raise money publicly, but not have to report under crowdfunding and Regulation A+.

If we go to the last slide of my introduction, this is sort of where we are in a nutshell from April 5 until now. The Commission staff has been hard at work reviewing the legislation, trying to provide answers to frequently asked questions, and guidance for emerging growth companies, for private offerings, and under the 12(g) threshold.

Remember that a lot of these new things aren't effective immediately. Some are. Some aren't. General solicitation currently, although we have a proposed rule out, Rule 506 is still Rule 506, and there is a prohibition on the use of general advertising and general solicitation.

Crowdfunding can be done legally if you're doing it the right way, giving away hats and vouchers and things like that. The crowdfunding that's provided for by the JOBS Act has to be implemented through SEC rules.

With that introduction, I'd like to turn it over to Sara Hanks.

MS. HANKS: Thanks very much for the introduction on behalf of me and my wacky company and wacky offerings.

I thought what we would talk about is what Title III changed and what it didn't. This is really important.

We have to understand both the impact and the limitations of Title III.

The good news is this is a completely new exemption from registration under the 1933 Act. This is huge. It is equally as important as what Commissioner Walter was talking about with respect to the general solicitation. This is a major change in regulation. This is an exemption from registration with the SEC for a public offering made to just everybody.

It is an exemption from offering up to $1 million, and of course, this could increase to the extent the SEC would consider interpreting the word "investors" as being non-accredited investors. That, I think, would be open to the SEC.

The offering must be made on a registered platform. This is a new animal, the crowdfunding platform.

There are limits on the dollar amount that an investor can make, and there are disclosures required.

Even with those conditions for investor protection, this is a pretty huge change.

Also huge is the exemption from the 1934 Act registration for crowdfunding investors. This means, however many investors you have, and you could be having thousands of

investors, you won't have to register with the SEC under the 1934 Act.

Another big change is the introduction of a crowdfunding portal. This is a totally new animal. One aspect of this is how it will affect other areas of broker-dealer regulation.

Broker-dealer regulation tends to be very binary, either you are a broker-dealer or you are not a broker-dealer.

A lot of people have wondered whether the introduction of a new thing that is not quite a broker-dealer, but not quite anything else, might affect, for example, the illusive finder's exemption in other parts of the securities laws.

Those are really, really big changes. What hasn't changed? Pretty much everything else. The context of regulation is unchanged. The fact that offers and sales of securities must be registered with the Commission or exempt from registration, this is another binary area of securities regulation.

The SEC is still concerned with investor protection. How many times have the Commissioners just referred to "investor protection?" That was the phrase that was most used by the Commissioners in their introductions.

One of the main tools of investor protection is

disclosure. That hasn't changed. It's a really important investor protection element.

Other things that haven't changed? People who give investment advice still need to be registered as investment advisors.

An entity made up of securities, like an investment company, a mutual fund, still has to be registered as a mutual fund. There aren't any exemptions so far from the 1940 Act.

Places where you trade securities, what do you call them? Places where you can buy and sell securities, whether it's a liquidity platform or a secondary trading mechanism, those are going to have to be registered as exchanges or as alternative trading systems.

People who move securities around are also registered. People who put buyers and sellers of securities into contact with each other, that's regulated.

Those things have not changed.

Looking at some of the policy issues that the SEC will have to face. There are some very interesting, challenging policy issues.

For example, what is a crowdfunding portal? I have spent a lot of time over the last few months in the crowdfunding industry. We have seen something of a culture shock. There are folks who think a crowdfunding portal is

just a notice board. It is a place where you put in the middle of the village green notices, missing cat, securities for sale, and that is all there is, right?

MR. LAPORTE: Just to expand upon what Greg said, about if people have questions, there are question cards in the packets. Molly Dwyer, who is the intern with the Office of Small Business Policy, who is in the back of the auditorium, if you want to raise your hand and give your questions to Molly, that would be great.

If you are listening over the web, you can e-mail your questions to smallbusiness@sec.gov. We will try to collect them.

I don't know how much time the panelists will have to answer questions, but we will try to get to them during this morning's session, both this session and the next session.

If we can't get to them, we will give the questions to the breakout groups. Many of these panelists will be in the breakout groups this afternoon, and some of them may be able to answer the questions in that context.

I'm sorry, Sara.

MS. HANKS: If you have any questions about timing, they go to that end. I'm not going to raise any questions about timing.

I'm going to raise some of the policy issues. Like

I said, there is this whole culture shock where we speak to a lot of crowdfunding portals who are really focused on having a fantastic user experience, where the portal can do all sorts of wonderful things.

Some of those guys don't really focus on the fact that they have now entered the most regulated industry in history ever in the universe.

We are talking about your super regulator, you are buying and selling securities. This is regulated.

MS. CROSS: Even more than like nuclear?

MS. HANKS: Probably so. It is more complex anyway.

MR. YADLEY: What you don't know won't hurt you about nuclear.

MS. HANKS: Until it lands on you.

MR. YADLEY: What you don't know about securities laws will, so keep talking, Sara.

MS. HANKS: It will definitely hurt you. One of the things that I sometimes talk to these portals about is when you look at, for example, Kickstarter, people are very familiar with the product model on Kickstarter. Then you look at another platform like CircleUp, for example, which is an accredited only platform. I wonder if the functionality looks the same?

You bring up a project or you bring up a company.

You can find out about it. You can make up your mind. You can press a button that says "buy here."

However much they look alike, Kickstarter and CircleUp are completely different species of creature from a regulatory point of view.

People have to understand that we are dealing and the SEC will be dealing with the fact that they have a new creature which needs to be regulated, and they have a challenge in trying to work out how light they can go on the regulation and not get in the way of crowdfunding, and yet still meet their requirements of investor protection. That is quite a challenge.

Other things that the SEC is going to have to be looking at is how much you dictate the process, things like escrow arrangements, timing, things like that.

The process itself includes investor protection aspects and you don't want to constrain the market from developing freely, but you do want to have investor protection.

In monitoring investment limits which range, of course, from the bottom end of $2,000 for the people who have the most modest income, to $100,000 a year for investors who have the most, the questions here are not just how to but who monitors.

Will self certification work? Is it a portal responsibility? Can we monitor this from an industry point

of view or individual portal point of view? Can we impose, or should the SEC impose, a solution, require a database?

Investor education requirements are also very important. I think this was reflected in the comments of several of the Commissioners.

Same issues here. Whose responsibility? How do you monitor investor education testing? It is a test required in the statute. How do you monitor that the investors have obtained the materials and looked at the materials?

All of us in the industry are working on getting great disclosure into the hands of the investors. How do you make sure they actually look at it? It's an interesting question.

Then we have integration issues for the legal wonks among us. Traditionally, there are rules on not being able to do a private offering like Regulation D at the same time you do a private offering, and there are very good reasons for that.

Would there be a reason for not imposing integration principles here? There are some folks who think the sophisticated investors in an accredited offering would be able to drive the due diligence and get a good deal for the unaccredited investors. Or, if you were to take the view that the $1 million limit in the statute applies to non-accredited investors, would that be enough protection in and

of itself, so that you were able to say a crowdfunding offering would be $1 million to non-accredited and some other number, possibly unlimited, to accredited investors, and you still get the side by side protection?

Looking at the areas where SEC rulemaking is required, I just tried to put all of this on one slide.

This is a summary of a couple of dozen places where Title III calls for the SEC to do a rulemaking. This is a whole load of work. As a former staffer, I understand just how much work this is.

There are requirements with respect to disclosure. There are some statutory requirements that the SEC may wish to elaborate on. The SEC will also have to decide how to file information which is required in the statute.

Legal wonks among you know that "file" is the wrong word there, but clearly there is a requirement in the statute that information be gotten into the hands of investors and also onto the SEC's website in some way.

What are ongoing reporting requirements going to be? There are communications and advertising rules. What are you going to be able to say outside the information that's on the crowdfunding portal or the platform? What can you say on Twitter? What can you say on Facebook? Is it just going to be like a tombstone that says "I'm doing crowdfunding, check out my stuff on this crowdfunding platform."

There are also questions with respect to advertising and promotion by the portals themselves. Some of the statute is a little confusing on that side, so there is going to be some guidance needed there.

There are background checks required. They are mandated by the statute. Unfortunately, it doesn't say in the statute what a background check is supposed to cover, what a securities regulatory enforcement check is, and if you do one, what are you supposed to do with it when you get it back.

The guy has bank robbery convictions. Can he still do crowdfunding? If he had a bank robbery five years ago, how long is he going to be excluded?

There are provisions in the statute that say the SEC can set bad actor rules. We would expect some guidance there.

There needs to be some investment advisor guidance for the portals--the extent to which the portal can exclude or collate information. Say this company is in this category, how can you slice and dice them and sort them, can you promote them in any way?

Of course, there is the regulation of portals themselves, qualification of portals, qualification of the portal's personnel. There is going to be a lot of issues to address that.

Finally, just some of the big issues that are still going to remain. Things that we need from the SEC, even though it isn't always set out in the statute, guidance on liability. There is 12(a) liability for issuers. The way I read the statute, I think there is liability on the portals as well.

Investment advisor issues, not just for portals but for other advisors. There are a lot of folks who are going to be giving advice of one kind or another, so some guidance there would be really good.

What I call the 10,000 dentists problem. You are going to end up with a huge number of investors in the cases of some companies. There need to be innovative ways of dealing with those crowds of investors, and I know there are many companies working on solutions to deal with information flowing to the investors and back from the investors.

Of course, if you end up with a bunch of investors, they are going to want to tell you how to run your company. You are going to get a lot of advice from your investors. You might need a way to deal with that.

To the extent somebody is imposing themselves between the company and the investors, it would be good to get guidance as to what they are permitted to do.

The extent to which there can be liquidity solutions, trading platforms, whatever you want to call them,

there needs to be some guidance there.

There is also the issue of when we do have some trading, and we have to bear in mind that although the statute says the crowdfunding securities for the first year can only be resold back to the company or in an IPO or to accredited investors, is there some need here for labeling crowdfunding securities the same way as 144(a) securities are labeled with a CUSIP identifier, so that you don't have trading forcing the companies into the need to register under the 1934 Act, the same way as all the recommendations of the various bodies have been advising over the course of the years?

There is a lot of really technical stuff here.

With all of that technical stuff, I'm going to hand it back to Greg and Meredith. On behalf of the wacky industry, thank you.

MR. YADLEY: Thank you very much, Sara. A lot of food for thought and some of those ambiguities and inconsistencies in the statute.

Meredith, I know the staff has been working pretty hard. What can you tell us about this?

MS. CROSS: I can tell you that is exactly right, we are working extremely hard. The timing is challenging, to say the least, as Sara explained, it's a very complex provision.

We did say at the time this was being considered that the deadline in the statute would be challenging. As you can see, it is. We are working as quickly as we can.

We also note that, as you mentioned, Greg, until we get the rules done, this exemption is not available. So we do want to remind people, as is noted on our website.

I think a few other points are worth noting. I think the staff feels like we need to get the bad actor pending rulemaking done before we can get this done, and similarly, also for the general solicitation rulemaking.

This one is more closely tied to general solicitation, as a policy matter. We think we need to get it done for that one, for this one. We have to have a bad actor revision that essentially all links back to the one we have pending because of the way that worked under Dodd-Frank.

We have the bad actor proposal out pending. We are trying to finalize it, so we do need to finish that one in order to be able to do this rulemaking. I think that is what the staff is thinking right now.

I'd just like to mention the over arching point in all of this. I testified about this in Congress a year ago or something. I've lost track.

If people quickly lose lots of money in crowdfunding transactions and feel they were defrauded, the

industry and the concept will be tainted, and then no one will be willing to invest.

We need to have a good set of rules in place that reduce the risk that will happen. The concept of the portal, a lot of the requirements that got added, increased the chances that won't happen.

Even though it may seem like a lot of regulation for not a lot of money, and I talked about it at the hearing, if you went online and you clicked "Invest" and then the money went off into the ether and you never heard from anyone ever again, very quickly people are going to think crowdfunding is just a stupid thing that you throw your money away at. No one will be able to raise money, and it won't be capital formation for small business.

The right amount of regulation here to get it so it's a credible place to go, for people like my son, who might think it's an interesting good idea. He's in his 20s, that's how people think about things who are youthful -- not me.

I think it's an intriguing idea that, if done right, could really do some great things. If done wrong, it will just be a terrible failure and will have a black eye on it.

I don't know if others on the panel feel the same way. I think it's very important that this get off on the right start and the regulation be struck at the right balance.

MR. YADLEY: Thank you, good comments. Gerry, do we have time for one question on crowdfunding? Is there one?

MR. LAPORTE: All those are on crowdfunding.

MR. YADLEY: I'll ask one question. What if a company starts a crowdfunding and wants to expand to a non-crowdfunding offering?

Clearly, that's an integration issue that I think the staff is aware of and some of the other parts of the JOBS Act we are looking at, too. Just once the prohibition on general solicitation is lifted, what does that mean for Reg S offerings or other offerings?

It's an issue at this point. I'm not sure we can really say more.

MS. HANKS: I think some of the questions I have Meredith might be able to answer better than me.

There is one question on due diligence by platforms, crowdfunding offerings. Is the bias to raise due diligence standards to protect investors or streamline them to keep costs manageable for smaller issuers?

I think those two don't need to be exclusive. I think the most important thing about due diligence and disclosure as a whole is getting it into the hands of investors in a way they can understand, just making disclosure more understandable, possibly shorter, possibly

easier. But, the more you can right size the disclosure and the due diligence to the needs of the investors so they actually look at the stuff, then the likelihood of protecting them is better, if you have actually attracted their attention.

MR. YADLEY: Sara, maybe you know the answer to this. One of the requirements of the JOBS Act is that these intermediaries in crowdfunding either be registered broker-dealers or be a funding portal.

If you're a registered broker-dealer, you are a member of FINRA, the self-regulatory organization. If you're a funding portal, you have to be a member of a self regulatory body.

What do you know about this? And, if FINRA is doing anything?

MS. HANKS: Again, Meredith may be able to add to this. We understand FINRA is working on it. When you look at the definition, the only eligible SRO would be FINRA. We understand they are looking at it.

To go back to one of the things that I had said earlier, one of the models I present when I talk and say are we Kickstarter plus, or are we Merrill Lynch minus?

In the minds of FINRA, because Merrill Lynch is who they already regulate, the starting point has got to be well, it's not quite Merrill Lynch, but we have to regulate it.

It's my understanding that they are working on it. This is a huge challenge, because how do you regulate this when your model of regulation is big broker-dealers. And now, you're being asked to regulate something small, with a light touch, and yet deals with the smallest investors.

MR. YADLEY: Is there another easy question? If not, we will move on and come back.

MS. HANKS: That answers that one. Will they be allowed to call an offering over the Internet "crowd-funding?"

They can call it what they like. It's a question of what they do with the offering, as opposed to what they call it.

MR. YADLEY: I think one of the points that has been made, and I think you have mentioned this, is since you need to use a broker-dealer for a portal, and lots of people are lining up to be a portal, does that mean most crowd-funding is in fact going to happen over the Internet? Or, will you have real people in their neighborhoods raising money?

MS. HANKS: That is a really interesting question. Just to take it in an incredibly wonky direction. The lawyers in the audience probably realize that friends and family funding--everybody talks about crowdfunding being an extension of family and friends' funding.

Those of us who have been working on IPOs for

decades are familiar with family and friends' offerings always having been done wrong. Frequently, the job of a junior associate working on an IPO is to go back and un-do all of the damage that was done to family and friends' fund raising in the early days.

I can see some sort of very specific uses for crowd-funding in that area, and that would be to do family and friends' funding right, if you can go through a portal. Because once you go through a portal, you have the protection. So presumably portals, and I'm looking at some in the audience that might do special deals for focused offerings where you know who you want to offer it to, you just want to do it right.

Same thing for the local guys that you mentioned. The guy who has the food truck. He knows who his audience is. You have to go through a portal, but maybe they will do special deals for folks who are doing directed offerings so to speak in the crowdfunding area.

MR. YADLEY: Thank you. We may have time to come back to that. If not, we have breakout groups this afternoon.

Let's talk about general solicitation. Jean Peters.

MS. PETERS: Thank you, Greg. As Greg said, I'm a member of Golden Seeds, which is the fourth largest Internet

angel network in the country, and I'm also on the Board of the Angel Capital Association, which represents the majority of the 300 plus angel groups organized across North America.

ACA is the voice for angel investing and this vital growing community of sophisticated accredited investors who not only infuse their own money but also their wealth of experience, knowledge and skills in high potential start up's.

Sara and I were talking earlier about sort of this new arena of general solicitation and crowdfunding being the Wild West in some ways. Not necessarily our angel groups as the sheriff's, but we do offer some adult supervision in the context.

Let's talk a little bit about how angel investors and angel groups work in capital formation. According to the Kauffman Foundation, angel investors provide upwards of 90 percent of the outside equity raised by startups.

That capital comes from our personal pocketbooks, and it's directed towards the essence of capital formation in the United States, small business startups with high growth potential.

Angel investors actually provide capital at a rate that is 20 times that of what comes from venture capital, again, in seed stage companies.

In 2009, for example, angels funded about 36,000

companies, while VCs funded about 1,800 companies at the early stage.

In terms of amounts of capital, last year in 2012, angels funded 66,000 companies for about $23 billion, an average of about $350,000 per deal. VCs funded a similar amount, about $24 billion, but only in 3,800 companies, most of them at later stages.

The tens of thousands of startups that angels fund each year are formed in every state and every industry sector. These companies are critical for job creation and broadly restored economic vitality.

Research from the Census Bureau's database of business dynamics illustrates the type of dynamic high growth startups that make up the vast majority of new jobs.

Even though startups comprise less than one percent of all companies, they generate ten percent of jobs in any given year. Without angel investing, most of those startups simply would not get off the ground.

It's very exciting to see these techniques of crowd-funding emerge as a new source of capital, but we don't really see that as a panacea to raise equity needed to grow for startups.

Angel investing is a very disciplined, long term process. Angel investors, especially those that form into cohesive groups and support best practices, bring a

tremendous wealth of experience and knowledge to the process. We have to, angel capital comes from our own pockets. It is not other people's money. It's not the kind that swirls around the public markets and secondary trading at high speed.

As angel investors understand, what we do is really risky and highly illiquid. Angels give their time and experience freely, without compensation and without liquidity for an average of eight years.

We do this to make a return. We also do it to give back, to stay apprised of industry changes, and because start up's value our input.

Most angel groups are geographic or industry centric. We tend to invest in what we know and in regions in which we live. Angel groups work not only within their membership, but also across the angel sector.

Nearly three-fourths of angel deals today are syndicated amongst angel groups and/or VC funds.

The experience of angels helps startups succeed. In fact, I believe it is essential for the success of the innovation economy. We believe it also is essential for companies that employ general solicitation or crowdfunding as part of their capital raising efforts.

Angel groups are a fundamental source of deal screening and due diligence for startups. For example, my

angel group, Golden Seeds, screens more than 1,000 deals per year, and we end up investing in 10 to 12. This is typical of ACA member groups. In aggregate, ACA groups invest in more than 1,000 companies a year after screening roughly 75,000.

That brings us to what are the key components of the JOBS Act. The end of the ban on general solicitation for issuers who sell securities only to accredited investors.

The ACA is pleased that the proposed rules continue the consistent approach for Rule 506 offerings that do not use general solicitation, as this supports the continued capital flow from angel investors to many job creating start up's.

However, we believe the rule needs to also provide more clarity on what constitutes reasonable steps under 506(c) for offerings where the issuer must take steps to verify and establish a reasonable belief that its purchasers are all accredited.

The ACA believes some safe harbors are needed so that companies and investors can act with confidence in seeking a transaction through general solicitation.

The ACA hopes that the rule and any accompanying safe harbor provisions be designed to validate and encourage disciplined angel group investing, because it's critical that the new rules do not increase regulatory costs and complexity

of this type of investing, which already requires a tremendous amount of resources, time, expertise, and development of best investing practices, along with substantial amounts of investors' personal funds.

An ACA survey of its membership clearly identified that angels would likely withhold investment if they find a cumbersome, burdensome and expensive verification process.

This is not what the JOBS Act intended to do and could be a devastating blow to innovation in the startup job creation conveyor belt.

We believe angel investing is critical to small businesses and capital formation, but we also believe angel groups and investors play an essential role in this landscape, as it continues to shift with the exciting additions of social media and other forms of general solicitation, as well as the new conduit of crowdfunding.

Angel investors with a disciplined approach to due diligence, deal screening, term sheets and corporate governance will continue to play a key role in financing the nation's most innovative and high growth startups.

We will be there when the companies that are crowd-funded need additional capital beyond which they raise via portals. We will continue to be a primary sorting mechanism for those startups that are most promising and in ensuring that companies seeking funding are legitimate, appropriately

structured, managed and valued.

We believe the wisdom of angels offers an important and substantial barrier to the types of hazards that is of great concern and should be a great concern of the Commission that might face accredited investors and others trying to sift through the social media advertising and crowdfunding realm to find great entrepreneurs and startups in which to invest.

Thank you.

MR. YADLEY: Thank you very much. Great perspective and you can really see how the angels out there are making a huge impact.

Meredith, obviously general solicitation, there is a proposed rule out. I think we have gotten quite a few comments; right?

MS. CROSS: Yes, indeed, we have a lot of comments. We have a very short rulemaking deadline. What we are doing now is sifting through the comments and trying our best to balance all the different things that are being expressed and put together a recommendation for the Commission that balances all the competing interests, and do that as quickly as we can. It's challenging.

MR. YADLEY: Indeed, it is. Gerry, do we have some questions on general solicitation?

MS. CROSS: There is one I was given which was

what's being done about companies that have not waited.

[Laughter.]

MS. CROSS: I will say we want to remind people, as we keep reminding people, that until the rules are changed, the rules are the rules. If you are generally soliciting for a private offering right now and have no other exemption, then consistent with the whole structure of the 1933 Act, you would be in violation of the 1933 Act and you may hear from us, and you may have already heard from us.

We do have people who spend time looking at things on the Internet, and we do find some of these things. And you may hear from us, but I can't tell you what we are doing with regard to any particular one.

MR. LAPORTE: This is a question that our office has gotten a lot, and I don't know who if anybody wants to answer this. The PLI had a conference in New York last week. There was, what was called a "picnic lunch," and this question was asked and answered in that Forum.

The question that has been presented today is does the SEC own the term "crowdfunding." I think what really is the question that we get a lot is: is JOBS Act crowdfunding the only type of crowdfunding, or can you do crowdfunding under Regulation A, or Rule 504, or the Kickstarter kind of crowdfunding that's already been done?

Meredith, I don't know if you want to try to answer

that, Greg or Jean.

MS. CROSS: I'm happy to jump in and make clear, you can use the term "crowdfunding" for other types of crowd-funding. For example, Reg A crowdfunding.

Stan Keller recently did a Reg A crowdfunding for a Broadway show, and you got to be listed as a producer. He said it was a great success. I don't know if the show was a success. I think the effort to do crowdfunding was a success through Reg A.

I think you do want to be careful that you don't call it "crowdfunding" if you don't have any crowds. That could be misleading. Be careful how you describe what you are up to and also make sure that you are complying with whatever regime you are in. I guess that is what I would say.

MS. HANKS: I think it would be great, although I'm speaking here as a hugely wonky lawyer, if we were to talk about Title III crowdfunding or 506 crowdfunding. That would be really helpful, so folks could know what type of offering they were making. But, I realize that is just a lawyer's view. It's not going to work.

MR. YADLEY: One of the other issues that permeates this I think for a lot of people, including me, that the elimination of the prohibition on general solicitation favorably affects is offers. And sales are regulated under the

1933 Act, so that is always a trap when you are out there talking to people and getting ready to do something in advance of having cover to do it in the form of a new rule or safe harbor.

How do you suggest that legal and compliance officers connect firms presently raising private funds?

MS. CROSS: I think the question is, the thing I said before, you are not allowed to do this now. As a lawyer, counseling people on the outside, how would you advise them about the use of general solicitation advertising before the rules are changed?

Since I already said you can't do it, maybe you can say what you always had previously said.

MR. YADLEY: I would say you can't do it.

[Laughter.]

MR. YADLEY: It's actually when people ask the question, because you can tell them that. And you can tell them why. And you can tell them about the problems you are going to have later, if you actually get to do a deal which has either professionals helping them, a broker-dealer, or financing is required. So you have a bank with sophisticated counsel who are asking gosh, you have a lot of investors, where did you get them, where did they come from?

MS. CROSS: It could also get raised, if you eventually file for an offering and you have a disclosure in

the back about sales of unregistered securities, because we would ask how did you get all those investors, and that could stall your offering and create contingent liabilities for rescission rights. Things like that.

There are lots of good reasons to wait, until we finish with the rule changes.

MR. YADLEY: Jean, because you brought it up. And, I'm sure you don't have a complete answer, because it's a difficult issue. But, when we have all these investors that have come to be investors legitimately, and now the company needs more capital. And it is not ready for those picky venture capitalists, but they have a friendly angel who understands the business and wants to help. What are you and your colleagues thinking about in how you will deal with the fact that, now instead of just a dozen friends and families, you may have several hundred or a thousand investors?

MS. PETERS: That is quite a big issue, because the structure of the cap table is an important part of due diligence. How are you going to manage your current shareholder base and what the complement of it is?

It sort of plays into this other question, about how much additional capital will the JOBS Act stimulate from angels?

We will look at: are there rescission rights? Ways to clean up the cap table? And those are things that crowd-

funding companies should be thinking about at the beginning. So that when they do come to angel investors or seed funds, VCs, they have a way to make that cap table viable.

You are going to have to report and communicate with those people on some regular basis.

Overall, we think the ability to have general solicitation will help, not just companies, but there are 8.5 million people in the country who qualify as accredited, only 200,000 to 300,000 of whom have ever done angel investing.

We do think there will be more people interested in this asset class, more people wanting to learn about it and learn how to do it correctly.

Also, when we do a deal, as I said earlier, deals are typically syndicated among angels, having the opportunity to do general solicitation and get broadcast to more angel groups and individual angels will help add more capital into transactions.

MR. YADLEY: Thank you. Why don't we move along and ask Mike Lempres to talk about Regulation A+ and emerging growth companies.

MR. LEMPRES: It works for me. I know you guys have been sitting for a long time here. I appreciate the attention at this late stage of the morning. I will try to keep it as light as I can.

Before diving into Reg A+, I was asked to talk a

little bit about the venture capital environment and the reason for that follows very closely to what Jean was just discussing. The reason for that is I work with Silicon Valley Bank. And for those of you who are not familiar with Silicon Valley Bank, we operate almost exclusively within the high growth technology sector, providing traditional banking products to 15,000 clients internationally.

We are often working in conjunction with venture capital partners. It gives us a viewpoint, a perspective, that is not terribly broad when you look at the startup world in whole, but it is very deep when you look at that high growth technology segment.

Right now, we are banking over half the venture-backed technology companies in the United States, so within that little group, we are pretty deep with a pretty good view.

Also, the issue of access to capital is very, very important obviously to that client group that we have.

We do a survey every year of our startup CEOs, and ask them, what their issues are? Consistently over the years, the number one challenge they face, and reported, has been access to capital, which you would expect amongst growing companies.

The one exception to that which I will address dealt with one sector that has some other issues.

Overarchingly, it has been access to capital.

I have a chart, I don't know if everyone can see. But to describe it broadly speaking, what it shows is that the amount of venture capital has been raised, has bumped around a little bit, but seems to have settled in right around $20 billion a year. That is down from the 2000 bubble that was about $100 billion. We are somewhere about a fifth of what it was at that time, but it has been fairly consistent.

There is room there. It's not booming the way it might be. I think that is one of the reasons Congress looked at ways to increase access to capital.

One of the points this chart brings forth that I would like to draw to your attention is the difference between the amount of capital that VC firms have been raising and the amount they have been deploying over the last five years. That has some ramifications, if you think about that.

It has been raising right around that $20 billion number. Actually, over the last five years, it has been a little less. They have raised approximately $85 to $86 billion. During that same time period, they have deployed about $129 billion.

If you look at that delta, what it is showing is that there is over $40 billion of what you might call venture capital reserves that have been expended. That has

ramifications down the road for companies that are growing.

I don't know exactly how that will play out, but you can see it there now. Since these funds typically are of a long term duration, they are typically eight, nine, ten year funds, you can see where it is going.

That ratio is not likely to change or these things are not really predictions about what is coming. You can see the funds have been raised and what's been deployed has been deployed.

What it does mean, I think, is higher capital intensive companies will have challenges looking at least to the traditional sources of venture funding.

I should note that Jean discussed angels. They are a big part of what's going on right now.

The corporate ventures are not included in this. Corporate ventures are something that don't get a lot of attention, but they do invest quite a lot. And by "corporate ventures," I'm talking about everything from Wal-Mart, Best Buy, to the automobile companies, people who are investing, and they are providing a different exit typically for startup companies.

What I wanted to mention also, as I look at this chart, I talked about the survey we do that shows that access to capital is a big issue. This chart and that survey are really addressing sort of macro, what's going on out there?

Sectors are being affected differently. What this chart does not show, for example, is what's happened to the life sciences sector. That is a sector that has been very, very hard hit over the last few years.

There are funds deploying assets now, improvements has been made. Very little being raised pointed at that sector right now. The startup CEOs who answered our survey, said life sciences was the one area where they did not say access to capital was their biggest challenge.

They said overwhelmingly that the regulatory environment, the Federal regulatory environment, was their greatest challenge, and often calling out specific agencies, like the FDA was called out.

That particular sector has been hit very hard. Others have been hit less hard, and particularly in the social media space, and other places, where they are less capital intensive, there has been a lot of activity.

That, I think, just sets the stage to go to an issue that this group addressed last year. I guess, as Greg had mentioned.

Last year at this Forum, one of the recommendations that came out, the third ranked recommendation, was to provide a new Section 3(b)(2), Regulation A+, as it is being called, which I would have gone with, but I wanted to put this picture of the super hero on the front, "Super Reg A+."

[Laughter.]

MR. LEMPRES: I should say that in preparation for this discussion today, I reached out to not just our clients, but some lawyers around Silicon Valley, some of the accounting firms, to find out what is going on? What people are excited about? What they are talking about in this area?

One of the things that comes across clearly is that people are aware of Reg A+. It's been six months. There has not been much activity under Reg A+. The expectations people have are somewhat dampened. I think their expectation is that it's a tool out there. Let's see how it plays out over time.

For those of you who are not as familiar, the changes that are coming, it's a new provision, not technically an amendment of Reg A. It raises the limits available from $5 million a year to $50 million a year, so it's a substantial increase, which should make a difference.

The reason Congress chose to do that, and the President signed it into law, is that Regulation A had not been used at that $5 million cap which seemed to be presenting a real challenge to its use. I think it was used twice, as I understand it, in the year 2010, and an average of about six or seven times a year over the last ten years or so.

It was not heavily used. The hope is that by bumping it up from $5 million to $50 million, that will be

enough to get it going.

There are some other real benefits to using Reg A. Things like there are no transfer restrictions. You can issue test the water communications, which could be very important obviously, and I think it is becoming more common as the JOBS Act encouraged that in some other areas.

The challenges amongst Reg A that remain, that I think are part of the reason the enthusiasm is a little bit dampened on anticipated use, among other things, is that it is not exempt from state blue sky laws generally, unless it is offered on a national securities exchange, which I think is unlikely, or sold to a qualified purchaser.

MS. CROSS: I'd like to ask a question on that, on the national securities exchange question. I did hear that raised in various meetings that I've been in.

At least one theoretical possibility is you could do a Reg A offering that ends up listed when you're done.

MR. LEMPRES: I think that is right.

MS. CROSS: I wondered whether anyone has been talking about that. Obviously, a Reg A benefit is you end up not having to be a reporting company and you clearly would have to be a reporting company if you were listed.

I'm not advocating this idea, but for example, if you're not registering and you don't have Section 11 liability, if you were using Reg A, you might do that for

that reason.

It is an interesting question whether there is any talk out there about that approach.

MR. LEMPRES: I have to say, Meredith, that's the longest conversation I really had about it.

[Laughter.]

MR. LEMPRES: Everybody I talked to basically dismissed it almost out of hand as extremely unlikely. It may play out over time. We will see. No, people have said they don't see the real benefits to doing it. They don't see it likely to occur.

MR. YADLEY: Part of that makes sense because an advantage of Regulation A, theoretically, has been you can have a public offering but you don't have to be a reporting company, except for the period of time through that year under 15(d).

If you're going to be a reporting company, now you start looking at something that Mike is going to talk about in a little while, but one of the recommendations of last year's Forum was down the list, but that there ought to be perhaps a special exchange that is more than the over-the-counter market, but it's not really the New York Stock Exchange or NASDAQ.

That is something that you know, Meredith, the Advisory Committee is looking at as maybe at some point there

is a progression of not only capital raising from angels to VCs to public offerings, but maybe a marketplace or exchange for this to go through.

I'm sure Mike will touch on this.

MS. CROSS: An interesting point that has been raised. Some have said without preemption, it will be too complex to do these. Certainly, the staff doesn't take a position on preemption.

If that is the concern, one could address that by listing. It is an interesting possibility that I think perhaps people might explore more over time.

MR. LEMPRES: I agree with that. What is interesting about Reg A is in many ways, it is the fact, it is kind of caught between Reg D and emerging growth companies now.

I don't mean to be too down on this. I think it is a wonderful idea, a wonderful tool to have. Certainly what was in existence had not been used much. I think this will be used more, and again, we are six months into this. We will see how it plays out over time.

There are costs associated with putting together an offering circular that are fixed, and they are substantial. I think what that does is, if you are going through that process, often people get pushed to again either a Reg D offering, or I think now with some of the possibilities with

the emerging growth companies.

I do think a place where we are likely to see some activity with Reg A+ is companies who are in later stages and getting later stage rounds, getting ready to go public. It makes sense--they are already going through a lot of the offering circular and other requirements that are being built up, so they are already expending some of those resources, maybe a place that helps them along the way.

That is one of the tools the JOBS Act has put in place. Another tool is emerging growth companies, which has been getting a lot of attention. In fact, it has been brought to my attention with the little article in this morning's Wall Street Journal about them. It is being covered quite a bit.

The basic concept for those of you who are not familiar with it is smaller companies or emerging growth companies, again, as Greg mentioned, "small" is relative, but easier to go public, easier to stay public.

The transition into the requirements that apply to public companies, and to do that in a way that is consistent with the companies' growth.

The emerging growth companies are significant for a lot of reasons. It is very important that companies go public early for job creation. The statistics show that approximately 90 percent of a company's job growth occurs

after the company goes public.

It is a real inflection point in the life of a company. It is a real inflection point that leads to job creation and job growth.

Emerging growth companies are generally under $1 billion in annual revenue. They remain EGCs until five years after their IPO, or until they exceed $1 billion in revenue.

The concept again is they transition to full regulatory obligations for public companies, but it covers quite a bit of ground. Speaking broadly, you are facing scale down, or what I would call "relaxed" disclosure, and governance requirements, particularly as it relates to accounting obligations.

There are other real benefits, that you can have a non-public or confidential review by the SEC of your offering documents, and that is a very helpful thing.

Research reports are permitted. There is no quiet period.

What we are learning as we look at what is being adopted by companies who are looking at these, the choices they are making, they are being fairly sophisticated in which aspects and which pieces of emerging growth company characteristics they choose to adopt.

It goes to something Commissioner Walter mentioned, which she described as a "false choice" between reducing

burdens towards getting access to capital or towards access to capital and towards investor protection.

What we are finding is that there is a resistance amongst emerging growth companies to do things that cause them to be perceived, or to fear they are being perceived, as providing less in the way of investor protection, as being sort of a lesser company as they go public.

For example, things that are done relative to the audited financial statements that are permitted or relative to some of the accounting rules that apply.

What we are finding is most companies are choosing to just say no, we will accept full public treatment for those. We are not going to go ahead and try to take advantage of these streamlined, more relaxed transitionary rules.

They are doing that because they don't know how the market is going to react. We will find out an awful lot over the next year. We will see how the market is priced. Somebody is likely to try it.

Right now, the companies are very tentative about going in there, and they are not doing it.

There are other areas where companies are being very aggressive and are really happy to accept this IPO on-ramp concept, and it is in the areas, for example, the "Say-On-Pay" issues that come up.

I think companies tend to be more willing to accept a reduced regulatory burden and providing their CD&A disclosures and providing "say-on-pay" votes, things like that that are required.

The one thing we are learning, as companies look at these issues, is that there is, as I mentioned, a real sensitivity to what they are willing to do, and the sensitivity is not coming from what's legally required. It is more trying to anticipate what the market will say.

What I would like to leave people with here today is that these tools are out there. This meeting is six months into the new law. I think next year, when this group sits down, if it looks at this provision of this law again, we will know an awful lot more about what people have chosen to do.

The tools will be out there. The other sort of relevant regulations are likely to have been issued. We will just see how it plays out.

I do think this is something that is getting quite a lot of attention. It is something that will make a difference long term. We will know more in five years than we do today, and we will know more next year than we do today.

With that, I would just say thank you very much, appreciate the opportunity to chat with you.

MR. YADLEY: Thank you, Mike. I think we have a

couple of questions.

MS. CROSS: Yes, they seem to be directed at me.

[Laughter.]

MS. CROSS: One is when does the SEC plan to adopt a definition of "qualified purchaser?" What is the current thinking about the substance of the definition?

I would say, we don't have a current active rulemaking underway because of all the rulemakings we have with the deadlines we haven't met yet, but we understand that the "qualified purchaser" definition could be useful in a variety of places.

We will certain be taking a look at that. It may be the "qualified purchaser" should be a different term for different kinds of offerings, for example. There are a lot of different kinds of issues that could go into this.

I know, for example, there are a lot of people who think it would be fine to say that QIBs are qualified purchasers to sort of get rid of some underbrush, but then there is a lot more interest in levels below that, depending on the type of offering.

We don't have anything immediate to report about that.

The other one was because the JOBS Act was the result of congressional legislation, it is unclear that the SEC can change certain provisions. True. I don't think I

have legislative authority or the Commission does.

Can the SEC change the name "emerging growth company" to something else, as suggested by Floyd Norris of the New York Times? What can, and can't the SEC change without going to Congress?

In general, what we can do is provide definitions. We can flesh out the exemptions with the requirements as mandated, even if it's not a mandatory rulemaking, we can provide additional detail through rules, but you are right. We can't go changing the labels, for example, that Congress put on things.

I think you are correct in the limits on that.

MR. YADLEY: We have talked a lot about investor protection, and as Sara said, the Commissioners probably used that phrase more frequently than any others. Obviously, people will complain to the SEC.

Lots of times, it's easier to complain to somebody closer to home, especially somebody that you may know, not out in this Washington, so I think we are delighted today to have Bill Beatty from the other Washington to reflect a little bit on what the state regulators are thinking about and some of the investor concerns that are foremost on your minds.

MR. BEATTY: Thank you very much. In my Washington, we refer to this as the "other Washington." It's

a matter of perspective, I guess.

Before I get started, and I don't think I have heard one today, but I'd like to give a brief disclaimer. The remarks I am about to give are my own. They do not necessarily reflect the views of the Washington Securities Division or NASAA.

MS. CROSS: Gerry did give us all a disclaimer before we started.

MR. BEATTY: Okay. The introduction, I think, is really right on. My perspective on this is as a regulator sitting in Olympia, Washington who, usually my staff thankfully these days, receives any number of telephone calls, complaints, etc., regarding gee, I saw this. Gee, I invested in this particular thing, and I can't find the guy I gave my money to.

We also receive a fair number of communications from very small companies, usually very unsophisticated, who are seeking to access the capital markets in a very small way and wanting to know how to do that.

The remarks that I am going to give today about the JOBS Act are really focused kind of from that perspective.

I think one of the biggest concerns that local regulators have in terms of Rule 506, in particular, is really the detection of illegitimate offerings.

A very normal occurrence in my office is getting a

call from some investor, saying I invested in this perpetual motion machine company, or I've been asked to invest in this offering, is it real, is it legitimate?

We start to ask a few questions. We say where did you hear about it? We check our databases. If their answer was gee, I was pitched this on a cold call, or even more frequently these days, gee, I saw this on the Internet, and then they contacted me, or in the old days sometimes there were even newspaper ad's. Immediately our antenna went up, because we realize that for most exempt offerings, obviously, there was a requirement for no general solicitation.

The question becomes under the new regime, how are we to detect the legitimate from the illegitimate offerings?

I think we posited a couple of ideas. One would be a requirement that the Form D be filed before advertising, if you're going to be advertising. That would give us a place to check when we get some of those calls.

Also, we have suggested that some amendments to the Form D itself would be helpful, disclosure of control persons and beneficial owners. If there is a website for the issuer, listing that. Making the disclosure of the issuer size mandatory.

For pooled investment vehicles, which seems to be a continual issue for us to deal with on many levels, the

identification of the investment advisor for that pooled investment vehicle.

These are just some ideas. I think the real concern and the real area that state regulators are going to be facing is: how do we enforce this, how much resources do we devote to it?

The states are the agencies that enforce Rule 506 really. We are local. We get the calls. Often times, these are very small offerings. They are not going to rise to a level of Federal concern.

We are very concerned about what happens in this area.

Some of my fellow panelists have also discussed the issue about verification of accredited investors. I think most states would support the establishment of some non-exclusive safe harbors.

Our fear is without that, at least initially, disputes regarding whether there is appropriate verification end up in the courts or even worse, from our perspective, in front of some state level administrative law judge who doesn't really know anything about securities and may spend a lot of time adjudicating issues regarding shore line management permits or something like that.

I think without some degree of certainty, there is going to be a lot of turmoil at least initially. Perhaps as

one of my colleagues who has practiced for many, many years in this area said, the quickest way to not have this be successful is to not have the safe harbors. He would caution almost all of his clients not to do it.

As far as whether there should be self-verification or not, I think most states would say no self-verification. It has to require the filing of some type of documentation, whether that is with the issuer itself, or with some type of third party provider, which has been suggested. I think that certainly would be fine.

Meredith, I was excited to hear your mention of the bad actor disqualification. I think the states firmly believe that before we launch off on many of these JOBS Act provisions, we really need to have that in place.

Whatever it turns out to be, it may not be exactly what we think it should be, but whatever it turns out to be, it needs to be completed and in place before we move on with it.

Advertising guidance. This is an issue that I think state level administrators see a lot. We have long conversations with very well meaning and legitimate companies that are trying to access the capital markets for the first time about okay, you have gone through the registration process or you have secured your exemption, now you are going to go forward and make your offering.

What you need to understand is that what you say and how you say it to your potential investors is not the same thing that you say when you advertise your products.

I think some guidance in this area from the Commission would be very helpful, that we have seen it in other places. With admonitions on balanced presentation on the risks and rewards, I think those would go a long way.

Finally, in the 506 area, I agree with some of the other panelists that some clarification regarding what the permissible activities of the platforms might be in this area, what types of due diligence is going to be done, is it the same standard that broker-dealers are held to, etc., are going to be things that need to be fleshed out.

Crowdfunding, the issue here, I think, from a state level concern, is kind of a twofold thing. Huge numbers of unsophisticated investors, coupled with probably not too much regulatory oversight, who the SRO is, is certainly going to be a big issue. It certainly is tending towards FINRA, and that would be great.

I think initially there was a big concern there would be some new and perhaps less robust SRO, and that might have been a problem.

Disclosure requirements. One suggestion would be to have an interactive question and answer type disclosure process built off similar to what the SCOR form is. It could

be made interactive, something like tax preparation software. That might be a guide to help walk people through how to create disclosures. State offices have a lot of experience in helping these types of people create--not create-- at least, critique their disclosures.

The investor education piece is going to be big. How will the review be ensured, again, the disqualification.

Background checks is going to be kind of an interesting area, too. Specifically, a question of what checks need to be done, and then what is the intermediary supposed to do with this stuff, and how is it kept, how is it disseminated, etc?

From a state perspective, obviously, state notification is something we are interested in. How will states be made aware of these offerings? Is open access to the portals going to be sufficient? And while that might be sufficient, then questions arise, as the sites are updated, about the storing and archiving of old information.

We have heard concerns, at least people have expressed to me concerns about the impact of crowdfunding on future financing's, which we have talked about a little bit.

I will just share that when I was on a panel a couple of months ago in San Diego, I posed a question to a Silicon Valley attorney, and I said what happens if one of these people walks into your office and has done this crowd-

funding thing and has 500 shareholders, what do you do?

His answer was I cry.

[Laughter.]

MR. BEATTY: More specifically, my paralegal cries. It is going to create some issues, I think.

Quickly on Reg A, I realize we are kind of running out of time here, I just wanted to mention that as states are not preempted, we recognize that therefore we have a very big role to play here.

We have formed a work group and that work group is also coordinating with a group from the ABA to suggest possible rules, possible forms. NASA would like to eventually put these types of filings on its electronic filing system, which I have been told is coming and relatively soon. It is supposed to be scaleable, so we could do that as well.

Disclosure documents, key. We would recommend keeping a question and answer format, if you are trying to target unsophisticated folks, particularly at the lower end of the spectrum. The question and answer style disclosure document is a big help.

With that, I'll stop because, I think we are out of time.

MR. YADLEY: Thank you very much. I think we have time for a question. Meredith has an answer to one.

MS. CROSS: It won't feel like an answer. A number of people have asked what is taking so long for us to finalize the rule eliminating the ban on general solicitation? When are you going to eliminate the ban on general solicitation, and variations on that theme.

The answer is we put the rule proposal out, and we are looking through the comments and the comments are quite extensive and varied. We need to do our work of considering all the comments and coming up with a recommendation for the Commission.

We are working as quickly as we can. I don't have a date for you.

MR. YADLEY: We are indeed out of time for now. As Gerry said earlier, many of us are around throughout the day. Feel free to ask questions.

Thank you very much, Meredith, for co-chairing this panel. We get to leave. You get to stay. Thank you, colleagues. I will turn it back to Gerry for an administrative report.

MR. LAPORTE: Thank you to all the panelists for such a fantastic presentation. We are going to take a ten minute break now. I have 11:12. That will bring us to 11:22. We only scheduled ten minutes. I think we need ten minutes for people to do their break stuff.

We will be back and try to start just shortly

before 11:25.

[Brief recess.]

MR. LAPORTE: I think we are ready to reconvene, if people can take their seats.

As people take their seats, I'd like to share a little bit of the credit. I think I heard my name mentioned way too often from the Commissioners and other people.

I am the Chief of the Office of Small Business Policy, but we have a number of other people in the office who deserve as much, if not more credit, than I deserve for this event today, and the work that we do.

First of all, Tony Barone. Tony is a Special Counsel in the Office of Small Business Policy who is the one primarily responsible for organizing this Forum. Tony did a fantastic job this year once again, even though he was on paternity leave.

Just a couple of months ago, Tony and his wife, Carla, just had their second baby in 17 months. It has been challenging for him to balance the demands of new fatherhood and organize this Forum, which has turned out to be quite a success.

Secondly, Johanna Losert, who is also a Special Counsel in the Office of Small Business Policy. Johanna? I don't see her raising her hand. Maybe it is just my failing eyesight.

Johanna tried to fill Tony's shoes while Tony was on paternity leave and did a great job. She has continued to play a major role even after Tony returned. We thank her for her fine work on this Forum.

Karen Wiedemann. Is Karen here? Karen is down here in the front. She is now in her third year as an Attorney Fellow in the Office of Small Business Policy, and making a huge contribution to the work of our office, for which we are very grateful.

Is Zack Fallon here? Zack is standing in the back. Zack joined the Office of Small Business Policy in April as a Special Counsel from the SEC's Office of General Counsel. He's already making a major contribution to our office.

Meredith?

MS. CROSS: Thank you very much, Gerry, and thanks everyone for coming back for this great panel this afternoon.

I would also like to thank Lona Nallengara, the Deputy Director for Legal and Regulatory Policy, and Mauri Osheroff, who oversees the work of the Office of Small Business Policy as Associate Director in the Division, as well as Jennifer Zepralka, Lilly Brown, and Tamara Brightwell, my counsels who help me with everything, including preparing for the Forum today.

PANEL DISCUSSION: SMALL BUSINESS CAPITAL FORMATION ISSUES NOT ADDRESSED BY THE JOBS ACT

MS. CROSS: Our next panel is on small business capital formation issues not addressed by the JOBS Act.

I am joined for this discussion as co-moderator by Marty Dunn, who is a partner at O'Melveny & Myers.

Prior to joining O'Melveny, he spent 20 years in various positions here at the SEC, including Deputy Director and Acting Director of the Division of Corporation Finance.

Marty knows these topics better than anyone, and I'm so glad he can be with us today. I will note on a personal level that when I first joined the SEC staff in 1990 in the Chief Counsel's Office, Marty was the rising star in the office. He was the youngest person, as far as I know, that had ever been promoted to the office.

MR. DUNN: Long time ago.

MS. CROSS: He's still very youthful. He was perceived as, and I can attest to this, one of the smartest securities lawyers anybody had ever met, and intuitively good at it.

What was more important to me was he was nice to me. There were all kinds of people who would use buzz words that I had no idea what they meant. Manny Strauss with his springing 15(b), and I would look at him.

MR. DUNN: That haunted you for months.

MS. CROSS: It haunted me, and Marty told me what it was. Michael Hyatt and the way he would explain 144. I

thought I understood 144. He made me feel like I could never grasp it again. Marty took me under his wing and made sure I felt welcomed and not stupid. For that, I am internally grateful, Marty, and I am very happy to be up here with you today.

MR. DUNN: That is very nice of you to say and horribly embarrassing in front of all these people. It was a good time, and there are a lot of crazy phrases.

I will tell my favorite Michael Hyatt story very quickly, which is I couldn't figure out 144 when I got to the Office of Chief Counsel. I went to Michael, and he'd answer it. We used to answer the calls on our dial phone back then.

They would change one fact, and I would be like I don't know, and I'd have to go ask Michael again for the answer.

Finally, I said Michael, I don't get this, why do I not get 144? He said because to understand 144, you have to understand the Securities Act. Oh, okay, I get it. I don't. I stopped asking him questions after that and just started making it up.

MS. CROSS: We did that for the rest of our career.

MR. DUNN: It has been running for 21 years.

[Laughter.]

MR. DUNN: It will catch up to us but not yet. That is that.

Thank you. It is great to be here. It is always good to be back in this building. I let go years and years ago when we started doing roundtables. Lilly and I would do some of the work on it, and everybody would join in as time went on, and there is so much that goes into it that you don't appreciate, from getting everybody lined up.

It's just ridiculous the amount of detail, and the fact that you don't notice it, tells you how good a job they do. It's worth taking the time to mention, because they work hard and it's great.

On to our panel today. We are very lucky to have these folks with us today to talk about what the JOBS Act didn't do, which to me for small business is as important as anything else.

To me the JOBS Act hit on IPOs great. It hit on general solicitation, which is going to change the world, we realize, but the nuances of what impacts small businesses is still there. It's not touched by the JOBS Act. We need to get into that.

I am going to introduce our folks in alphabetical order, just to confuse things, because that is not how they are speaking.

Professor Robert Bartlett from UC Berkeley. His focus is on alternative markets, how they develop, how the law works with that, perfect expert to have on alternative

markets. We are thrilled. Thank you.

John Borer, III, who because we are in D.C. I'm going to refer to as "JB III" for the rest of the day. Senior Managing Director and head of Investment Banking at The Benchmark Company LLC.

You have been at this longer than we have up here. John is going to talk about--JB III is going to talk about alternative hats to IPOs and capital formation.

Last, but certainly not least, is Ann Yvonne Walker from Wilson Sonsini Goodrich & Rosati. When you talk about small business and ABA capital formation work and all the effort on this, Ann is always there and has been there forever, and truly knows this stuff inside out and can talk about it forever, but we are going to limit her to 20 minutes today.

Ann will go last, and we will talk about a topic I know near and dear to Meredith's heart which is modernization and simplification of SK, which I think is a big point.

I will say one last thing on the introductory part, which is my focus on this is truly--I started writing small business rules in 1991. I have been at this the whole time. It never ceases to amaze me that the discussion is exactly the same every time.

What are the issues? They are basic. How do you find people, how do you deal with the SEC and states, and how

do you provide liquidity. There you go, let's just wrap that up and be out of here, right?

The discussion about who's a finder, who is a broker, coordination between the states and the SEC, coordination among exemptions, bad actor provisions, all of that is the same discussion.

It moves in fits and starts. I think our panel today, because we are outside of the JOBS Act, fits right into this. This is where the fits and starts happen.

I think the push to actually bridge some of these issues, given the ambiguity of the Internet and the alternative markets and the ability to meet people in many, many more ways now, it has to be dealt with.

I will give my specific example that I have been working with on with some folks for the last six months or a year.

That was a way to use the Internet to find small investors to do an offering that some folks would call "crowd-funding," call it whatever you wish. Not accredited investors. How do you go after them?

The change to 506 is not going to change this. We took the Reg A path, believe it or not. Somebody besides Stan did a Reg A. Worked very well. Deal sold out. All that worked.

At the same time, dealing with the staff's review,

which is great, the state review, which had a lead coordinating state and all that stuff.

I was listening to the discussion before about the states looking at these things and saying, if we're going to do general solicitation, we need to know these are legitimate people. We need bad actor provisions.

Isn't that what Reg A is? You have SEC review. You have financials. You have everybody putting them out there. There is a bad actor provision in Reg A.

Why is there some notion that a deal that is being reviewed at the SEC, at the state level also needs to be reviewed? Can we not trust it or something? I can't figure out why one of the pushes here has not been to coordinate Reg A.

We have Section 28 authority -- the SEC has Section 28 authority if they want to go beyond $5 million.

If we are talking about what the JOBS Act didn't do, the opportunity to use Reg A successfully instead of saying isn't Reg A cute, and nobody uses it, I think it is something that is lost all the time, and I think it is something we should talk about.

It is not for today's panel because we are talking about other things. I really want somehow to instill a conversation between the states and the SEC and the people who do this to figure out a way that if everything we are

looking for, for general solicitation is already in Reg A, why aren't we trying to find a way to make that better. That is my rant.

MS. WALKER: Marty, if I might, I would point out that one of the recommendations from last year's Forum was Regulation A should preempt state securities regulation. I trust you would agree with that.

MR. DUNN: Preemption, it brings so much up at the state level and hurts the coordination part. I understand completely why.

I also understand why at the state they see so often the enforcement side of small business capital formation, that that becomes your focus in a way. I totally respect that because they are protecting investors and doing what they are supposed to do.

Instead of preemption, you have SCOR, you have coordination among the states, why isn't there some coordination that if the SEC reviewed it, that's okay with us.

Sure, we will look at the broker-dealer stuff. Sure, we will go through and make sure we know who the people are, that they haven't been to prison in the last week or two.

Why can't we find some way to better coordinate that? Now that I have finished my rant, I will turn it over

to you.

MS. CROSS: I think the states would say they are in the business of the merit review with respect to whether or not the offering is appropriate for the citizens in their state, as opposed to whether or not the disclosure is appropriate.

I think for the Division, that would be the point they would make.

MR. DUNN: It's not the 20s any more.

MS. CROSS: We don't take a position, as you know, on the staff about whether or not there should be preemption. There has historically always been state involvement in Reg A offerings.

With regard to Reg A+ and how that all plays out, it will be an interesting rulemaking, and I'm sure we will get lots of comments on the topic.

With that, I am going to do a quick little introduction before turning it back over to Marty and the panel.

I wanted to mention a few thoughts about what could be coming after the JOBS Act as it relates to small business capital formation. I think it is safe to assume there will be some kind of private offering reform in the future.

On the last panel, we heard there are aspects of the JOBS Act and there are also aspects of the Dodd-Frank

Act, for example, the change to the "accredited investor" definition to remove the house and requirement that we study the "accredited investor" definition every four years, and we not change the net worth test for a few years, and GAO study the "accredited investor" definition.

Obviously, there is going to be a lot of action around the "accredited investor" definition.

There is a requirement that we do the bad actor disqualification. There is the general solicitation change.

All of those things point to whichever rulemaking you think about, that private offerings are going to be different in the future. They are going to be regulated in a different way. They are going to have a different impact on the capital formation system.

I think that will be very important to get your input as we go along, and it is something that will pose real challenges for everybody.

The definition of "accredited investor" is pretty darn stale. When we talk about trying to change it, we get a lot of people who are quite concerned about the impact on capital formation.

When we don't talk about changing it, we get a lot of concern from people who think it doesn't actually label it as those who don't need the protection of securities laws the right group any longer.

That is going to be a difficult rulemaking process going forward. The Chairman talked about that, and that is quite a serious project going forward.

I did have high hopes when I joined the agency for a project, we were calling "Offering Reform 2.0." We were going to review the public offering reforms that were adopted a few years ago. We were trying to sound modern with the whole "2.0" thing.

We would see if those reforms could be adapted for smaller companies in a way consistent with investor protection. For example, maybe we could let the smaller companies have more of a "file and go" immediate effectiveness, or greater use of free writing prospectuses.

A goal of that project would be to make the registered markets a viable alternative, an attractive alternative, to the private markets.

Obviously, we had to move that project to the back burner similar to my core disclosure project, which likewise has not made much progress, in light of the Dodd-Frank Act and JOBS Act and everything else that has happened. We have not had the bandwidth to do it right now.

I continue to think there is some very good reforms that happened in the offering reform project that could be quite useful to small companies, and particularly as the private offering route becomes more and more attractive, I

think it is important that we make a public offering route attractive as well, and things we can do that are consistent with investor protection in that realm will be important.

On the same kind of lines, you may have noticed in our reviews of the smaller companies, we have been particularly focusing on making sure we are looking at materiality the right way, and we are allowing our staff significant judgment in their reviews, so we are not nitpicking over things that are not important with the smaller companies.

We are trying very hard to calibrate the reviews correctly, and there has been a big change in our reviews of the smaller companies over the last couple of years as we have worked to do that.

That frees up time to spend more time on the larger cap companies, and it also keeps us out of the weeds where it is unnecessary.

I don't know if anyone has noticed those changes, but that has been quite purposeful, and hopefully that has made things, at least a little easier, for the smaller companies.

I guess those are the things I would note as things that will continue to go forward.

One other thing I did want to mention that was mentioned on the earlier panel and I think leads into this

panel well is what is going to be the impact in the future of the changes to the thresholds in 12(g). Up to 2,000 holders of record, who knows how many that is in DTC?

You can generally solicit to get them, assuming there are not more than 500 non-accredited, is it just going to become optional to become a public company. Are people going to decide, you know I really don't need that whole registered offering, public reporting route, and instead, I'm going to go this whole other route? And what can we do to make the registered markets a viable alternative, and how does all that relate to capital formation and investor protection?

There is my rant.

MR. DUNN: Professor Bartlett is going to give us a good bit of detail on that. He's going to give you the smart answer. I will give you my usual bumpkin answer, which is on the private market side of things. You see sometimes there is a big discussion, and then all of a sudden, you blink, and it is the way it is.

I remember a couple of years ago when I started reading about alternative markets for pre-IPO companies, my first response was how do you do that? How is that working? Why?

You look at it and you see the way these markets have developed with the information required and

accreditation and how things go along, and you see the notion of yeah, I see how that works. The SEC is probably never going to say oh, yeah, absolutely, "vaya con Dios," but you see how it has evolved.

Your point is a good one. It's going to be an interesting question for a regulator to figure out how to deal with we're regulating the stuffing out of exchanges, and once you reach a point where a competitive amount of shares are being traded non-exchange, how do you make a good analysis of the costs versus benefits of the regulation, and which direction do you head and what do you do?

It's a hard question, and I am glad I'm in private practice and don't have to answer it any more.

With that, we're going to turn it over. John is going to start with alternative paths to IPOs. I promised each of these nice folks given all their travels that they had 20 minutes each, and I believe we are right on time to do that.

Do you want to get us rolling?

MR. BORER: Marty, thank you very much. Since I don't have a countdown clock, be sure to give me the hook when I need it.

There is the title of my presentation. This is me. I am head of Investment Banking at The Benchmark Company in New York. Prior to June, I was 21 years at another firm,

Rodman and Renshaw, in the same position. I have been doing this longer than I wanted. Here I am, so you will probably get some good perspective from me.

A little bit of background. First of all, thank you for asking me to participate. I'm coming at this from the perspective of investment banking, not legal, not accounting, not regulatory. I studied as a lawyer, but in deference to all the lawyers here, thank goodness, I chose a different path. I've had a lot of fun doing it.

What I'm saying today are my own views. As with Greg who moderated this morning, I sit on the Advisory Committee at the SEC on Small and Emerging Companies. I have had a fair amount of indoctrination on a number of these subjects, which has been quite helpful in leading me to this point.

Background. The market for a traditional IPO in my view is broken. You can see that in the numbers which have been pretty widely studied and published. I'm not sure what has caused all that, but I have certain views as do others.

After-market performance, the number of transactions that are filed, S-1s filed and not completed, those types of things.

The dynamics, and I'll walk through them quickly here, again. Few of these dynamics in my view--I am open to change even at this advanced stage--and understanding, are

going to be changed by the provisions of the JOBS Act. Certain will on the margin. I think there will be easier paths, more convenient paths than otherwise, but some of the biggest problems here aren't going away.

The first of which, and we discussed this in a committee at the SEC, fewer sponsoring firms at the smaller end of the market. Consolidations. Shrinkage.

Margin compression caused by you name it, spreads, decimalization, restrictions around the way IPOs can be marketed, the participants and the firms can be paid, communication, etc. The ecosystem at the small end of the market for IPOs, meaning IPOs under $50 million in the last 20 years, has been decimated.

The Montgomery securities, the Hambrecht & Quist, the Robertson Stephens, the Alex Browns, not to mention the Advests, all the firms around the country just aren't around any more. They don't do it.

Execution risk has become bigger. It was always complicated to time the market, figure out who could best do your deal and all these other kinds of things, but the amount of information, due diligence, and these types of things, all necessary for investor protection, has really stressed the companies, and they have other choices, including just selling themselves to somebody who wants their product or technology and can get rid of all the people or offshore.

The cost of the IPO process, the capital and the costs, because of the aforementioned execution risk and what has to be done, have gone up dramatically over the last 10 to 15 years.

IPOs are sold in a condensed two week period under a prospectus with limited additional marketing information available, face-to-face marketing.

Pricing dynamics are problematic. Most of the transactions that have been done in the last two years actually were able to go to market and complete IPOs, which was a fraction of what was filed, priced below the mid-point of the ranges, and in many cases, traded down, which is the last point, mixed after market performance.

Because of these various things over the years, and there have been different ways to get public over time, self-registration, go place a registered offering yourself. The executives of a firm go out and place the stock. I haven't seen one of those in a few years, but I have seen it in my career.

Merger transactions, either into smaller non-shell companies or in many cases into shell entities that were already reporting companies, would allow a company to become public. There have been hundreds of these done over the last decade.

There is good and bad, and I'll walk through those

really quickly. They have been used as an alternative to an IPO. There is a method to where I am going here, because I'm going to get to something that's a little bit different.

The problem with the reverse mergers, and there is a stigma that has been attached to these over the years, and more so in the last two to three years, because many foreign companies, principally Chinese companies, came public through reverse mergers, issues of lack of transparency, were they ever fully intending to be compliant with the true needs of a public company in the United States, etc., have come back and had negative repercussions.

When you do a reverse merger, you are not likely to get broad institutional sponsorship going in like you would from an IPO that's fully marketed to a mix of institutional and retail investors.

Lack of transparency I just talked about. The stigma that is carried forward there and now, which has even been codified in the exchange listing rules being changed to prohibit listing within a certain period of time, subject to a few exceptions, of reverse merger companies, and that is the last point I have here.

What has happened is the new rules on the listing have toughened what was already a tough and in some cases stigmatizing process, but which over the years, and my friend, David Feldman, who I think is here today, has written

a book on these things. There have been many, many very successful reverse mergers over the years and the companies are strong performers and big cap companies in the stock market today.

Over the last four to five years in the stock market and securities market generally, there has been a strong move towards marketing of transactions for public companies on a select basis, a private basis, private placements.

If historically, going back 15/20 years ago, a public company wanted to raise follow-on capital, they would file a prospectus. They would hire an underwriter. They would announce a transaction. They would do an one week road show. Remember, the company is already public so people know who they are. They would do their offering.

Back then, people didn't do private placements. Insurance companies did debt and things like that, but not the public equities.

In the meantime, going back seven, eight, nine years ago, some of the less liquid names, because the smaller underwriters went away, as I was talking about the ecosystem changing, people started doing PIPEs, private investment in public equity offerings.

Subsequent registration, less liquid, Level 2 securities initially, but will be registered and become fully

tradeable mark-to-market securities.

Over the years, companies that were qualified were starting to use shelf registrations, S-3. The rules changed a few years ago, thankfully, which broadened the use and availability of S-3 to a far larger range of companies, and investors became used to being shown transactions that were not fully marketed public offerings, who were used to buying securities off the shelf registration statement.

Today, the use of a fully marketed public offering announced ahead of time, and with a conventional road show, not the overnight deals which have become very popular lately, have become the way to go.

What is referred to today as a registered direct or CMPO, confidentially marketed public offering, is public really in technical terms only because the transactions are announced at 4:15, the underwriting agreement is signed at 2:00 in the morning, and the pricing is announced at 8:30 the next morning.

That works for the Exchange, and it is qualified as a public offering for purposes of establishing discounts to market and the Exchange rules, but it is public in my view, my personal view, not a legal view, in name only.

What happened at the same time with respect to some of those things, the reverse mergers that were being done for companies that weren't really ready for prime time, public

offering/IPO wise, started to get a little bit of attention.

I mention one here. There was a company, Cougar Biotechnology, follow-on. There was another company, Puma Biotechnology. Puma is still public.

Cougar, I'll use as an example here in a second, came around with stellar investors, institutional investors, the Boston, San Francisco and New York accounts, who bought into this alternative method of legitimately coming public through a reverse merger.

What I see is as an alternative to an IPO, for the company that doesn't just want to sell out to big brother and go to the beach, a path to becoming public using a confidentially marketed IPO, or what I am calling a CMIPO.

Historical context. Form 10 merger path to public markets gained attention in life sciences. The comment was made on the earlier panel about life science companies have a whole range of problems of their own. It may be that regulatory is the first, but everyone I talked to has problems with how do they get the capital they need to fund what they are doing in the clinic.

There was a company called Cougar Biotechnology that came public in a Form 10 merger. They merged into a Form 10 shell. A Form 10 shell is a shell that has been filed, becomes effective after 60 days, has no prior operations, and it is just a publicly reporting shell

company, typically to be used in a transaction of this type.

In that transaction, strong institutional investor sponsorship, subsequent work, got public, registered the securities, got onto the NASDAQ, $1 billion sales in May 2009 to Johnson & Johnson.

Quick turn and a very high return for the initial investors, and a nice ride for those who came along when the company was publicly traded.

Most of the initial Form 10 transactions were executed as reverse mergers into Form 10 shells. Technically, Form 10 mergers, Cougar, Radius and Puma, and Puma was done by the same management team that did Cougar after their non-compete ran out.

New rules which toughened the listing standards changed the landscape a little bit here, because instead of being able to do your reverse merger, having all the qualifications you need, including number of shares, assets, and those types of things, the Exchanges require you to season for a year or have a $40 million IPO or underwritten public offering -- it's not technically an IPO -- before you can list. That limits the follow on liquidity for a lot of these companies.

As a result, what has been done, and we have participated in several of these, is just a direct registration alternative. Forget merger. Forget reverse

merger. Form 10 shells, just a Form 10 shell. What it is worth these days is probably not that much, but it is a quick path to becoming public with the snap of a finger.

Coronado Biosciences, again, another life sciences company, but this is an area where the IPO market has pretty much been decimated, did it this way.

They did a capital raise. They filed their Form 10. They filed an S-1. The total process, private financing to public trading, 139 days. They had their money before they started the process. There was no risk of spending $1 to $2 million and then finding out the IPO window had shut on them.

Today's trading on the Bulletin Board, before the up listing to NASDAQ, 21 days. Exchange seasoning does not apply to this, because there was not a reverse merger.

The CMIPO is a modest revision to the Form 10 self registration, it just saves time. After closing the financing, and this can be done in stages -- you have some of these companies that are well-backed.

They have been backed for two to four rounds of venture capital by big firms, but when it gets to the point where they need access to the public market, a lot of them are being shut out.

We advise companies on this all the time.

An alternative has come about that is the latest

being used, and I will use a couple more examples here in a second. Instead of filing a Form 10, doing a financing, filing an S-1, which will be reviewed, and then when the S-1 is effective, filing a Form 8-A to become subject to the full reporting requirements, it registers the company under the 1934 Act.

Ova Science, which is another one of these. They did a financing earlier this year. They have been a venture backed company, a very nice company, good management team. They entered the public market via self-registration.

I use this as an example, because in the private deals that were right before or in anticipation of bringing them public through the filing with the SEC, the company raised venture capital or private equity capital in anticipation of going public with some of the big Boston mutual funds and other well-known investors. And then they did a retail private placement with three or four firms, New York firms, that gave them the requisite number of round lot holders that they would need in order to go to NASDAQ and say not only do I have enough capital, I've been in business long enough. I have my audits.

I have a full Board with independent committees, etc., but I have 500 shareholders, which is an issue with respect to some of these transactions when they have had limited institutional investment, and in fact, may play, and

I'm not sure exactly how, with the crowdfunding ability with respect to how some of these things get done.

I'm not sure exactly how it is going to work. I've had conversations with a couple of practitioners. There are issues of what you can do either before or after you do a crowdfunding deal.

In fact, this company, the last round they did, the institutional and retail round they did, had $5.50 a share earlier this year, the stock started trading on Monday at $7.50 and closed yesterday at $8.00.

It wasn't a huge valuation that they came out at, but in many, many of these life sciences transactions, and as we have seen with Facebook and others, the ability to price these deals effectively, you almost need to have a crystal ball, and even with that, it's kind of cloudy.

Up front, it is rather limited liquidity, probably very limited until you get onto the NASDAQ and start getting some research coverage, the pricing is not going to be as volatile and unpredictable.

Again, these are life sciences companies. You can do it with other companies. These were companies that raised $20, $30, $50 million, $54 million in the case of Puma that they raised before they did their filing.

The CMIPO turns the IPO process upside down. It allows a company to take an alternative path, still raise

significant capital before incurring the risk of spending the money on going public, and the time line can be substantially less than what it may be to do a full on IPO.

Challenges and solutions. You can read the slides on the Internet, so I will go quickly.

Execution risk and costs, completely turned upside down. Up front funding, back end costs. Yes, you have to spend money to go raise money. You have to pay an agent to raise the capital for you, etc.

Compressed marketing time line, pricing dynamics. I just went through that.

Challenges. It's not for everybody. If you can get big underwriters to go do your IPO for you, go do it. The statistics are 2,000 IPOs a year 15 years ago. We will see what 2012 is. It is going to be a small fraction of that, probably less than 20 percent.

Today, you come to me and ask me if you can do an IPO, I'll talk you out of it.

The last piece is just the Exchange seasoning rules, which anybody can look up on the Internet. They have been changed within the last 12 months, pretty much limit anybody from doing an IPO and then getting onto an Exchange within a 12 month period.

MR. DUNN: Thank you. The changes to the Exchange rules, given all the reverse merger issues, particularly with

non-U.S. companies, that was coming. That was necessary, don't you think?

MR. BORER: Yes, I think the politics were such that they weren't going to say we're only going to do this for Chinese companies, because then you are cutting too fine.

MR. DUNN: On U.S.

MR. BORER: I know what that means. The reverse mergers needed to be policed. What I was hopeful of, that it would be more of a merit look at these things. And part of the point of my presentation is, if the difference between having to comply with the seasoning rules is, instead of merging into just a Form 10 shell that has nothing in it and no real legal significance, just doing your deal and then filing a Form 10 three days later. I don't know if that path to becoming public and not being subject to the seasoning rules changes that much.

Going into a shell that has people who are problematic with promotional backgrounds, uncertain reps and warranties on how many shares are really outstanding, are there derivative securities I don't know about, are there liabilities I don't know about, etc., that is a very different thing than what I think the Form 10 in the pure sense is. They threw the Form 10 in there, just like every other shell.

MR. DUNN: Thanks, John. Now you have raised

money. The people who have it want to do something with it.

Professor Bartlett is going to walk us through that.

MR. BARTLETT: Thanks so much. My presentation is going to pick up on something that Meredith and Marty mentioned, which is one of the key aspects of the JOBS Act is that it fundamentally changes, I think, this division between what we think of as a public company and a private company.

I think I will start off by just conceptualizing this distinction between a public and a private company. I think we might have a conventional view that we view a public company as one that has a lot of shareholders, a lot of investors, and a private company does not.

For instance, on the private company side of the spectrum, a company like Bechtel, owned largely by the Bechtel family, but also Toys-R-Us would be this as well. They were taken private by a consortium of private equity investors, so they have a fairly small group of investors.

On the other side of the spectrum, we have companies like Google and General Motors that are publicly traded, have thousands of beneficial owners. They clearly would seem to be public in some sense.

Of course, this is a spectrum. There is a whole variety of different ownership structures that can lie in between.

Twitter, for instance. Twitter is kind of private. It's a venture-backed company, but because of the emergence of these alternative trading venues, such as SecondMarket marketing shares, there is a lot of non-related third party shareholders in Twitter. Is it public or is it private?

Proxim Wireless is an OTC company. It also sort of seems public because it has shareholders, but maybe less public than General Motors, because it has a smaller shareholder base.

Zoom is also a similar type of company, a smaller reporting company under the rules, disclosure rules, which actually gets to the legal interpretation of what is a public and private company, which then takes us to Section 12.

Basically, we have Section 12, which tries to draw some sort of division between what is a public and private company. It's a spectrum, as we talked about.

The rule was historically if it's 500 shareholders and $10 million in assets, we will call it public. If it's not, it's going to be a private company.

The consequence is, of course, that you have to disclose. You are subject to the periodic disclosure requirements when you are a Section 12 reporting company.

We have some scaled disclosure in this regard as well. You have companies like Google and GM that are sort of subject to the full slate of reporting obligations. However,

a company like Zoom, because it is a smaller reporting company, gets a slightly scaled reduced burden of their periodic reports.

What about these other companies that don't fall onto the Section 12 public side? There is no disclosure requirements at all, at least not under the Federal regime.

It is this aspect of the JOBS Act that I want to focus on because the amendments in Titles V and VI to the JOBS Act basically increase this threshold from 500 to effectively 2,000 shareholders of record, which creates a big space in this private domain of trading.

The question that I think the JOBS Act raises, which it didn't address, is--is this okay? Should we require some form of disclosure, perhaps in this new space, or are we okay with the result of the JOBS Act, which is there is no mandatory Federal disclosure?

Why this might seem like an important question to ask is because the reason we mandate disclosure in the first place is because of the ownership structure and the assumptions that we generally have regarding the relationship between owners and the information they need to price assets.

For instance, when you have a company like Bechtel, we don't need mandatory disclosure because the Bechtel family presumably can get whatever information they need in order to invest capital, simply by demanding it of the company and

they will produce it.

However, if you're an investor in Google or General Motors, there is a large number of collective action problems that would suggest this could be difficult for any individual investor to privately negotiate for information disclosure.

For that reason, that's why we have mandatory Federal disclosure.

The question is when you have much more publicly traded companies in this private non-Section 12 space, are we concerned about these collective action problems, and I think there are reasons to be so. So that's the question, how can we resolve that potential issue?

The basic outline of what I'm going to talk about is I just want to do a quick overview of why it is the case that companies in this private space, and I will give Proxim Wireless as an example, but same with Twitter, any of the SecondMarket companies that trade, why is it they are immune from the periodic disclosure requirements?

I am going to highlight two problems with this state of affairs for both investors as well as issuers, and then I'm going to just highlight a couple of ideas I have on what the Commission can actually do to address these problems.

First, why is it that the companies can be immune from Federal mandatory disclosure obligations? Just to give

you an example of what these types of companies look like, OTC markets has become a very large trading venue for many private companies that are not subject to Section 12 reporting obligations.

You basically can enter in the ticker for one of the companies that trade in the OTC markets, let's just enter the ticker for Proxim Wireless. You do that and you basically get what looks like sort of a NASDAQ trading company. You have bid's and ask's. You have the most recent pricing on the trades.

Okay, I want to find out more, what mandatory disclosures are they providing, as if you were looking at a NASDAQ traded company.

I go to the financials website or the link. It says Proxim does not report. The reason it doesn't report is because it doesn't have to. It's not required to register under Section 12. It's not subject to Section 13(a) reporting obligations, but nonetheless, if you go to its trading volume, it looks very public in terms of the ownership structure and trading.

How does Proxim get into this situation? As I mentioned, the companies in this domain, which would include both OTC firms as well as companies trading in SharesPost and SecondMarket, because they stay beneath shareholder of record requirements, Section 12, and they don't issue any

securities under a 1933 Act registration statement, so there is no Section 15(d) reporting obligations or a springing 15(d) reporting obligation, as the case may be.

The resales themselves by the investors are exempt from any registration reporting obligation by virtue of Section 4(1), 4(3) and 4(4), which that combination of exemptions also permits them to trade freely.

That is the Federal structure as to why there is no disclosure obligations.

However, one of the reasons why we might think whether it is appropriate to examine, if this is optimal, is these rules, which of course have been in place for many, many years, may or may not be optimal for the size of these markets today.

If you look at the OTC markets and you look at how many firms are in this no information domain, it's up to 3,124. I have presented this several times. Every time I look, it's a bigger number. This is a greatly expanding marketplace. Most of these are U.S. companies.

Also, you have firms like SecondMarket, SharesPost, which are growing as well. SecondMarket published they had $1 billion in stock transactions since 2008, much of that has been in the most recent past, but they also are clearly trying to take advantage of the JOBS Act, as well.

For instance, they just launched a community bank

pilot program, since so many community banks now are going to be de-registering by virtue of Title VI of the JOBS Act.

What are some problems with this state of affairs? One of the main problems I want to highlight is the fact that the theoretical reason saying why we might worry, maybe there are collective action problems, suggesting there is the need for information, that is a real concern, and it has led to disclosure obligations in other domains.

This has created a set of state and Federal disclosure obligations that are uncoordinated and extremely costly for issuers without providing any clear benefit to investors.

Part of what I'm arguing is we need to clean up this current messy state of haphazard state and Federal broker-dealer disclosure obligations.

What are these haphazard disclosures? One comes from the broker-dealer regulations that we impose, which is under Rule 15(c)2-(11), which says if you're a broker-dealer and you want to initiate a quotation on the over-the-counter marketplace, then you need in your possession a set of 16 items of information given to you by the issuer.

In some sense, this is an information disclosure requirement. However, the way that it works is, it doesn't really produce much information into the marketplace that might actually help in terms of asset pricing.

For instance, it only governs the initiation of a quotation. The information can quickly become dated after the initiation has commenced. It doesn't apply to new secondary markets at all, because there are no brokers initiating quotations on these marketplaces.

It also isn't in the public domain. There is no public repository of this information at all.

Lastly and maybe more importantly, the scope of the rule is significantly diminished by a whole host of exemptions that actually allow the Pink Sheets to effectively operate fairly well from an operational perspective.

For instance, there's an exemption if it's an unsolicited customer order, any broker could post that order. There is also something called the "piggy back exemption," which says if you're a broker-dealer and you want to start initiating a quotation, you want to start making a market in OTC securities, if there is already a broker-dealer who has been publishing quotations continuously for 30 days with no more than a short lapse of publishing bid's and ask's, you can go ahead and piggy back on that broker-dealer, having already starting to quote indications of interest and bids, even if you never get that 15(c)2-(11) information.

For that reason, it has often been criticized. This rule is one of the more heavily criticized rules in my humble opinion.

Even the CEO of OTC Markets says--he calls this a "rule of darkness," as opposed to one of disclosure.

That is the Federal regime, it applies to a broker-dealer.

What about the state disclosure requirements? I think there are also concerns that it is fairly uncoordinated and messy, making it very costly for issuers.

Just because you are exempt from the Federal disclosure requirements, it doesn't mean that you are exempt from the state requirements. The reason is because there is no Federal preemption. Section 18 covers only covered securities.

If you resell Twitter on SharesPost, that Twitter security is not a covered security, because it's not listed on a major stock exchange and while some resales under 4(1) and 4(3) are exempt, it's only if the company, Twitter in this case, is subject to filing Section 13 or 15 reports, which it is not.

It is not a covered security. The upshot is most of these transactions are subject to state securities regulations, state registration requirements, which often come with the remedy of rescission as well. It's pretty strong medicine, if you get it wrong.

What are the exemptions that you would try to use? The OTC marketplace has had to deal with this. There is a

way to get around it so you have unsolicited broker exemptions in most states.

There is also exemptions in most states, but not all, for isolated non-issuer transactions, so if it's a marketplace that's not trading very frequently, you might be able to land this form of exemption.

There is also something called a "manual exemption," which is based on an information disclosure requirement that basically says as long as a company is providing to a listed publisher of manual information, such as S&P, they would be providing some of their basic financial information on a periodic basis, then you are exempt. The problem is that does not apply to all states.

Why is this potentially problematic? Because one, it's very uncoordinated. Not all states have the same exemptions. It's very different than say SCOR, where you have a fair amount of coordination that has occurred at the state level.

There is just not much coordination in the state resale registration requirements.

What is an isolated transaction? Does a manual exemption actually apply? It can be a real headache, and therefore costly for issuers.

There is also some concern that these exemptions don't make much sense, and we might start to see some of the

exemptions disappear. And this has happened actually in the context of the manual exemption, which actually first arose from the Uniform Securities Act in the 1950s. And there have been some states that have simply said, this is actually not an effective form of getting information into marketplaces, and they have repealed the manual exemptions. So we might see some restriction or contraction in the scope of these exemptions, making it even more complicated.

There is this concern that it doesn't seem as if issuers and traders necessarily are paying attention to these Blue Sky resale laws. This is from the Corporate Council in 2011 where they say companies with shares in SharesPost and Second-Market often ignore the Blue Sky stuff, they don't require the Council's opinion to address these matters.

I am happy to be corrected here, but in many conversations with attorneys involved in these matters, I have never had one tell me they give a state Blue Sky resale legal opinion. They all give Federal resale legal opinions, but not state Blue Sky legal opinions, which suggests there is the potential for just a real big mess given there is often a rescission right that comes with violating these resale registration requirements.

There is a second problem as well which just gets to lack of information in these markets. If you can bear with me, I'm going to make you reminisce your macroeconomics

class.

Let's just assume, for instance, that you have a downward sloping demand curve for one of these securities. This is probably not an outlandish claim.

You have more people willing to pay a cheap price for say Facebook stock on SecondMarket, and only a few people willing to pay a high price, a downward slope in demand curve.

One of the challenges is of course you have heterogenesis valuations of known potential buyers. None of this is a problem for markets, but what becomes somewhat of a problem in this domain is the quantity supplied in Second-Market or SharesPost tends to be restricted.

Therefore, what you end up having is a situation where you have restricted quantity, so therefore you are selling to those bidders who are at sort of the tail of the distribution, those optimists that sort of hide in that aspect of the valuation distribution.

As a result, you have a price which doesn't necessarily mean it's going to be a market clearing price if the quantity was much greater.

This is a problem any time you limit the quantity in this particular type of marketplace, but I think it is aggravated when you have large information asymmetries because what happens is the variance in the valuations

necessarily becomes larger meaning the density of the tail becomes broader as well, which means you might actually shape the demand such that there is actually even greater demand, you are sort of engaged in a situation where you are selling to the extreme optimists who want to sort of just gamble on black.

If that is the case, the price would be even further from the market clearing price.

There is a real risk, I think, in these marketplaces. As a general matter, the prices might be an inaccurate reflection of what value you should attach to these securities, and it could be even amplified in light of the information asymmetries given the nature of these markets.

Is there evidence that these markets systematically over-value shares? To get at that, I can give you a couple pieces of data.

What I did here is I looked at the published prices of SharesPost transactions on Bloomberg, and then I compared it to how the company priced its own securities under Section 409(a).

In California, they have to disclose this under something called 25-102-0 filings.

I basically said I'm going to look at the price that was paid on SharesPost and then I'm going to compare it

to the internal valuation by the company.

The red line below basically tells you the distance in time between the SharesPost price and the company's internal valuation.

As you can see, all of these numbers virtually are negative, meaning the company was clearly ignoring the Shares-Post price or looking at the SharesPost price and saying no, that's too expensive for what the value of this company's stock really is.

Obviously, companies have some incentives to diminish their valuation of their securities for compensation purposes.

What does the public market look like? This is the same comparison compared to those companies that went public after having trades on SharesPost. Some traded many times. Some traded only a few.

What you can see is some variation. Sometimes SharesPost was much cheaper than the IPO offering price. Sometimes it was much less.

Facebook, of course, is the sort of poster child here for maybe potential problems, given the fact it was trading around $50 per share prior to its IPO.

You do have to wonder how comfortable the bankers would be by simply ignoring that price when they priced their offering. Of course, they have such a large amount

sold in their offering that it would aggravate this problem. I talked about where you have a price in a market with constrained quantity which might actually be amplified by virtue of the fact that in that marketplace you are selling to the tail of the distribution, that is to those people who have the highest value on those securities.

What can the Commission do about this? My basic suggestion is that we need information in these marketplaces but on a scaled basis.

I think there are a couple of ways we can do that. One way, which I think is good, is simply to reform, as has been suggested many times in the past, Rule 15c2-11 disclosure requirements.

For instance, eliminate the piggy back exemption, making the information publicly available. I think that would go a long way towards improving on the status quo.

This might also help solve the uncoordinated state securities laws issues, but only to the extent you believe it might diminish the concerns that state securities regulators legitimately have, that these marketplaces don't have sufficient information for investors.

I think a better approach is actually to look at preemption. This gets to the suggestion made earlier which is I think it is really time for the SEC, if I may suggest, to look at the "qualified purchaser" definition and actually

permit preemption by allowing sales to qualified purchasers or to define "qualified purchasers" to permit preemption.

What I would do is I would suggest we take a page from the 144(a) book, and we say as long as you are selling to someone who has disclosure or access, and that would be the definition of "qualified purchaser," then preemption would occur.

This way, it would permit investors who can fend for themselves based on a metric that can be determined to participate in this marketplace. Those investors who might fall more into like retail investors would actually have to be provided with disclosures.

I recognize this could bias the market towards institutional investors and those who can fend for themselves, but I don't actually have a problem with that.

The second option is there, but I don't think it's as clean and easy as the first, which is the SEC, I think, does have the authority to create voluntary Section 13(a) reports that a company could file, which would then allow preemption.

Lastly, I think regardless of these issues, I do think that there are reasons to doubt the use of SharesPost and SecondMarket as a metric for fair value when it comes to 409 issues as well as for cheap stock issues when we are looking at companies going public.

Thank you.

MR. DUNN: First, those are great issues. Thank you. The other is I'm totally stealing your slides.

[Laughter.]

MR. DUNN: I talk about public/private all the time, and that's beautiful. I'm using that. If I take credit, you know I'm thinking about you.

[Laughter.]

MS. CROSS: That was extremely helpful to pointing out what I view as the long term problem here, for securities law geeks, it seems like 1964 will come again when Congress felt compelled to putting in 12(g), so companies that were traded actively in the OTC markets and there wasn't information available, they had to come register with us so information would be available.

Now we have between the active OTC markets that are not Exchanges and the 2,000 holder of record test, all the opportunity for that to come again.

I think to the extent that the marketplace builds in discipline to address that in advance through various means, I'm not sure what they are, it will help stave off the need to essentially go back.

If there do become very liquid markets through the OTC market with no information, bad things will eventually happen and people will raise their hands and say how did we

get here and what do we do?

I think it's hard to know when that will happen, but I have pretty significant concerns it will.

MR. DUNN: Now we are in the world of you actually have to do disclosure. Ann is going to talk about ways to fix that, Meredith.

MS. WALKER: That was a pretty hard act to follow. I don't have slides. Regulation S-K is not particularly a sexy topic, although I have heard it said that "S-K" stands for "sex kitten."

Also, this is a panel that is supposed to be about things outside of the JOBS Act. This is kind of in the JOBS Act and kind of not.

As you all may know, Section 108 of the JOBS Act -- maybe you don't recall--it is one of the lesser known sections--directed the SEC to do a comprehensive analysis of Regulation S-K with the view to determining how the requirements could be updated to modernize and simplify the registration process and to reduce the costs and burdens associated with these requirements for emerging growth companies.

There was a report due on this to Congress on October 2, but as we know, the staff of the SEC has been trying to meet a myriad of deadlines, and it's not surprising that one has slipped.

Nonetheless, this is an important project, I think. This is really down to brass tacks of what do I have to disclose. That's what Regulation S-K is all about.

Section 108 was the impetus for these comments. You will find in your packet that was distributed today when you came in a copy of a comment letter that I and two other practitioners from the Silicon Valley sent to the SEC, suggesting some areas where we thought some simplification and modernization are overdue.

I'm just going to mention a few of those. I know I'm the only thing between you and lunch and we are running toward the end of our time.

MR. LAPORTE: Excuse me, Ann. That letter is also available on the website that people are looking at, accessing this webcast.

MS. WALKER: Great. Thanks, Gerry.

In connection with putting together that letter, in addition to soliciting input from our colleagues, securities lawyer colleagues, we also did a brief survey of companies that would qualify as emerging growth companies and were in the technology and life sciences area, and did an initial public offering between December 2008 to 2011 and approximately May 18, 2012.

This consisted of 22 companies. It wasn't a huge sample. There were a number of things that sort of fell out

of that review in looking at where there was lots of disclosures that didn't really appear to be necessary or material to investors.

After looking at that, we put together our comment letter, and we kind of were thinking that the framework perhaps should be more principles based, instead of all line item driven.

We have heard talk about this in other contexts, and I think the time is coming that this should be applied more generally to Regulation S-K, and how it affects disclosure.

The first thing we mentioned was Item 10, which is a general provision. As you probably know, there is a section, subsection (f) of Item 10 that defines smaller reporting companies, talks about how they can become or cease to become a smaller reporting company, and also has this very helpful chart that shows which of the Items in S-K have either special rules for smaller reporting companies or for which smaller reporting companies don't even have to provide any disclosure under the particular item.

We are suggesting there should be the same type of provision in Item 10 of S-K regarding emerging growth companies.

It is very helpful. It would be right there for somebody who is trying to put together disclosure. That was

our first recommendation.

We also thought that it's time to re-look at the requirement in Item 101c-8 for disclosing backlog as of a recent date and as of a year prior date.

This is an age old complaint. I've heard this from when I was a first year associate. I'm not going to tell you how long ago that was, although I guess it's in my bio.

There were only 4 out of the 22 surveyed companies that actually did disclose backlog. You might say it's a line item requirement, how can you not disclose it?

In most cases, it's simply not meaningful. In fact, it may even be misleading. This could be for a number of reasons.

The concept of backlog really is only helpful, if you are in sort of a manufacturing or assembly business where there is a certain amount of time that it takes to make a product and assuming you don't make it until a customer orders it, backlog makes some sense.

In this day and age of technology, there are an awful lot of companies that are nowhere near that model. Think of a software company. Somebody orders software, boom, you just copy it instantaneously.

From the time you get an order until the time you fill it could be a matter of weeks or even a day.

That is one thing that contributes to backlog not

being meaningful. Kind of in the other direction, I've represented a number of companies where they don't wait for the order because they need to be responsive to the customers. They will build inventory to what they think is going to be ordered.

In that situation, the actual backlog at any given time is really not what the investor should know, what the investor should know is the inventory risk that you are taking by doing this.

This gets more towards principles based disclosure, instead of requiring backlog as a line item, let's think about what's important about it and where it would be disclosed even without that line item requirement.

Management's Discussion and Analysis. Obviously, if there is an inventory risk, as I just described, you are going to have to say something about that in MD&A.

Similarly, if you are a more traditional business and backlog is meaningful, then if there has been any significant change either up or down in your backlog from last year to this year, you're going to have to talk about that in MD&A, too, because that is clearly going to affect your future sales.

I don't think we really need the backlog line item any more.

Item 305, which is about derivative securities,

market risk, first of all, I don't think there is anybody except possibly the accountants that really understands that.

I've read it several times.

MS. CROSS: I worked on that rulemaking.

[Laughter.]

MS. WALKER: You're a better person than I, Meredith. In any event, this is one which involves a lot of extensive and complex disclosure, including quantitative disclosure in certain cases.

As you know, it involves hedging and other types of investments that companies make in derivative securities, hedging foreign exchange risk, commodity risk, those kinds of things.

Again, in the survey of companies, there were only 3 out of 22 that gave any quantified discussion of exchange rate risks, and none of them talked about commodity risk or interest rate risk.

It seems that among the emerging growth companies, there is a very small universe of companies that are even involved in things that Item 305 would require disclosure for.

Smaller reporting companies are already exempt. We suggest emerging growth companies should be similarly exempt from Item 305.

Item 506, dissolution. This is that lovely one

page in the IPO prospectus that is generally considered the province of the accountants again. It goes through all these little nice calculations and comes out with a number when you get toward the bottom of the page that says okay, you, Mr. Initial Public Offering Public Investor, by paying $10 for this share of stock, you realize that based on what previous investors, private investors, paid, there is immediate dilution of 80 percent. Pick a number.

One might think that this should be important to investors, but that is not what the data shows. The data that we have seen shows that at least among our smaller universe of 22 companies, which frankly I think is a pretty good proxy for what I have seen over the years, the range of dilution went from 41 percent to 136 percent with an average of 80 percent.

One wants to scratch one's head and say investors must not have been too concerned about that. Moreover, you can get to pretty much the same data by looking at the balance sheet and the cap table.

Why do we need this one page of accounting mumbo-jumbo?

Somebody is going to have to give me the hook for when I need to stop.

MR. DUNN: Five minutes.

MS. CROSS: The staff is working on the S-K study

now, tracing back where the requirements came from. I can tell you from the many times over my SEC career, we have tried to take away a line item requirement, and whenever we suggest taking one away, somebody is very attached to it. It is remarkable.

It is almost like you need to start from scratch and say those aren't there any more to actually meaningfully chip away at whatever one little piece you want to look at.

I don't know where the staff will come out on the report and I don't know what the Commission will do.

It is a very challenging idea to go peal away specific ones. There is the argument that you don't need the dilution, dilution is so much that it's not meaningful. Some would say that's why you needed it and would not agree with an argument that you don't need it.

Those kinds of positions, you understand.

MS. WALKER: I totally understand. I think you would also agree that in the historical mentality of adding items that appear to address specific problems or issues, we have moved more and more towards a very prescriptive line item based disclosure system as opposed to a more principles based system, which I think in the long run would actually be better for investors.

It would be harder to enforce perhaps, but better for investors.

MS. CROSS: I don't disagree. I think the difficulty we run into between using principles based and not having very good compliance to overly prescriptive rules that become stale, it just goes back and forth.

Then something was missing in a disclosure, and then we have to write a rule that says you have to include that. That becomes a requirement. The principle didn't work to get you to do it. It just keeps going this way.

Recently, Congress has been adding a whole lot of very specific line item requirements. I'm not commenting on any particular one.

We have certainly been implementing our share of them. There are some that are in the statute that haven't even made it into the rules.

It is a challenge, how to get away from the specific items and over to the principles based is definitely challenging.

Some companies like to be told what to do. Some like it, it's simpler if there is a rule that says disclose this.

MS. WALKER: In the interest of time, I'm going to mention one other specific item. I commend to you the letter that is in your materials, if you are interested in this.

The other one I want to mention is material contracts, Item 601b-10(i). Again, this is a very well

meaning requirement.

Unfortunately, the language of the requirement and what constitutes a contract that is in the ordinary course of business and material versus those that are not, has become interpreted in an ever broader way.

For example, let me just read you an excerpt from that particular line item. It's talking about if you have a contract in the ordinary course of business, then you won't have to file it, unless it is a contract upon which the registrant's business is substantially dependent as in the case of continuing contracts to sell the major part of registrant's products or services or to purchase the major part of the registrant's requirements of goods, services or raw materials.

I would submit to you that ten percent is not the major part, and unfortunately, that is where comments have headed over the years, that is where practitioners have felt they have had to go over the years.

Our suggestion is stop the presses. Let's look at what it really says, and try to interpret it with respect to this requirement a bit more literally, which may seem to contradict my principles based, but let me tell you why this is such a problem. I am sure you all realize this.

These are contracts with third parties who have in most cases no interest in your IPO, and probably the contract

says that you are not allowed to disclose it or you are going to have to get their consent to disclose it.

It's probably going to have really sensitive competitive pricing terms and other terms, which you are going to have to get confidential treatment for.

It goes on and on. There is a huge amount of burden that becomes associated with a contract if it's deemed a material contract.

We are suggesting maybe we need to roll that back a bit.

In conclusion, I will just say that I think it really is long past time to do this kind of in-depth review of Regulation S-K, and to modernize it and simplify it.

I will stop there.

MR. LAPORTE: Thanks. The JOBS Act, doesn't it refer to something about studying registration under S-K or there is some odd language? We will just ignore that.

MS. CROSS: We considered saying owner registration requirements in Reg S-K, so we're done.

MS. WALKER: I think the legislators are not quite understanding how it works.

MS. CROSS: We decided to go with the kind of thing you're talking about, where we are looking at the actual requirements and how they would affect offerings.

MR. DUNN: We are up against time, but we will do a

light round of questions and answers.

MR. BARTLETT: One simply notes, if I was aware the SecondMarket requires disclosure in the context of a private company transaction. I am definitely aware of that.

That doesn't have any affect on the potential problems under the state securities laws, it might get to the question of whether there is information out there in the marketplace that allows us to accurately price these.

The problem that I have seen with these disclosures is that they are fairly restrictive and more importantly, they are not periodic.

Once you are in SecondMarket, it's not clear exactly how frequently and how consistently you get information.

The second question is with respect to the resale market, why is the situation the issuers' problem. It does not have control over resales and should disclose that resales may be restricted under Federal and state laws.

I agree with that. This is a problem for in some sense the marketplace in general. If you are a prospective buyer in SharesPost, for instance, you hold and resell again in SharesPost, the problem you may have is you in fact are the seller under a rescission claim.

However, to the extent that the company aids in this, they would be a soliciting person, so in fact, the

issuer could in fact be on the hook as well if they are actually a participating participant in the resale transaction.

The more fundamental point is that it's just sufficiently incoherent that it becomes the issuer's problem because they then have to worry about their investors coming back and saying I'm going to apply a discount or I'm going to ask for a covenant from you, in order to make sure they can resell safely.

The point of what I'm trying to argue is, through a Section 18 preemption approach, we actually can make this marketplace work, I think, a lot more seamlessly, from both the issuer's perspective, as well as from the investor's perspective, in terms of the information that is out there.

MR. DUNN: On the information in the market that you mentioned, it strikes me that all these markets are developing the level of information that is required there, if you look at the beginning to now.

Do you think market forces will take care of that, or do you see that evolving?

MR. BARTLETT: I often marvel at the power to produce information as of course happens in all types of marketplace securities and otherwise.

I think the strongest example of this would be the 144(a) market, where there is no disclosure requirement, but

yet what you see is routinely a covenant within an indenture which says the issuer shall file Section 13 Act reports or if they don't actually file with the SEC, they have to at least provide them.

This is clearly a case where the marketplace is responding.

Will that happen in this marketplace? I'm less confident in part because of the nature of these companies. There is literature out there which suggests that one of the main deterrents for voluntary disclosure by companies is the very legitimate concerns they have over protecting their proprietary information.

These concerns, I think, are with many of the companies that are trading in these markets, which I think has the potential to add a drag on the markets to have an optimal level of disclosure.

MR. DUNN: Thank you. What recommendations can be made to better enforce non-U.S. company behavior related to IPOs, especially Chinese companies.

I think a lot of this is already happening, particularly at the Exchanges. You are seeing Exchanges have very good enforcement activities with regard to non-U.S. companies.

I think it is actually happening. Unfortunately, I think what often happens is you get U.S. experience in

structure and not in practice. The Board will be structured in such a way but in practice, it is still dominated. I think that is the nature of our culture and tradition in a lot of ways, and you have to get good disclosure on that and know where you are. I don't know what more you can do.

The next one in very nice handwriting, looks just like mine, what do you as a lawyer--thanks for noting that --do with the problem that any--underlined three times-- mal-disclosure, non-disclosure, whenever established, turns a 12a-2 claim into a 12a-1 claim because the exemption is gone.

I used to deal with that when I was on the staff under the notion of in a registered offering, what if the disclosure is so bad, you turn that into a 12a-1 claim instead of a 12a-2, and I think you will see historically the Commission doesn't do that.

There is like a 40 year old memo circulating around here somewhere that says why that I lost a long time ago. Of course, I would never have taken out of the building anyhow. Rules. I follow rules.

If you notice, they don't do that. My view of this is if you're complying with an exemption and you have a disclosure issue, that's a disclosure issue.

Could a court find that differently? Of course, Courts do all kinds of weird things all over the place. Of course.

If you are asking me what I advise folks, my view is non-disclosure doesn't turn something--bad disclosure doesn't turn something into a Section 5 problem.

Of course, somebody over here will go good, that means I don't have to say anything. Of course, there is always an extreme to which you have abused something so much that there is actually non-compliance and obviously, that is a bad case.

If you're trying to comply with something and you wind up with bad disclosure, or something you can get sued under 12a-2 or 10b-5 for, the notion that automatically flips you into 12a-1 rescission land, I've never viewed as a consistent reality.

MS. CROSS: I tend to agree. I think there are some exemptions that are conditioned on providing specific information, so if you don't do any of that, sale to non-accredited under Reg D, you could see a situation where that starts to look like a Section 5 violation.

MR. DUNN: I'm not aware of a lot of those cases.

MS. CROSS: I don't think there are a lot of those cases. We wouldn't bring them, unless there was probably some sort of fraud or something else going on, just because of resource issues. It doesn't mean we couldn't.

MR. DUNN: With that, we ran a few minutes late. Thank you all very, very much. This was very useful. Thank

you all for the time.

[Applause.]

MR. LAPORTE: We are now going to break for lunch. Those of you who are coming back for the breakout groups this afternoon, we ask you to come back to this room at 2:00. Somebody from the SEC staff will be here to organize you and escort you up to the conference rooms where the breakout groups will be held.

Those who aren't here at SEC headquarters who are listening on the web and want to participate in the breakout groups, you needed to pre-register, and you have the telephone numbers and the call codes. You can call into the breakout groups this afternoon.

We hope to see many of you back or listening on the phone this afternoon for the breakout groups.

Thanks for coming.

[Whereupon, at 11:49 a.m., the session concluded, to reconvene for breakout groups.]

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