

THIRTY-THIRD ANNUAL

SEC Government-Business

FORUM

ON
**Small Business
Capital Formation**

November 20, 2014

Washington, DC



2014 SEC Government-Business Forum on
Small Business Capital Formation

FINAL REPORT

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The SEC conducts the Government-Business Forum on Small Business Capital Formation annually. The recommendations contained in this report are solely the responsibility of Forum participants from outside the SEC, who were responsible for developing them. The recommendations are not endorsed or modified by the SEC and do not necessarily reflect the views of the SEC, its Commissioners or any of the SEC's staff members.

TABLE OF CONTENTS

Summary of Proceedings.....	1
Planning Group.....	4
Forum SEC Staff.....	7
Agenda	8
Opening Remarks of SEC Chair Mary Jo White	11
Remarks of SEC Commissioner Luis A. Aguilar.....	13
Remarks of SEC Commissioner Daniel M. Gallagher	22
Remarks of SEC Commissioner Kara M. Stein.....	24
Remarks of SEC Commissioner Michael S. Piwowar	26
Consolidated Forum Recommendations.....	27
Forum Recommendations by Breakout Group.....	31
Breakout Group Participants	35

SUMMARY OF PROCEEDINGS

Background

As mandated by the Small Business Investment Incentive Act of 1980, the U.S. Securities and Exchange Commission conducts an annual forum that focuses on small business capital formation.¹ Called the “SEC Government-Business Forum on Small Business Capital Formation,” this gathering has assembled every year since 1982. A major purpose of the Forum is to provide a platform to highlight perceived unnecessary impediments to small business capital formation and address whether they can be eliminated or reduced. Each Forum seeks to develop recommendations for government and private action to improve the environment for small business capital formation, consistent with other public policy goals, including investor protection.

The 2014 Forum, the 33rd, was convened at the SEC’s headquarters at 100 F Street, N.E., Washington, D.C., on Thursday, November 20, 2014. The program included both panel discussions and breakout groups.

Planning and Organization

Consistent with the SEC’s statutory mandate in the Small Business Investment Incentive Act of 1980, the SEC’s Office of Small Business Policy (part of its Division of Corporation Finance) invited other federal government agencies, the North American Securities Administrators Association (“NASAA,” the organization representing state securities regulators), and leading small business and professional organizations concerned with small business capital formation to participate in planning the 2014 Forum. The individuals who participated in planning the Forum, and their professional affiliations, are listed on pages 4 through 6.

The planning group recommended that this year’s Forum again be held in Washington, D.C. The members of the planning group also assisted in preparing the agenda and in recruiting speakers.

Participants

The SEC’s Office of Small Business Policy worked with members of the planning group to identify potential panel participants for the 2014 Forum. Invitations to attend the Forum were sent to participants in previous Forums and to members of various business and professional organizations concerned with small business capital formation. In addition, the SEC’s Office of Minority and Women Inclusion assisted in reaching out and extending invitations to the Forum to representatives from several diverse business communities, including minority-owned businesses, women-owned businesses and

¹ The SEC is required to conduct the Forum annually and to prepare this report under 15 U.S.C. 80c-1 (codifying section 503 of Pub. L. No. 96-477, 94 Stat. 2275 (1980)).

veteran-owned businesses. The SEC issued two press releases to inform the public about the time, date and location of the Forum.

The morning panel discussions were accessible through a live webcast on the SEC's website. A written transcript of the panel discussions and other morning proceedings has been posted on the SEC website. The afternoon breakout group sessions were not webcast, but were accessible by telephone conference call to pre-registered participants.

Approximately 200 attendees were physically present for the Forum proceedings in Washington, plus 20 panelists and moderators, including all five SEC Commissioners and SEC senior staff.

In a related event, a day prior to the Forum, on November 19, 2014, representatives from the SEC's Office of Minority and Women Inclusion, the Division of Trading and Markets, the Office of Investor Education and Advocacy and the Office of Small Business Policy, in partnership with the U.S. Small Business Administration's Office of Investment and Innovation and the Office of Entrepreneurial Development, co-hosted an afternoon event held at SEC headquarters in Washington, D.C. designed for existing and aspiring small businesses, including those that are minority-owned, women-owned, and veteran-owned, to discuss how the Jumpstart Our Business Startups Act of 2012 (the "JOBS Act") expands the options that small businesses may use to raise capital. Invitations to attend this event were sent to the same groups that were invited to attend the Forum. The SEC in partnership with the SBA also issued a press release to inform the public about this SEC/SBA hosted event. Participants of this event were encouraged to attend the Forum the following day.

Proceedings

The agenda for the 2014 Forum is reprinted starting on page 8. All five SEC Commissioners delivered remarks at the Forum's morning proceedings. The remarks of all of the Commissioners are reproduced starting on page 11. After the remarks of the SEC Commissioners, panel discussions were conducted on secondary market liquidity for securities of small businesses, moderated by Stanley Keller and Stephen Luparello, and on whether the SEC should revise the accredited investor definition, moderated by Stanley Keller and Keith Higgins.

The afternoon proceedings included breakout group meetings open to all pre-registered participants, who took part both in person and by telephone conference call. Four breakout groups met: one on exempt securities offerings, which was moderated by Gregory C. Yadley; a second on secondary market liquidity for securities of small businesses, which was moderated by Michael L. Zuppone; a third on the accredited investor definition, which was moderated by Deborah S. Froling; and a fourth on disclosure effectiveness for smaller reporting companies, moderated by Thomas J. Kim.

The discussions of the four breakout groups resulted in draft recommendations. The moderators of the four breakout groups presented their respective groups' recommendations at a final assembly of all the Forum participants as the last matter of business on November 20, 2014. After the Forum, the moderators of the four breakout groups continued to work with their group participants to refine each group's recommendations. Each breakout group then submitted its final draft of five recommendations to the SEC staff from these discussions, resulting in a list of 20 recommendations that was circulated by e-mail to all participants in the four breakout groups in the form of an electronic ballot, asking them to specify whether, in their view, the SEC should give high, medium, low or no priority to each recommendation. This poll resulted in the prioritized list of 20 recommendations presented starting on page 27.

Records of Proceedings and Previous Forum Materials

A video recording of the Forum's morning proceedings, including the two panel discussions, is available on the SEC's website at <http://www.sec.gov/news/otherwebcasts/2014/gbforum112014.shtml>. A transcript of the morning proceedings is available on the SEC's website at <http://www.sec.gov/info/smallbus/sbforum112014-final-transcript.pdf>.

The Forum program, including the biographies of the Forum panelists and moderators, is available on the SEC's website at <http://www.sec.gov/info/smallbus/sbforum112014-program.pdf>.

The final reports and other materials relating to previous Forums, dating back to 1993, may be found on the SEC's website at <http://www.sec.gov/info/smallbus/sbforum.shtml>.

PLANNING GROUP

Moderator

Sebastian Gomez Abero
Chief, Office of Small Business Policy
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*Representing Committee on Middle
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AGENDA

2014 SEC Government-Business Forum on Small Business Capital Formation
Washington, D.C.
November 20, 2014

9:00 a.m. Call to Order
Sebastian Gomez Abero, Chief, Office of Small Business Policy, SEC Division
of Corporation Finance

Introductions of Chair and Commissioners
Keith F. Higgins, Director, SEC Division of Corporation Finance

Remarks
SEC Chair Mary Jo White
SEC Commissioner Luis A. Aguilar
SEC Commissioner Daniel M. Gallagher
SEC Commissioner Michael S. Piwowar

**9:50 a.m. Panel Discussion: Secondary Market Liquidity for Securities of Small
Businesses**

Moderators:

Stephen Luparello, Director, SEC Division of Trading and Markets
Stanley Keller, Partner, Edwards Wildman Palmer LLP, Boston, Massachusetts

Panelists:

Vladimir Ivanov, Senior Financial Economist, SEC Division of Economic and
Risk Analysis
Michael L. Zuppone, Partner, Paul Hastings, New York, New York
Robert Malin, Vice President of Sales, NASDAQ Private Market
R. Cromwell Coulson, President and CEO of OTC Markets Group, Inc.
A. Heath Abshire, Arkansas Securities Commissioner, Little Rock, Arkansas

11:10 a.m. Break

11:20 a.m. Introduction of Commissioner Stein
Keith F. Higgins, Director, SEC Division of Corporation Finance

Remarks
SEC Commissioner Kara M. Stein

**11:30 a.m. Panel Discussion: Should the Commission Revise the Accredited Investor
Definition?**

Moderators:

Keith F. Higgins, Director, SEC Division of Corporation Finance
Stanley Keller, Partner, Edwards Wildman Palmer LLP, Boston, Massachusetts

Panelists:

Rachita Gullapalli, Financial Economist, SEC Division of Economic and Risk
Analysis

Prof. Donald C. Langevoort, Georgetown University Law Center, Washington,
D.C.

Jean Peters, Board Member, Angel Capital Association; Managing Director,
Golden Seeds Fund LP

A. Heath Abshire, Arkansas Securities Commissioner, Little Rock, Arkansas

12:40 pm. Lunch Break

2:00 p.m. Breakout Group Meetings to Develop Recommendations

▶ **Exempt Securities Offerings Breakout Group**

Moderator:

Gregory C. Yadley, Partner, Shumaker, Loop & Kendrick, LLP,
Tampa, Florida

▶ **Secondary Market Liquidity for Securities of Small Businesses Breakout
Group**

Moderator:

Michael L. Zuppone, Partner, Paul Hastings, New York, New York

▶ **Accredited Investor Breakout Group**

Moderator:

Deborah S. Froling, Partner, Arent Fox LLP, Washington, D.C.

▶ **Disclosure Effectiveness for Smaller Reporting Companies Breakout
Group**

Moderator:

Thomas J. Kim, Partner, Sidley Austin LLP, Washington, D.C.

3:15 p.m. Break

3:30 p.m. Breakout Group Meetings to Develop Recommendations (continued)

5:00 p.m. Plenary Session to Develop Next Steps

Moderators:

Sebastian Gomez Abero, Chief, Office of Small Business Policy, SEC Division of
Corporation Finance

Gregory C. Yadley, Partner, Shumaker, Loop & Kendrick, LLP,
Tampa, Florida

5:30 p.m. Networking Reception

OPENING REMARKS OF SEC CHAIR MARY JO WHITE

SEC Government-Business Forum on Small Business Capital Formation
November 20, 2014

I want to reiterate the welcome to everyone to today's Government-Business Forum on Small Business Capital Formation. I especially want to thank all of the panelists and participants in today's program. You all serve as our eyes and ears in the small business community, giving us critical insight into the impact of our rules on small businesses, and we are always eager to engage in discussions with you and benefit from your recommendations. And, I also want to thank the staff of the Division of Corporation Finance and the Division of Trading and Markets for their work in organizing today's Forum.

You don't need me or any of us to tell you that small businesses play a crucial role in the growth of our nation's economy and the creation of new jobs for Americans. Today's event is the SEC's 33rd Government-Business Forum. Each year, we gather with leaders of the small business community to learn more about the needs of entrepreneurs and small business owners and the impact that our rules are having or could better have on their efforts to raise capital and grow their business. The open and direct discussions that are a hallmark of these Forums have resulted in many thoughtful and creative recommendations for reducing regulatory impediments for businesses seeking to access the capital markets. Just as a point of reference, some of the Forum recommendations that the Commission or the staff has acted upon in the last decade include:

- simplifying the disclosure and reporting requirements for smaller companies and allowing smaller companies to provide less burdensome, scaled disclosures;
- shortening the holding periods for resales of securities under the Rule 144 safe harbor from one year to six months for reporting companies;
- exempting compensatory employee stock options from registration under the Exchange Act of 1934;
- providing a transition period for smaller reporting companies from the say-on-pay and frequency votes required under the Dodd-Frank Act; and
- developing a pilot program to assess the impact of tick size on market liquidity for small-cap companies.

As you know from your agenda, today's Forum will explore a number of important issues that affect small businesses.

Our first panel will address the very important subject of secondary market liquidity for securities of small businesses. The JOBS Act sought to promote capital formation for small businesses by changing the initial public offering process for emerging growth companies and expanding the options for unregistered offerings. While these changes are designed to facilitate smaller companies' ability to access the capital markets, investors in these offerings may face liquidity challenges, which would place their investment at risk. These same challenges could also constrain the positive potential that the changes to the offering process could have for small business capital formation. We must therefore consider these liquidity challenges in terms of both the impact on investors and the ability of small business issuers to access the capital markets. We very much want your feedback and your ideas in this area.

The second panel will focus on the accredited investor definition, a very important subject for us and for you. As you know, the Commission staff, including staff from the Division of Corporation Finance and the Division of Economic and Risk Analysis, is conducting a comprehensive review of the accredited investor definition as it relates to natural persons. The goal of the reviews is to assess whether we are properly identifying the population of investors who should be able to purchase securities in a securities offering without the protection afforded by the registration requirements of the Securities Act. A critical part of the staff's review is soliciting and considering input from the public and other interested parties, obviously and importantly including those of you here today, so we are anxious to hear your insights on this important topic.

After the morning panel discussions, as is the tradition of the Forum, we will ask you to join breakout groups to discuss and draft specific recommendations on the topics covered in the two panels. We will also ask you for recommendations on the disclosure effectiveness review that the Division of Corporation Finance is undertaking and on exempt securities offerings. And let me emphasize how very interested we are in the recommendation you make.

As we assess your recommendations, we always consider carefully the impact that the suggested changes would have on investors—both in terms of what risks they may face, but also whether the change would serve to attract investors to small business investing. Obviously, regulatory changes that compromise investor protections or raise concerns for investors about investing will ultimately cost the small business community more than any benefit derived from the proposed change. Investor confidence—confidence in small business investing and in the fairness of the capital raising process—is an important guide as you discuss, test and formulate your recommendations and as we consider them. It is really the marriage of investor protection and better ways to facilitate more capital formation that makes our markets the envy of the world. I very much look forward to the output from today.

Thank you again for your efforts today to help us to improve the ability of small businesses to access our capital markets, to grow and drive job creation and economic growth.

**REMARKS OF
SEC COMMISSIONER LUIS A. AGUILAR
“The Importance of Small Business Capital Formation”**

SEC Government-Business Forum on Small Business Capital Formation
November 20, 2014

Thank you and good morning. Let me start by extending a warm welcome to the panel members and other participants, including those viewing by webcast, to today’s Forum on Small Business Capital Formation. I look forward to your discussions. Before I begin, let me note that these remarks are my own, and do not necessarily reflect the views of the U.S. Securities and Exchange Commission (“SEC” or “Commission”), my fellow Commissioners, or members of the Commission’s staff.

Small businesses² are the engine that drives the U.S. economy. The statistics show that small businesses make up 99.7% of U.S. employer firms, 48.5% of private-sector employment, and 37% of high-tech employment.³ Small firms were responsible for 63% of net new jobs created between 1993 and mid-2013, or more than 14 million of the nearly 23 million net new jobs created during this period.⁴ There is no debate that the success of small businesses is essential to the sustained growth of our greater economy.

The SEC has long recognized the importance of small businesses. For example, since 1979, the SEC has had an Office of Small Business Policy. In addition to annually organizing today’s Forum, this Office is available to answer questions and, importantly, participate in rulemakings and other activities that affect smaller reporting companies. Moreover, in 2011, the Commission established an Advisory Committee on Small and Emerging Companies to provide the Commission with advice and recommendations specifically related to privately-held small businesses and publicly traded companies with less than \$250 million in public market capitalization.⁵ And, of course, the Commission has also, over the years, promulgated a number of regulations that were geared towards smaller firms, such as Regulation A, first adopted in 1936, and Regulation D in 1982.⁶

² For these purposes, small businesses are defined as those independent businesses with fewer than 500 employees. See U.S. Small Business Administration Office of Advocacy, *Frequently Asked Questions*, available at http://www.sba.gov/sites/default/files/advocacy/FAQ_March_2014_0.pdf.

³ *Id.*

⁴ *Id.*

⁵ SEC Advisory Committee on Small and Emerging Companies, <http://www.sec.gov/spotlight/acsec-spotlight.shtml>.

⁶ The original Regulation A was actually a collection of 11 separate exemptions from registration, most of which went up to \$100,000 in offerings subject to various conditions. These 11 exemptions were repealed and replaced by a single \$100,000 Regulation A exemption adopted effective in 1941. See Securities Act Release No. 2410, [1941-44 Transfer Binder] Fed. Sec. L. Rep. (CCII) 75,111 (Dec. 3, 1940). Regulation A, in effect today, permits offerings of up to \$5 million to be exempt from registration, provided that the issuer meets certain offering conditions, including, among others, filing an offering statement with the Commission, no sales are made until the offering

More recently, following the passage of the Jumpstart Our Business Startups Act (“JOBS Act”), the SEC has focused on rulemakings intended to facilitate the ability of small businesses to access the capital markets. For example, within the past 18 months, the Commission has pressed forward with a number of important initiatives in this area, including:

- proposed rules on crowdfunding, which would exempt qualifying transactions from the registration and prospectus delivery requirements of the Securities Act;⁷
- proposed rule amendments to Regulation A of the Securities Act (known as “Regulation A-plus”), which would permit companies to raise up to \$50 million in any 12-month period without requiring registration under the Securities Act, provided certain requirements are met;⁸
- final rules amending Rule 506 of Regulation D, to remove the prohibition against general solicitation and advertising, provided that all purchasers are accredited investors;⁹ and
- proposed various rules to further amend Rule 506 to address concerns about the impact of general solicitation that were raised by numerous commenters.¹⁰

statement is deemed “qualified,” and offering circulars are provided to the purchasers of securities. *See* Securities Act Release No. 33-6949 (July 30, 1992). Rules 504 and 505 of Regulation D were adopted pursuant to the SEC’s authority in § 3(b) of the Securities Act of 1933 (the “Securities Act”) to exempt offerings with an aggregate offering price of not more than \$5 million. Rule 506 of Regulation D was adopted as a safe harbor provision pursuant to § 4(2) of the Securities Act for “transactions by an issuer not involving any public offerings.” Under Rule 506 as originally adopted (prior to revisions enacted last year and discussed further below in footnote 10 and accompanying text), issuances that met certain conditions, such as that offers and sales could be to no more than 35 purchasers who were financially sophisticated and an unlimited number of accredited investors. *See Revision of Certain Exemptions From Registration for Transactions Involving Limited Offers and Sales*, SEC Release No. 33-6389 (Mar. 8, 1982).

⁷ *See Crowdfunding*, Release No. 33-9470 (Oct. 23, 2013), available at <http://www.sec.gov/rules/proposed/2013/33-9470.pdf>.

⁸ *See Proposed Rule Amendments for Small and Additional Issues Exemptions Under Section 3(b) of the Securities Act*, SEC Release No. 33-9497 (Dec. 18, 2013), available at <http://www.sec.gov/rules/proposed/2013/33-9497.pdf>. To take advantage of this new proposed offering exemption, called “Tier 2” offerings in the proposed rule, an issuer would be required to provide audited financial statements, to have ongoing reporting obligations, and to abide by certain limitations on sales. *See id.*

⁹ *See Eliminating the Prohibition Against General Solicitation and General Advertising in Rule 506 and Rule 144A Offerings*, SEC Release No. 33-9415 (July 10, 2013), available at <http://www.sec.gov/rules/final/2013/33-9415.pdf>.

¹⁰ *See Amendments to Regulation D, Form D and Rule 156*, SEC Release No. 33-9416 (July 10, 2013), available at <http://www.sec.gov/rules/proposed/2013/33-9416.pdf>. Among other things, these amendments proposed (i) requiring the filing of a Form D in Rule 506(c) offerings before the issuer engages in general solicitation; (ii) requiring the filing of a closing amendment to Form D after the termination of any Rule 506 offering; (iii) requiring written general solicitation materials used in Rule 506(c) offerings to include certain legends and other disclosures;

In looking at the Commission’s role in facilitating capital formation for small businesses, it is important to note that the Commission’s mission is to do so in a manner consistent with the protection of investors and maintaining the integrity of the capital markets.

There is no doubt that a successful investment environment requires a system that works for both issuers and investors. The challenge is to develop a process that enables businesses to raise capital in a cost effective way while also, importantly, providing for ways to benefit and protect investors and the markets generally.

As we all know, investments in companies—both small and large—inherently have risks. It is also understood that investments in small or emerging businesses carry unique investment risks.¹¹ While it is hoped that many small businesses will grow and flourish and make money for both entrepreneurs and investors, we should not lose sight of the heightened risks these riskier enterprises pose for investors—through the higher risk of small business failure,¹² the lower liquidity of these securities, and, regretfully, the higher incidence of outright fraud in the small business security markets.¹³

Given these heightened risks, Congress and the Commission historically have sought to protect investors by requiring that certain conditions be met in exempt offerings geared towards small businesses. Examples of this include:

and (iv) requiring the submission, on a temporary basis, of written general solicitation materials used in Rule 506(c) offerings to the Commission.

¹¹ See U.S. Small Business Administration, *Starting and Managing a Business, Starting a Business, Explore Loans, Grants and Funding, Venture Capital*, available at <https://www.sba.gov/content/venture-capital> (“Investing in new or very early companies inherently carries a high degree of risk”). See also Washington State Department of Financial Institutions, *A Consumer’s Guide to Small Business Investments*, available at <http://dfi.wa.gov/sd/sbinvestments.htm> (“A basic principle of investing in a small business is: Never make a small business investment that you cannot afford to lose entirely. . . . Small business investments are generally highly illiquid even though the securities may technically [be] freely transferable. Thus, you will usually be unable to sell your securities if the company takes a turn for the worse”).

¹² According to the U.S. Small Business Administration, over 50% of small businesses fail within the first five years. See Robert Longley, *Why Small Businesses Fail: SBA* (2014), available at <http://usgovinfo.about.com/od/smallbusiness/a/whybusfail.htm>. Separately, according to a Bloomberg study cited by Forbes magazine, eight out of ten entrepreneurs who start businesses fail within the first 18 months. See Eric T. Wagner, *Five Reasons 8 Out Of 10 Businesses Fail* (Sept. 12, 2013), available at <http://www.forbes.com/sites/ericwagner/2013/09/12/five-reasons-8-out-of-10-businesses-fail/>.

¹³ See Comment letter from Andrea L. Seidt, Commissioner, Ohio Division of Securities (Jan. 9, 2013), available at <http://www.sec.gov/comments/jobs-title-iii/jobtitleiii-199.pdf> (noting that “[s]tatistics repeatedly demonstrate that most new businesses fail,” and crowdfunding provides investors with “almost no bargaining power and little information”); see also SEC Website, *Microcap Stock: A Guide for Investors*, available at <https://www.sec.gov/investor/pubs/microcapstock.htm> (“accurate information about ‘microcap stocks’—low-priced stocks issued by the smallest of companies—may be difficult to find . . . when publicly-available information is scarce, fraudsters can easily spread false information about microcap companies, making profits while creating losses for unsuspecting investors”) (Website last visited November 9, 2014).

- limiting general solicitation in Rule 506 offerings to “accredited investors” that presumably are better situated to understand the risks of the investments and absorb any losses;
- imposing limits on the capital that may be raised in offerings under Regulation A and the proposed Regulation A-plus and crowdfunding exemptions; and
- imposing individual and aggregate investment limits in crowdfunding transactions.

In addition, many exemptions require that issuers make specific disclosures to investors.¹⁴

I note that today the Forum will consider one important issue that underpins the capital formation for small businesses—and that is the definition of “accredited investors.”

Improving the “Accredited Investor” Definition

The Forum’s input on the “accredited investor” definition is particularly timely because, under the Dodd-Frank Act, the Commission is required to undertake a review of the definition, as applied to natural persons, to determine whether it should be modified for the protection of investors, in the public interest, and in light of the economy.¹⁵ Indeed, the Dodd-Frank Act mandates that the Commission commence this review no earlier than this past July 2014, and at least once every four years thereafter.

In addition, the definition of “accredited investor” has taken on greater meaning now that issuers can engage, without registration, in unlimited advertising and solicitation, so long as the ultimate purchasers are accredited investors.¹⁶ Given the importance of this definition in helping to identify investors that are presumably sophisticated and financially able to invest in illiquid securities, the accredited investor definition is particularly important.

¹⁴ For instance, offerings seeking to benefit from the registration exemptions of Regulation A (or proposed Regulation A-plus) or the crowdfunding proposed rules would be obligated to satisfy certain issuer disclosure and reporting requirements. See *Proposed Rule Amendments for Small and Additional Issues Exemptions Under Section 3(b) of the Securities Act*, SEC Release No. 33-9497 (Dec. 18, 2013), available at <http://www.sec.gov/rules/proposed/2013/33-9497.pdf>; and *Crowdfunding*, SEC Release No. 33-9470 (Oct. 23, 2013), available at <http://www.sec.gov/rules/proposed/2013/33-9470.pdf>.

¹⁵ See Section 413(a) of Title IV of the Dodd-Frank Act, available at <http://www.gpo.gov/fdsys/pkg/PLAW-111publ203/pdf/PLAW-111publ203.pdf>.

¹⁶ *Eliminating the Prohibition Against General Solicitation and General Advertising in Rule 506 and Rule 144A Offerings*, SEC Release No. 33-9415 (July 10, 2013), available at <http://www.sec.gov/rules/final/2013/33-9415.pdf>.

Recently, the Commission’s Investor Advisory Committee (“IAC”) provided the Commission with its own recommendations regarding possible ways to amend the accredited investor definition. The IAC’s recommendations would both limit and expand the pool of accredited investors—always with an eye to identifying individuals who should be able to fend for themselves. In brief, the IAC recommended that the Commission revise the accredited investor definition to enable individuals to qualify as accredited investors based on various ways of assessing their financial sophistication, such as through specialized work experience, investment experience, licensing or other professional credentials, or perhaps even through a qualifying test developed by, or in collaboration with, securities regulators.¹⁷

The IAC, like many observers, is also concerned that the current definition of an “accredited investor” may assume too much.¹⁸ The criticism is that it is a crudely-designed method to distinguish between purchasers who are supposedly financially sophisticated and purchasers who are not. Specifically, the definition assumes that individual accredited investors are knowledgeable and experienced about financial matters *if* they meet specific income or net worth thresholds. Although one may argue that an individual with annual income of \$200,000 or net worth of \$1,000,000 is well-off,¹⁹ those benchmarks do not necessarily correlate with a person’s financial sophistication.²⁰

¹⁷ In particular, the IAC suggested that individuals who have attained certain professional credentials, or who have relevant professional experience, such as individuals with Series 7 securities licenses or those with Chartered Financial Analyst designations, could qualify as accredited investors without regard to their income or net worth. The IAC also suggested that the Commission could look to certain individuals with professional experience that qualifies them as financial experts, such as persons who have work experience in the private equity sector or have spent some period of time as a director of a large business. The IAC also suggests that the Commission look to individuals with certain investment experience to qualify as accredited investors. *See Recommendation of the Investor as Purchaser Subcommittee and the Investor Education Subcommittee: Accredited Investor Definition*, at p. 2, available at <http://www.sec.gov/spotlight/investor-advisory-committee-2012/accredited-investor-definition-recommendation.pdf> (last visited Oct. 7, 2014).

¹⁸ *See, e.g., id.*; Doug Cornelius, *The Confusing Analysis of Whether You Are An Accredited Investor*, Compliance Building (Sept. 30, 2013), available at <http://www.compliancebuilding.com/2013/09/30/the-confusing-analysis-of-whether-you-are-an-accredited-investor/>; Comment letter from Karen Tyler, NASAA President and Commissioner, North Dakota Securities Department, North American Securities Administrators Association, Inc. (dated Oct. 27, 2007), available at http://www.nasaa.org/wp-content/uploads/2011/07/34-NASAACommentLetter_Revisions_of_Limited_Offering_Exemptions_in_Regulation_D.pdf.

¹⁹ The definition of “accredited investor” applicable to Rule 506 is set forth in Rule 501(a) of Regulation D [17 CFR 230.501(a)] and includes any person who comes within one of the definition’s enumerated categories of persons, or whom the issuer “reasonably believes” comes within any of the enumerated categories, at the time of the sale of the securities to that person. The categories include (A) any natural person whose individual net worth, or joint net worth with that person’s spouse, exceeds \$1,000,000, excluding the person’s primary residence and any indebtedness secured thereby (up to the value of such residence), and (B) any natural person who had an individual income in excess of \$200,000 in each of the two most recent years or joint income with that person’s spouse in excess of \$300,000 in each of those years and has a reasonable expectation of reaching the same income level in the current year.

²⁰ For example—and without limiting the concerns raised over the accredited investor definition—many households meeting the accredited investor threshold are likely to be elderly, with savings accumulated over the course of decades (which must, in turn, last the rest of a lifetime). I am particularly concerned that seniors may be targeted by general solicitations, as many older Americans may lack the financial literacy necessary to understand the risks of an

Indeed, the SEC’s Division of Economic and Risk Analysis estimated that only a small percentage of U.S. households meeting the definition of accredited investor have substantial direct holdings of individual securities, which suggest that their experience investing in securities might be limited.²¹ This point is important because a general solicitation, combined with an offering exempted under Rule 506, means that the issuer is not required to provide information statements or disclosures to investors.²² The IAC also addressed this issue, as it recommended that the Commission revise its accredited investor definition, as it pertains to natural persons, to take into consideration the loss of investor protections once provided by the ban on general solicitation and advertising.²³ Thus, the fear is that investors may not truly be sophisticated, and may not be in a position to effectively negotiate to obtain the information they need.

investment in restricted, unregistered securities. See SEC, *Study Regarding Financial Literacy Among Investors As Required by Section 917 of the Dodd-Frank Wall Street Reform and Consumer Protection Act*, at p. 15 (Aug. 2012), available at <http://www.sec.gov/news/studies/2012/917-financial-literacy-study-part1.pdf> (“...surveys demonstrate that certain subgroups, including women, African-Americans, Hispanics, the oldest segment of the elderly population, and those who are poorly educated, have an even greater lack of investment knowledge than the average general population”). This risk may be heightened by cold-calling and other forms of general solicitation. To that end, seniors and other unsophisticated investors targeted for their relative wealth may not be protected by the definition of “accredited investor,” but in fact may be more vulnerable because of it.

²¹ *Eliminating the Prohibition Against General Solicitation and General Advertising in Rule 506 and Rule 144A Offerings*, SEC Release No. 33-9415, at p. 75 (July 10, 2013), available at <http://www.sec.gov/rules/final/2013/33-9415.pdf> (stating that “evidence suggests that only a small fraction of the total accredited investor population has significant levels of direct stockholdings”).

²² Under Rule 506, no information statement or other disclosure is required to be provided if all the purchasers are accredited investors. Form D, the Notice of Exempt Offering of Securities, does not currently require any substantive disclosure. See *Electronic Filing and Revision on Form D*, SEC Release No. 33-8891 (Feb. 6, 2008), available at <http://www.sec.gov/rules/final/2008/33-8891.pdf>.

²³ *Recommendation of the Investor as Purchaser Subcommittee and the Investor Education Subcommittee: Accredited Investor Definition*, at p. 2, available at <http://www.sec.gov/spotlight/investor-advisory-committee-2012/accredited-investor-definition-recommendation.pdf> (last visited Oct. 7, 2014) (stating that “this Committee earlier recommended that the Commission revise the accredited definition, as it pertains to natural persons, to reflect the loss of procedural protections once afforded by the general solicitation and advertising ban”). The SEC’s experience has shown that when stock promoters are allowed to advertise and solicit the public without the safeguards of the Commission’s registration or qualification requirements, it can open the door for fraudsters and scam artists. SEC Website, *Microcap Stock: A Guide for Investors*, available at <http://www.sec.gov/investor/pubs/microcapstock.htm>. In 1992, in an effort to aid capital raising by small businesses, the Commission relaxed the ban on general solicitation under Rule 504, another provision of Regulation D, permitting unregistered offerings up to \$1 million. *Small Business Initiatives*, SEC Release No. 33-6949 (July 30, 1992), available at <http://www.sec.gov/rules/final/6949.txt>. In addition to general solicitation, the 1992 amendments also permitted securities sold pursuant to Rule 504 to be freely-tradable in the secondary market. These amendments to Rule 504 incited a wave of pump-and-dump schemes and other penny-stock frauds too devastating to ignore. SEC Website, *Microcap Fraud* (June 24, 2003), available at <http://www.sec.gov/hot/microcap.htm>. Accordingly, in 1999, the Commission reinstated the general solicitation ban under Rule 504, and restricted shares issued pursuant to the rule, for all offerings other than those that were registered under state law or made pursuant to certain state law exemptions. *Revision of Rule 504 of Regulation D, the “Seed Capital” Exemption*, SEC Release No. 33-7644 (Feb. 25, 1999), available at <http://www.sec.gov/rules/final/33-7644.txt>. Although some of the microcap fraud schemes unleashed by the 1992 amendments, such as pump-and-dump frauds, relied on the freely-tradable nature of Rule 504 shares, other schemes

I know that the Forum participants have a lot to contribute on the accredited investor definition, and I look forward to the discussion of this issue.

Enhancing Secondary Market Liquidity for Small Business Equity

I also note that today's Forum will feature a panel to discuss secondary market liquidity for the securities of small businesses. This topic also has increased importance in light of new, and expected, Commission rules that would enable a far wider range of small business securities to be sold in the secondary trading markets. For example, the larger dollar amount of securities that could be issued under proposed Regulation A-plus will not be restricted securities, and could therefore be immediately traded by security holders who are not affiliates of the issuer.²⁴ Separately, as currently proposed, shares issued in crowdfunding transactions would be freely tradable after a one-year holding period. Similarly, securities issued in private placements under Regulation D are permitted to be resold after a one-year holding period.²⁵

Unlike large, well established publicly-owned companies, one of the biggest problems long facing small companies is the lack of an actively-traded secondary market for their securities.²⁶ In an attempt to generate more investor interest in small and mid-sized companies, commentators and market participants have periodically urged the Commission to consider special mechanisms to facilitate the trading of the shares in these companies.²⁷

were facilitated primarily by the ability of such issuers to spread fraudulent information about their business, assets, and results of operations without the scrutiny imposed by the registration process. *Supra, Microcap Fraud.*

²⁴ Securities Act §3(b)(2)(C), as added by JOBS Act §401(a). *See* Rule 144 under the Securities Act.

²⁵ *Id.* Securities Act Rule 144 allows public resale of restricted and controlled securities if a number of conditions are met, including, for example, meeting the holding period requirement of one year (assuming the seller is not an affiliate of the issuer). *See* Rule 144 under the Securities Act.

²⁶ *See, for example,* Comment letter from John Perkins, Chairman, Small Business Capital Access Association (April 22, 1997), available at <https://www.sec.gov/rules/other/s71597/perkins1.txt> ("As the SBCAA stated last year, the biggest problem faced by small companies trying to raise capital is the lack of a secondary market for the investors who invest in these offerings").

²⁷ For example, the SEC Advisory Committee on Small and Emerging Companies recommended to the Commission that it create a separate specialized U.S. equity market that would facilitate trading in the securities of small and emerging companies. *See* Comment letter from Stephen M. Graham and M. Christine Jacobs, Committee Co-Chairs, SEC Advisory Committee on Small and Emerging Companies (dated Mar. 21, 2013), available at <https://www.sec.gov/info/smallbus/acsec/acsec-recommendation-032113-emerg-co-ltr.pdf>. Some commentators have suggested that the SEC support a program, like the proposed "tick size" pilot, to test a change in the way shares are priced. *See* Supriya Kurane, *SEC asks exchanges, FINRA to submit "tick size" pilot plan*, Reuters (June 25, 2014), available at <http://www.reuters.com/article/2014/06/25/sec-pilotprogram-trading-idUSL4N0P61HV20140625>.

One idea that has been suggested is for the Commission to change the way shares are priced.²⁸ The idea is to widen the spread on small cap stocks, so as to promote greater interest in these stocks, and thereby promote greater interest in the small cap stock market itself.²⁹ To that end, the Commission is currently considering a 12-month “tick size” pilot program. This pilot program proposes to study the effects of widening minimum quoting and trading increments—that is, tick sizes—for certain stocks with smaller capitalization.³⁰

As you may have read, this potential pilot program has received significant criticism. For example, some commenters have suggested that an unintended consequence of increasing spreads could be an increase in trading costs for such trades.³¹ Other commenters are concerned that the pilot program will benefit the national stock exchanges, to the detriment of other

²⁸ See *id.*, Supriya Kurane. In particular, these concerns echo those that have been raised since the introduction of a minimum price variation of one penny in 2005 for stocks of companies of all sizes (called “decimalization”), which is that decimalization itself may hurt the liquidity of small cap stocks. See *Order Directing the Exchanges and the Financial Industry Regulatory Authority To Submit a Tick Size Pilot Plan*, SEC Release No. 34-72460 (June 24, 2014), available at <http://www.sec.gov/rules/other/2014/34-72460.pdf>. In a January 2010 Concept Release on Equity Market Structure, the Commission noted specifically that broker-dealers may have greater incentives to internalize low-priced stocks than higher priced stocks, given the relatively larger minimum spreads that could be earned by broker-dealers. See *Concept Release on Equity Market Structure*, SEC Release No. 61358 (Jan. 14, 2010), available at <http://www.sec.gov/rules/concept/2010/34-61358.pdf>.

²⁹ See Supriya Kurane, *SEC asks exchanges, FINRA to submit “tick size” pilot plan*, Reuters (June 25, 2014), available at <http://www.reuters.com/article/2014/06/25/sec-pilotprogram-trading-idUSL4N0P61HV20140625>. In fact, Congress directed the Commission in the JOBS Act to conduct a study and report to Congress on how decimalization affected the number of initial public offerings (“IPOs”), and the liquidity and trading of smaller capitalization company securities. The Commission submitted the staff’s study to Congress in the July 2012 Decimalization Report, which in part specifically suggested a public roundtable, where recommendations could be presented on a pilot program that would generate data to allow the Commission to further assess decimalization’s impact. See *Order Directing the Exchanges and the Financial Industry Regulatory Authority To Submit a Tick Size Pilot Plan*, SEC Release No. 34-72460 (June 24, 2014), available at <http://www.sec.gov/rules/other/2014/34-72460.pdf>.

³⁰ See *SEC Announces Pilot Plan to Assess Stock Market Tick Size Impact for Smaller Companies*, Press Release No. 2014-176 (Aug. 26, 2014), available at <http://www.sec.gov/News/PressRelease/Detail/PressRelease/1370542761050>. On November 3, 2014, the Commission provided notice of publication of a proposed “tick size” pilot program in the Federal Register to solicit public comments. See *Joint Industry Plan; BATS Exchange, Inc., BATS Y-Exchange, Inc., Chicago Stock Exchange, Inc., EDGA Exchange, Inc., EDGX Exchange, Inc., Financial Industry Regulatory Authority, Inc., NASDAQ OMX BX, Inc., NASDAQ OMX PHLX LLC, The Nasdaq Stock Market LLC, New York Stock Exchange LLC, NYSE MKT LLC, and NYSE Arca, Inc.; Notice of Filing of Proposed National Market System Plan to Implement a Tick Size Pilot Program On a One-Year Pilot Basis*, SEC Release No. 34-73511 (Nov. 3, 2014), available at <http://www.sec.gov/rules/sro/nms/2014/34-73511.pdf>; see also *SEC Announces Pilot Plan to Assess Stock Market Tick Size Impact for Smaller Companies*, SEC Press Release No. 2014-176 (Aug. 26, 2014), available at <http://www.sec.gov/News/PressRelease/Detail/PressRelease/1370542761050>.

³¹ See Rick Baert, *Critics strike back at tick-size pilot program*, Pensions & Investments (Nov. 10, 2014), available at <http://www.pionline.com/article/20141110/PRINT/311109973/critics-strike-back-at-tick-size-pilot-program/A> (quoting Henry Yegerman, director of trading analytics and research at Markit Group Ltd, to say “[t]his test will mean better spreads but also more executions, with possibly higher cost,” and also pointing out that the exchange owners will benefit from the trade-at provision).

alternate trading venues, such as dark pools.³² The comment period for the pilot program is still open, and I look forward to your thoughts on the pilot program—as well as other ways to address the anemic secondary market liquidity in a manner that works for companies, investors, and the markets.

As you discuss the challenges facing small businesses, I also encourage you to consider the role that can be played by the brave men and women who have risked their lives to fight for our freedoms. There is no doubt that veterans can help small companies grow. Veterans have long demonstrated through their commitment to service and their capacity for adapting to various environments and situations, that they have the drive, experience, and skills to benefit any company smart enough and lucky enough to hire them.³³ I encourage small businesses to make a special effort to recruit veterans. We will all benefit.

Without doubt, veterans are no strangers to the world of small businesses. In fact, nearly one out of every ten U.S. small businesses is owned and operated by veterans.

In closing, I want to again thank today's participants, and importantly, I want to thank the hard work of the SEC staff responsible for putting together today's Forum. Thank you.

³² See Dave Michaels and Sam Mamudi, *Brokers Attack SEC's Plan as Trojan Horse*, Bloomberg (Nov. 11, 2014), available at <http://www.bloomberg.com/news/2014-11-11/brokers-attack-sec-s-plan-as-trojan-horse-designed-to-hurt-them.html> (stating that the “one of [the tick size pilot's] provisions -- called a trade-at rule -- is really a stealth attempt to hurt brokers that run private trading systems that compete with the likes of the New York Stock Exchange”); see also Rick Baert, *Critics strike back at tick-size pilot program*, Pensions & Investments (Nov. 10, 2014), available at <http://www.pionline.com/article/20141110/PRINT/311109973/critics-strike-back-at-tick-size-pilot-program/A> (citing Henry Yegerman, director of trading analytics and research at Markit Group Ltd, to say that the exchange owners will benefit from the trade-at provision).

³³ Just two weeks ago, the President proclaimed the country's first National Veterans Small Business Week to put a focus on how our military veteran entrepreneurs help our country prosper by creating new business opportunities, job growth, and economic progress that benefit us all. See National Veterans Small Business Week (Nov. 3, 2014), available at <http://www.whitehouse.gov/blog/2014/11/03/national-veterans-small-business-week>; see also Letter from the President on National Veterans Small Business Week (Nov. 3, 2014), available at http://www.sba.gov/sites/default/files/WH_NVSBW.pdf.

REMARKS OF SEC COMMISSIONER DANIEL M. GALLAGHER

SEC Government-Business Forum on Small Business Capital Formation
November 20, 2014

Thank you, Keith [Higgins] for that introduction. And a special thank you to Sebastian [Gomez Abero] for his hard work in organizing this conference and, quite frankly, for all of his amazing work generally. His role as Chief of the Division of Corporation Finance's Office of Small Business Policy is probably the most important staff position at the SEC for promoting the capital formation needs of small businesses, which is in turn one of the most important things that this agency should be doing.

I was gratified to see that the Divisions of Corporation Finance and Trading and Markets were able to work together on today's first panel, regarding secondary market trading in securities of small businesses. Promoting the development of these secondary markets is incredibly important. While a robust, liquid secondary market has benefits of its own, it also promotes the health of the primary offering market, which directly benefits small business issuers.

I hope the discussion today will embrace the full scope of the public and the private markets in small business securities. As I've said before, I believe a fully robust capital markets ecosystem for small businesses requires both.

Specifically, there is a need for continued innovation in secondary trading in the private marketplace. If additional guidance from the SEC—for example, with respect to a private resale exemption—would help this market develop further, we should move forward on that now.

I also hope and expect that we will complete our Regulation A+ rulemaking, mandated by the JOBS Act, in the very near future. To fully activate the benefits of this new exemption, however, we need to consider how to create secondary markets in these shares. I am a strong proponent of an idea that this Forum has floated in the past: Venture Exchanges, where Regulation A+ shares could be listed and traded by anyone, not just accredited investors, and could do so with an exemption from state blue sky laws and with scaled listing standards appropriate for Regulation A+ issuers. I believe this could truly revolutionize small business capital formation.

Moreover, there's a long-standing need for better, more liquid markets for smaller post-IPO companies. We should consider better scaling of the periodic reporting regime for small companies, to match commonly-accepted market definitions of "microcap" and "nanocap." Venture Exchanges or exchanges with similar scaled listing standards may help here as well. Companies barely clinging to a NASDAQ or NYSE listing could fit more comfortably at a Venture Exchange, and companies currently trading OTC may be willing to up their game if the hurdle to become exchange-traded wasn't so insurmountable.

Finally, I wanted to touch briefly on the second panel today, regarding changes to the accredited investor definition. Frankly, I have yet to be persuaded that this is an issue that we should be taking up at this time. Dodd-Frank’s removal of the value of the primary residence for purposes of the net worth test was already a significant change to the accredited investor definition. But more fundamentally, I am baffled by continued insistence from some quarters that we need to significantly revise the accredited investor definition. Why should we spend limited Commission resources “protecting” the wealthiest 2-3% of investors in this country? This obsession with “protecting” millionaires—potentially at the cost of hindering the wildly-successful and critically-important private markets—strains logic and reason. Millionaires can fend for themselves. That additional government paternalism could also negatively impact the availability of capital for small companies is a double whammy, and rather than pressing our luck, we should be yelling “stop”—and instead spend our time focusing on actually facilitating capital formation.

As I don’t want to take any more time away from what I hope will be a great discussion today, I will conclude with a final thought. This Forum has advanced some truly excellent recommendations in the past, and I’m sure will continue to do so in the future. And yet there is at least a perception that these recommendations are not given their due. So I hope that, going forward, we can commit to respond to each Forum recommendation in writing, as a way of validating that the proper attention has been paid to your voices. If the Commission cannot make that commitment, at least this Commissioner will.

Thank you all for giving us some of your valuable time today.

REMARKS OF SEC COMMISSIONER KARA M. STEIN

SEC Government-Business Forum on Small Business Capital Formation
November 20, 2014

Let me add my welcome to those of the other Commissioners.³⁴ It is a pleasure to be with you this morning as you meet to discuss the important topic of small business capital formation. I have been particularly focused on capital formation myself, because smart policies around capital formation, particularly for small businesses, will lead to good jobs and healthy investment opportunities across America.

On a recent trip to Los Angeles's "Silicon Beach," I had the privilege of visiting a technology venture accelerator at University of Southern California's Viterbi School of Engineering called the Start-Up Garage. The people I met, as well as their ideas, were truly exciting. I think there actually might be one or two of you here with us today.

Now, more than ever, America's small businesses need smart, well-integrated, and workable rules that facilitate capital formation and ensure healthy markets that give investors the confidence to invest. As I have been saying recently, instead of a careful and thoughtful continuum of capital formation, a jumble of overlapping and inconsistent options for both private and public capital-raising have crept up.³⁵ The system has become increasingly complex, is at times irrational, and contains gaps. It both inhibits efficient capital formation at some stages on the continuum, while needlessly exposing investors to undue risks at other stages. We can—and should—rationalize this patchwork quilt; it will benefit both entrepreneurs and investors. I hope that some of that good thinking will be done today.

I also believe that many of the ideas for doing so share broad support from across the policy spectrum. For example, Commissioner Gallagher's idea about venture exchanges and my views about rebuilding regional exchanges may offer, I hope, promise for progress.

At the same time, I also share Commissioner Aguilar and others' concerns about the practical realities and risks when dealing with smaller issuers and less liquid (especially retail over-the-counter) markets. We have to be smart, practical, and willing to both experiment and adapt as we see issues emerge.

In short, I am very focused on working through the issues you're discussing today. As part of that effort, I want to see the Commission move quickly toward finalizing three very important rules related to capital formation—crowdfunding, the new Regulation A (or "Reg A+"), and certain investor protections under Rule 506.

³⁴ As was announced at the beginning of the Forum, the views I am expressing today are my own and do not necessarily reflect those of the Commission, my fellow Commissioners, or the staff of the Commission.

³⁵ See "Remarks before the Los Angeles County Bar Association 47th Annual Securities Regulation Seminar," Oct. 24, 2014, <http://www.sec.gov/News/Speech/Detail/Speech/1370543279728#.VGz3GGPgfIA>.

Moreover, as I've said before, we should be able to walk and chew gum at the same time: even as we work to rationalize and improve the entire system, we should move as quickly as possible to finalize the proposals that are before us. These rules arise from laws passed two and a half years ago, and Congress is looking to us to get them done.³⁶ Congress worked hard to make sure that the Commission had authority to establish appropriate protections around new ideas like crowdfunding, so that they could blossom into healthy, durable markets.³⁷ I hope we can move quickly on these and on all of our Congressionally mandated obligations. Quite frankly, I don't think we're very far away on some of these rules. Let's get them done.

Thank you for taking time out of your busy schedules to come here and participate in this dialogue.

³⁶ See, e.g., Jump Start Our Business Startups ("JOBS") Act section 302(c), requiring the Commission to complete Title III rulemaking 270 days after enactment.

³⁷ For a discussion of several potential risks, see "Remarks at the 15th Annual 'Live from the SEC' Conference," Nov. 13, 2014, <http://www.sec.gov/News/Speech/Detail/Speech/1370543436711#.VGz6WWPgfIA>.

REMARKS OF SEC COMMISSIONER MICHAEL S. PIWOWAR

SEC Government-Business Forum on Small Business Capital Formation
November 20, 2014

Thank you, Keith [Higgins], for that introduction. And a special thank you to each of the audience participants here, for giving up your time and spending your money to join us in Washington, D.C. It is so important to hear your voices. Perhaps, in the future, we might consider alternating the venue of this forum with locations elsewhere in the country, so we can make it as broadly accessible as possible.

It is no secret that small businesses are the engines that power our economy. They foster innovation and offer opportunity for millions of Americans. More importantly, these small corporations and businesses are crucial to creating jobs. But without adequate access to capital, a small business might never get out of the starting gate.

As a former staff member in the U.S. Senate, I saw firsthand the concerns about small business capital formation. One of the signature pieces of bipartisan legislation accomplished during my time with the Senate was passage of the Jumpstart Our Business Startups Act—better known as the JOBS Act. Indeed, a signed copy of the JOBS Act hangs on my office wall here at the SEC.

I am very happy to be part of the 33rd annual forum on small business capital formation. The statutory purpose of the forum is to review the current status of problems and programs relating to small business capital formation. So I am pleased to see representatives of other regulators—from the Board of Governors of the Federal Reserve System, the Office of the Comptroller of the Currency, the Small Business Administration, FINRA, and state and provincial securities regulators—here today alongside our Commission staff.

I am keeping my remarks short, because I want to use this forum as an opportunity to listen. I look forward to today's discussion as well as the recommendations that will be forthcoming. Those recommendations are reviewed by many people, including members of Congress. In fact, when I have conversations about small business with my former colleagues on Capitol Hill, including conversations about so-called "JOBS Act 2.0" bills, one of the first documents they reference is the report from this forum.

Thank you, again, for your attendance today and I would also like to thank our staff for their dedicated work in organizing the forum.

CONSOLIDATED FORUM RECOMMENDATIONS³⁸

Set forth below are the 20 recommendations of the 2014 SEC Government-Business Forum on Small Business Capital Formation, consolidated from the four breakout groups of the Forum held on the afternoon of November 20, 2014. The four breakout groups covered the following topics: Exempt Securities Offerings, Secondary Market Liquidity for Securities of Small Businesses, Accredited Investor Definition and Disclosure Effectiveness for Smaller Reporting Companies. After the Forum, the moderators of the breakout groups continued to work with their breakout group participants to refine and finalize each group's recommendations.

The recommendations are presented below in the order of priority established as the result of a poll of all participants in the breakout groups.³⁹ The priority ranking is intended to provide guidance to the SEC as to the importance and urgency the poll respondents assigned to each recommendation.

For additional clarity with respect to the interest in each broad area of discussion, the recommendations are also presented starting on page 31 by the breakout groups from which they originated.⁴⁰

³⁸ The SEC conducts the SEC Government-Business Forum on Small Business Capital Formation, but does not endorse or modify any of the recommendations of the Forum. The recommendations are solely the responsibility of the Forum participants, who were responsible for developing them. The recommendations do not necessarily reflect the views of the SEC, its Commissioners or any of the SEC's staff members.

³⁹ In the poll, the participants were asked to respond whether the SEC should give "high," "medium," "low" or "no" priority to each of the 20 recommendations. Of the 138 participants, 42 responded, a 30% response rate. Each "high priority" response was assigned five points, each "medium priority" was assigned three points, each "low priority" response was assigned one point and each "no priority" or blank response was assigned zero points. The total number of points assigned to each recommendation is shown in brackets after the text of the recommendation, as is the average assignment of points for the recommendation. The average assignment of points was determined for each recommendation by dividing the total number of points for a recommendation by the number of responses received (42).

⁴⁰ Of the 42 respondents to the poll, 15 were participants in the Exempt Securities Offerings Breakout Group, 12 were participants in the Secondary Market Liquidity for Securities of Small Businesses Breakout Group, 9 were participants in the Accredited Investor Breakout Group and 4 were participants in the Disclosure Effectiveness for Smaller Reporting Companies Breakout Group. Two respondents participated in more than one breakout group, and four respondents did not specify the breakout group in which they participated.

*Priority
Rank*

Recommendations

- 1 Provide federal preemption for issuer sales and selling securityholder resales of securities issued pursuant to Regulation A and Regulation A+, and exempt purchasers and transferees of such securities from the calculation of the number of registered holders under Section 12(g) of the Exchange Act. [177 points; average ranking 4.21]
- 2 In finalizing the rules under Regulation A+, provide that:
 - the information required for Tier 2 issuers shall be sufficient to meet the “current reporting” requirements of Rule 144;
 - there shall be no 10% of net worth limitation on purchasers;
 - business development companies shall be eligible issuers; and
 - a speedy path to full Exchange Act reporting for Tier 2 issuers from required Tier 2 disclosures shall be available.[152 point; average ranking 3.62]
- 3 Do not exclude retirement assets from the calculation of net worth for determining an investor’s status as an accredited investor. [151 points; average ranking 3.60]
- 4 Maintain the current financial thresholds for individuals to qualify as accredited investors, namely \$200,000 annual income, \$300,000 annual income for joint filers, or \$1 million net worth excluding primary residence. [146 points; average ranking 3.48]
- 5 Consider additional separate categories of qualification for accredited investors based upon passing an SEC-approved examination, or based upon various types of sophistication, such as education, experience or training, including, without limitation, persons holding FINRA licenses, or CPA or CFA designations. [145 points; average ranking 3.45]
- 6 Through regulatory and policy changes, permit the creation of “venture exchanges,” operated as national exchanges or Regulation ATS regulated alternative trading systems with rules tailored for smaller non-reporting companies, including Regulation A issuers. These exchanges should benefit from state blue sky preemption, a Regulation NMS exemption, and a Rule 12f-2 (Unlisted Trading Privileges) exemption, as well as other intrastate exchange exemptions for low volume trading. These venture exchanges should have control over other variables, including tick sizes, minimum capitalization, minimum listing and trading prices and continuous trading versus periodic call auction trading, so as to create heterogeneous, competitive venues. [142 points; average ranking 3.38]
- 7 Withdraw the proposed amendments to Regulation D, Form D and Rule 156, or re-propose scaled-back changes that will not impair usability and utility of Rule 506(c), either on a planned basis or as a fall back in the event of unplanned general solicitations. [135 points; average ranking 3.21]

*Priority
Rank*

Recommendations

- 8 Adopt rules under Section 18(b)(3) to expand the category of the proposed “qualified purchaser” to include any purchaser of a class of security that has been offered and sold pursuant to Section 4(a)(1) or (3), provided that, the issuer files reports pursuant to proposed Rule 257(b) in order to preempt state blue sky law regulation of after-market resale trading of securities issued pursuant to Regulation A+ Tier 2 and Tier 1 offerings, or alternatively seek any necessary legislation to implement such preemption. [133 points; average ranking 3.17]
- 9 Propose a new federal exemption governing the private resale of restricted securities under Section 4(a)(1) of the Securities Act, commonly referred to as “Section 4(1-1/2)”, modeled on Congressman McHenry’s bill, H.R. 4565 (113th). [128 points; average ranking 3.05]
- 10 Extend JOBS Act benefits to smaller reporting companies. [125 points; average ranking 2.98]
- 11 Do not bifurcate the definition of accredited investor based upon the type of exempt offering being conducted. [122 points; average ranking 2.90]
- 12 Revise the definition of “smaller reporting company” to include:
 - (a) an issuer with a public float of less than \$250 million; or
 - (b) an issuer with a public float of less than \$700 million and annual revenues of less than \$100 million.[119 points; average ranking 2.83]
- 13A Adopt rules under Section 18(b)(3) to define the category of “qualified purchaser” to include any purchaser of a security that has been offered and sold pursuant to Section 4(a)(1) or (3) through a registered broker-dealer. [103 points; average ranking 2.45]
- 13B Eliminate or significantly reduce the extent of XBRL reporting requirements for smaller reporting companies. [103 points; average ranking 2.45]
- 15 Permit smaller reporting companies to exclude line item-responsive disclosures from their periodic reports if such disclosures are not material. [100 points; average ranking 2.38]
- 16 Eliminate Form 8-K reporting for smaller reporting companies; any Form 8-K events that occur in the quarter will be required to be filed in the periodic report for the quarter. [99 points; average ranking 2.36]

*Priority
Rank*

Recommendations

- 17 Reduce the holding periods under Rule 144(d)(1)(i) from six months to three months and under Rule 144(d)(1)(ii) from one year to six months. [96 points; average ranking 2.29]
- 18 Extend the tick size pilot to three to five years, publish the data that is obtained and adjust the program to achieve the overarching policy goals of improving the ability of investment banks, broker-dealers, and sales and trading platforms to make markets in the securities of small and emerging growth companies. [93 points; average ranking 2.21]
- 19 Join with NASAA and FINRA in the effort to implement the basic principles of the American Bar Association Task Force on Private Placement Brokers. To achieve this goal, join NASAA and FINRA in developing a timeframe for quarterly or other regular meetings—with specified benchmarks—until a mutually agreeable regime of finder registration and regulation is achieved. [92 points; average ranking 2.19]
- 20 Undertake to compile data to determine:
 - (a) the number of offerings, number of investors and dollar amount of capital raised in private offerings;
 - (b) the qualifications of investors who invest in such offerings; and
 - (c) any harm caused by the current definition of accredited investor, such that the Commission can determine the economic impact and necessity of any changes to the definition of accredited investor on investors and capital formation activity. [85 points; average ranking 2.02]

FORUM RECOMMENDATIONS BY BREAKOUT GROUP

Set forth below are the recommendations of participants in each of the four Forum breakout groups in order of priority, as discussed in footnote 39 on page 27.

Exempt Securities Offerings Breakout Group Recommendations

<i>Priority Rank</i>	<i>Recommendation</i>
1	Provide federal preemption for issuer sales and selling securityholder resales of securities issued pursuant to Regulation A and Regulation A+, and exempt purchasers and transferees of such securities from the calculation of the number of registered holders under Section 12(g) of the Exchange Act. [177 points; average ranking 4.21]
2	In finalizing the rules under Regulation A+, provide that: <ul style="list-style-type: none">• the information required for Tier 2 issuers shall be sufficient to meet the “current reporting” requirements of Rule 144;• there shall be no 10% of net worth limitation on purchasers;• business development companies shall be eligible issuers; and• a speedy path to full Exchange Act reporting for Tier 2 issuers from required Tier 2 disclosures shall be available. [152 point; average ranking 3.62]
3	Withdraw the proposed amendments to Regulation D, Form D and Rule 156, or re-propose scaled-back changes that will not impair usability and utility of Rule 506(c), either on a planned basis or as a fall back in the event of unplanned general solicitations. [135 points; average ranking 3.21]
4	Reduce the holding periods under Rule 144(d)(1)(i) from six months to three months and under Rule 144(d)(1)(ii) from one year to six months. [96 points; average ranking 2.29]
5	Join with NASAA and FINRA in the effort to implement the basic principles of the American Bar Association Task Force on Private Placement Brokers. To achieve this goal, join NASAA and FINRA in developing a timeframe for quarterly or other regular meetings—with specified benchmarks—until a mutually agreeable regime of finder registration and regulation is achieved. [92 points; average ranking 2.19]

Secondary Market Liquidity for Securities of Small Businesses Breakout Group Recommendations

<i>Priority Rank</i>	<i>Recommendation</i>
1	Through regulatory and policy changes, permit the creation of “venture exchanges,” operated as national exchanges or Regulation ATS regulated alternative trading systems with rules tailored for smaller non-reporting companies, including Regulation A issuers. These exchanges should benefit from state blue sky preemption, a Regulation NMS exemption, and a Rule 12f-2 (Unlisted Trading Privileges) exemption, as well as other intrastate exchange exemptions for low volume trading. These venture exchanges should have control over other variables, including tick sizes, minimum capitalization, minimum listing and trading prices and continuous trading versus periodic call auction trading, so as to create heterogeneous, competitive venues. [142 points; average ranking 3.38]
2	Adopt rules under Section 18(b)(3) to expand the category of the proposed “qualified purchaser” to include any purchaser of a class of security that has been offered and sold pursuant to Section 4(a)(1) or (3), provided that, the issuer files reports pursuant to proposed Rule 257(b) in order to preempt state blue sky law regulation of after-market resale trading of securities issued pursuant to Regulation A+ Tier 2 and Tier 1 offerings, or alternatively seek any necessary legislation to implement such preemption. [133 points; average ranking 3.17]
3	Propose a new federal exemption governing the private resale of restricted securities under Section 4(a)(1) of the Securities Act, commonly referred to as “Section 4(1-1/2”), modeled on Congressman McHenry’s bill, H.R. 4565 (113th). [128 points; average ranking 3.05]
4	Adopt rules under Section 18(b)(3) to define the category of “qualified purchaser” to include any purchaser of a security that has been offered and sold pursuant to Section 4(a)(1) or (3) through a registered broker-dealer. [103 points; average ranking 2.45]
5	Extend the tick size pilot to three to five years, publish the data that is obtained and adjust the program to achieve the overarching policy goals of improving the ability of investment banks, broker-dealers, and sales and trading platforms to make markets in the securities of small and emerging growth companies. [93 points; average ranking 2.21]

Accredited Investor Breakout Group Recommendations

<i>Priority Rank</i>	<i>Recommendation</i>
1	Do not exclude retirement assets from the calculation of net worth for determining an investor's status as an accredited investor. [151 points; average ranking 3.60]
2	Maintain the current financial thresholds for individuals to qualify as accredited investors, namely \$200,000 annual income, \$300,000 annual income for joint filers, or \$1 million net worth excluding primary residence. [146 points; average ranking 3.48]
3	Consider additional separate categories of qualification for accredited investors based upon passing an SEC-approved examination, or based upon various types of sophistication, such as education, experience or training, including, without limitation, persons holding FINRA licenses, or CPA or CFA designations. [145 points; average ranking 3.45]
4	Do not bifurcate the definition of accredited investor based upon the type of exempt offering being conducted. [122 points; average ranking 2.90]
5	Undertake to compile data to determine: (a) the number of offerings, number of investors and dollar amount of capital raised in private offerings; (b) the qualifications of investors who invest in such offerings; and (c) any harm caused by the current definition of accredited investor, such that the Commission can determine the economic impact and necessity of any changes to the definition of accredited investor on investors and capital formation activity. [85 points; average ranking 2.02]

Disclosure Effectiveness for Smaller Reporting Companies Breakout Group Recommendations

<i>Priority Rank</i>	<i>Recommendation</i>
1	Extend JOBS Act benefits to smaller reporting companies. [125 points; average ranking 2.98]
2	Revise the definition of “smaller reporting company” to include: (c) an issuer with a public float of less than \$250 million; or (d) an issuer with a public float of less than \$700 million and annual revenues of less than \$100 million. [119 points; average ranking 2.83]
3	Eliminate or significantly reduce the extent of XBRL reporting requirements for smaller reporting companies. [103 points; average ranking 2.45]
4	Permit smaller reporting companies to exclude line item-responsive disclosures from their periodic reports if such disclosures are not material. [100 points; average ranking 2.38]
5	Eliminate Form 8-K reporting for smaller reporting companies; any Form 8-K events that occur in the quarter will be required to be filed in the periodic report for the quarter. [99 points; average ranking 2.36]

BREAKOUT GROUP PARTICIPANTS

The participants identified below took part either in person or by telephone conference call in the Forum afternoon breakout groups on November 20, 2014. These participants formulated the Forum recommendations set forth beginning on page 27 and were later given an opportunity to participate in a poll to prioritize the recommendations.

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