



U.S. Securities and Exchange Commission

## Small Business Capital Formation Advisory Committee

November 16, 2022

The Honorable Gary Gensler  
Chair  
U.S. Securities and Exchange Commission  
100 F Street NE  
Washington, DC 20549-1070

Dear Chair Gensler:

On behalf of the SEC Small Business Capital Formation Advisory Committee, we are pleased to submit the below recommendations approved at the Advisory Committee's October 13, 2022 meeting, where the Committee discussed key elements that underpin vibrant entrepreneurial ecosystems.

The Committee explored ways to support small business growth across the country, including facilitating access to capital for founders, particularly underrepresented founders, who are building businesses outside of prominent entrepreneurial hubs. In order to promote growth of diverse entrepreneurial ecosystems, our recommendations related to access to capital are as follows:

1. **Regulation D.** Recognizing that the Commission may be considering changes to Regulation D, the Committee is not in favor of making Regulation D harder to use by increasing disclosure requirements. The Committee supports maintaining the elements of the current exempt offering framework that are functioning well and reaffirms its recommendations from [December 2019](#), including its support for an exempt offering framework that is clear, concise and effective for small businesses to raise capital, and asks that the Commission "do no harm" to Rule 506(b).
2. **Accredited Investor Definition.** In connection with any potential future rulemaking on the definition of "accredited investor," as set forth in Securities Act Rule 501(a) of Regulation D, the Committee reaffirms its recommendations from [November 2019](#) and [February 2022](#), including its request that the Commission not increase the current financial thresholds for individual investors to qualify as accredited. Going forward, the Commission could consider indexing the financial thresholds for inflation on a periodic basis. Also, given the imperfect proxy that financial thresholds provide for measuring investors' sophistication, we recommend the Commission provide alternative methods for investors to qualify as sophisticated, which could include investment experience, knowledge gained through work experience or membership in associations, education credentials, additional professional certifications, or tests to demonstrate sophistication.
3. **Micro-Exemption.** Given the impact of early-stage investors who tend to invest within their local communities, as well as regional differences in income and wealth, the Committee reaffirms its recommendation from [February 2022](#) relating to the creation of a new exemption for local and/or micro-investments that would not be limited to accredited investors. In this

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regard, while the Committee is aware of a micro-exemption proposed in draft legislation, the Committee recognizes that there must be guard rails and does not support exempting all offers below \$5 million.

4. *Finders*. In order to promote small business capital formation, especially for underrepresented businesses and businesses that are not in regions with robust capital raising networks, the Committee supports a framework to permit certain “finders” to engage in limited capital raising activities involving accredited investors, consistent with the principles set forth in our findings in [November 2020](#). In particular, the Committee supports a simple playbook for finders, with clear rules, enforcement actions for bad actors, and safe harbors for finder activity conducted in compliance with the rules.
5. *Pooled Investments*. The Commission should take steps to facilitate capital formation in exempt offerings through pooled investment funds. Consistent with the Committee’s recommendations in [November 2019](#) and [April 2021](#), the SEC should allow retail investors to invest in private, growth-stage companies through diversified pooled investment funds, thereby giving retail investors the ability to invest alongside professional investors. The Committee further encourages the Commission to work cooperatively with other agencies to create a framework whereby private investments can go into retirement vehicles, provided that they are limited to a minority of an individual’s respective retirement assets.

Respectfully submitted on behalf of the Advisory Committee,



Carla Garrett  
Committee Chair



Jeffrey Solomon  
Committee Vice Chair

CC: Commissioner Hester M. Peirce  
Commissioner Caroline A. Crenshaw  
Commissioner Mark T. Uyeda  
Commissioner Jaime Lizárraga