

U.S. SECURITIES AND EXCHANGE COMMISSION

MEETING OF SEC ADVISORY COMMITTEE
ON SMALL AND EMERGING COMPANIES

Wednesday, September 23, 2015

9:30 a.m.

U.S. Securities and Exchange Commission

100 F Street, N.E., Washington, D.C.

Multipurpose Room (L-006)

1 PARTICIPANTS:
 2
 3 SEC COMMISSIONERS PRESENT:
 4 Mary Jo White, Chair
 5 Giles Cohen, on behalf of Luis A. Aguilar
 6 Daniel M. Gallagher
 7 Michael S. Piwowar
 8
 9 ADVISORY COMMITTEE MEMBERS PRESENT:
 10 Stephen M. Graham, Co-Chair
 11 M. Christine Jacobs, Co-Chair
 12 Charles Baltic
 13 David A. Bochnowski
 14 John J. Borer, III
 15 Dan Chace
 16 Milton Chang
 17 Sara Hanks
 18 John Hempill
 19 M. Christine Jacobs
 20 Sonia Luna
 21 David J. Paul
 22 Timothy Reese
 23 Timothy Walsh
 24 Gregory C. Yadley
 25 Michael S. Peciak, Official Observer

1 PARTICIPANTS (CONT.):
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 3 STAFF PRESENT:
 4 Julie Davis
 5 Sebastian Gomez Abero
 6 Keith F. Higgins
 7 Joanne Rutkowski
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1 P R O C E E D I N G S
 2 C O - C H A I R S C A L L M E E T I N G T O O R D E R
 3 C O - C H A I R G R A H A M : I t h i n k n o w i s a s g o o d a t i m e
 4 a s a n y t o c a l l t h e m e e t i n g t o o r d e r . S o g o o d m o r n i n g ,
 5 e v e r y o n e . A n d w e l c o m e t o t o d a y ' s m e e t i n g o f t h e A d v i s o r y
 6 C o m m i t t e e f o r S m a l l a n d E m e r g i n g C o m p a n i e s . W e
 7 a p p r e c i a t e t h a t a l l o f y o u w e r e a b l e t o m a k e i t , d e s p i t e
 8 t h e l o g i s t i c a l c h a l l e n g e s p r e s e n t e d b y t h e f a c t t h a t t h e
 9 P o p e i s i n t o w n , j u s t i n c a s e a n y o n e m i s s e d t h a t . W e
 10 a l s o w a n t t o a c k n o w l e d g e t h e i n t e r e s t e d p a r t i e s w h o w o u l d
 11 b e h e r e b u t f o r t h e f a c t t h a t t o d a y i s Y o m K i p p u r .
 12 A s a l w a y s , w e a r e b e i n g w e b c a s t l i v e . A n d w e
 13 w i l l t h e n b e a r c h i v e d , w h i c h i s I a m s u r e t h e r e a s o n w h y
 14 s o m e o f y o u a r e h e s i t a n t t o s p e a k . S o h o p e f u l l y t h o s e
 15 t h a t a r e u n a b l e t o j o i n u s t o d a y w i l l t a k e a d v a n t a g e o f
 16 t h a t .
 17 R e g a r d i n g t h e c o n f l i c t w i t h Y o m K i p p u r , w e f i n d
 18 t h a t i s u n f o r t u n a t e , b u t I r e m i n d e v e r y o n e t h a t t h e t e r m
 19 o f t h i s C o m m i t t e e e x p i r e s t o m o r r o w . S o o u r f l e x i b i l i t y
 20 t o m o v e t h i s m e e t i n g t o a d i f f e r e n t d a y w a s s o m e w h a t
 21 l i m i t e d .
 22 A q u i c k t h a n k s t o t h e S E C s u p p o r t s t a f f , w h o
 23 m a d e s u r e t o b u i l d i n e x t r a t i m e t h i s m o r n i n g t o g e t h e r e
 24 a n d d o e v e r y t h i n g t h a t t h e y d o t o m a k e t h e s e m e e t i n g s r u n
 25 w e l l . I t h i n k m a n y o f u s r e m e m b e r w h e n w e t r i e d t o h a v e

1 a meeting in San Francisco a few years ago where the
2 audiovisual did not go that well. And you tend to lose
3 sight of the importance of these individuals until you
4 are faced with those situations.

5 It is always a problem when you start thanking
6 people because you are always prone to leave somebody
7 out, but I do want to give a special thanks to Sebastian
8 and to Julie, who do an absolutely fantastic job
9 supporting the Committee. And it would be difficult to
10 manage, if not impossible to manage, without them.

11 Today we plan on wrapping up our consideration
12 of three important topics by making formal
13 recommendations to the Commission. We will start with
14 public company disclosure, which is a topic about which
15 many of us have firsthand experience. And our
16 recommendation will be timely as the SEC staff works
17 toward moving its public disclosure effectiveness project
18 forward.

19 We had a great discussion about disclosure
20 during our June meeting and again at our July conference
21 call. So we think today we should be in a position to
22 coalesce around our recommendation.

23 We will also return to the topic of Rule 147,
24 which, as you know, is an SEC safe harbor that is often
25 relied upon by issuers for intrastate crowdfunding.

1 At our June meeting, Mike Peciak gave us an
2 update about what many states are doing in this regard to
3 promote small company capital formation. And we seem to
4 have agreement that there are ways that we could
5 modernize Rule 147 to better facilitate the intrastate
6 crowdfunding.

7 Before lunch, we also plan to finalize a
8 recommendation regarding the so-called "finders" issue.
9 Many of us work in various capacities with companies that
10 are small and trying to locate capital. And, you know,
11 it is difficult to find, you know, people that are
12 willing to help in this context without, you know,
13 actually being concerned about running afoul of the
14 broker-dealer laws. This is now an easy one, but we feel
15 that, at a minimum, there are certain incremental steps
16 that could be taken to kind of move the ball forward in
17 this area to better facilitate small company capital
18 formation.

19 After lunch, we will return for a more informal
20 discussion on a topic that I believe you will all find
21 interesting. You may have seen that some academics and
22 professionals, including just last month a named partner
23 in a prominent New York law firm, are suggesting doing
24 away with quarterly reports for public companies. They
25 argue that quarterly earnings reports result in too much

1 focus on short-term performance, to the detriment of the
2 long-term health of the company. So I look forward to
3 all of your viewpoints in that regard.

4 So that is what we intend to accomplish today.
5 And we intend to make sure that we wrap up soon enough so
6 that we can all make trains and planes, notwithstanding
7 the additional traffic that we might face.

8 We are honored to have with us this morning
9 Chair Mary Jo White, Commissioner Piwowar, and
10 Commissioner Gallagher. Commissioner Stein hopes to join
11 us this afternoon. Commissioner Aguilar had planned to
12 join us by videoconference from Atlanta, but he is sick
13 today. And his counsel will sub for him. Giles Cohen?

14 MR. COHEN: Yes.

15 CO-CHAIR GRAHAM: Okay. I remembered.

16 So, with that, I will turn things over to Chair
17 White.

18 INTRODUCTORY REMARKS

19 COMMISSION CHAIR WHITE: Thank you, Steve. And
20 good morning, everyone. Thank you and, Chris, you as
21 well for your leadership. Thank you all for being here
22 through the road closures and other scheduling issues
23 that we have or by webcast. I will be very brief in my
24 remarks so you can get down to your business.

25 As Steve mentioned and as I think all of you

1 know, the term of this Committee expires tomorrow,
2 September 24th. I just want to say and really can't
3 emphasize it enough that the advice and the expertise the
4 Committee has provided to the Commission, really, on a
5 variety of issues for the last four years has been
6 incredibly helpful to us.

7 I also want to reiterate Steve's thanks to
8 Sebastian and Julie and Keith and CorpFin for their
9 assistance to this Committee. And if you will look at
10 today's agenda, you are continuing to work very hard
11 today and continuing in making those contributions to us.
12 And, frankly, the contributions that you have made have
13 shown the importance of this Committee, and I am pleased
14 to announce that the Commission is renewing the charter
15 of the Committee for another two-year term. I think that
16 will actually be formally announced today. The
17 Commission will be selecting members, and it is my hope
18 that many of you will continue to serve. And I certainly
19 look forward to the continuing dialogue and being the
20 beneficiary of your insight and suggestions as we go
21 forward.

22 I understand from your agenda that the
23 Committee will be discussing several formal written
24 recommendations today. There has been some prior
25 discussion on them. We are very interested in all of

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1 them. Relevant to those topics, as I mentioned at your
 2 June meeting, the staff in the Division of Corporation
 3 Finance is actively considering ways to improve
 4 Securities Act Rule 147, a safe harbor that issuers
 5 generally rely on for intrastate crowdfunding offerings.
 6 We very much look forward to having your input on aspects
 7 of that rule that could be modernized. And on the
 8 subject of the JOBS Act crowdfunding rulemaking, the
 9 staff has been working very hard on final rule
 10 recommendations for the Commission, and I anticipate that
 11 you will see something on that front from us in the very
 12 near term.

13 The staff in the Division of Corporation
 14 Finance also continues, as you know, to be hard at work
 15 on the initiative to enhance the effectiveness of the
 16 public company disclosure regime for both investors and
 17 for companies. The staff's review is focused initially
 18 on the business and financial disclosures required in
 19 companies' periodic reports, and I expect that the
 20 Commission will publish the first product from that
 21 initiative very soon. We have benefitted already from
 22 your input in this area and again look forward both to
 23 the discussion this afternoon but also your written
 24 recommendations on that that you will be discussing
 25 today.

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1 So let me just conclude -- I said I would be
 2 brief -- by reiterating my sincere appreciation for your
 3 service, all of you. You have had a productive term, and
 4 we know that each of you has a very busy schedule and
 5 multiple demands on your time. We are very grateful for
 6 your commitment to helping the Commission advance its
 7 mission and, in particular, for the benefit of small
 8 companies and their investors.

9 I also want to just pause for a moment to thank
 10 my friend and colleague Commissioner Dan Gallagher, who
 11 will be leaving the Commission on October 2nd. You know,
 12 Dan has really rendered just extraordinary service to the
 13 agency and our mission and has been a real champion, as
 14 you know, for the interests of small businesses. We will
 15 all miss him and his many contributions.

16 Thank you.

17 CO-CHAIR GRAHAM: Thank you, Chair White.
 18 Do we want to start with Giles?
 19 MR. COHEN: Thank you.

20 Commissioner Aguilar would like to be here
 21 today, but, as you heard, he picked up a bug and is
 22 losing his voice. Anyhow, he will be watching these
 23 proceedings from his sick bed. He asked me to deliver
 24 his remarks on his behalf. So here it goes.
 25 Thank you and good morning. Commissioner

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1 Aguilar would like to start by welcoming the members of
 2 the Advisory Committee on Small and Emerging Companies to
 3 today's meeting. As you know, this is the final meeting
 4 of the current term of this Committee, and he would like
 5 to extend his appreciation to each of you for your
 6 service to the Committee, this Commission, and the
 7 greater public good. He appreciates your efforts and,
 8 like me, looks forward to today's discussions.

9 Commissioner Aguilar would also like to thank
 10 the staff of the Division of Corporation Finance's Office
 11 of Small Business Policy for organizing this meeting and
 12 for their work on renewing the Committee's charter for an
 13 additional two years. This Committee performs an
 14 important service to America's small business community,
 15 and he looks forward to its continued good efforts.

16 One of the topics on today's agenda is the
 17 Committee's recommendation regarding expanding simplified
 18 disclosure for smaller issuers. As you know, the SEC has
 19 long recognized the significance of small businesses and
 20 has promulgated a number of regulations focused on
 21 smaller companies. These regulations include providing
 22 scaled disclosure and reporting requirements for small
 23 business issuers, which were amended in 2007 to provide
 24 for simplified disclosure and reporting to an expanded
 25 group of so-called "smaller reporting companies."

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1 As you consider future recommendations to the
 2 regulatory environment for small and mid-sized/emerging
 3 companies, Commissioner Aguilar urges you to keep in mind
 4 the dual goals of a strong capital market environment for
 5 these companies and the needs of their investors. We can
 6 all agree that any discussion of how to optimize the ways
 7 smaller issuers can raise capital has to be accompanied
 8 by a robust discussion of how to optimize the protection
 9 of investors. Neither goal is exclusive of the other,
 10 and Commissioner Aguilar is confident that this Committee
 11 is well-positioned to consider how best to enable
 12 businesses to raise capital in a cost-effective way while
 13 also, importantly, providing for ways to protect
 14 investors and the markets generally. Commissioner
 15 Aguilar looks forward to hearing your thoughts as to how
 16 best to accomplish these important goals.

17 The Commissioner also wants to briefly discuss
 18 a topic that is not on today's agenda, but he hopes it
 19 will be considered for a future meeting of this
 20 reconstituted Advisory Committee, and that is the
 21 increasing threat to small and emerging companies of
 22 cyber attacks. While cyber security is not traditionally
 23 an issue that encompasses the Commission's regulatory
 24 focus on small businesses other than those businesses
 25 that it regulates as broker-dealers, investment advisers,

1 and such, it is increasingly on the minds of all
 2 investors.
 3 As news headlines constantly make clear,
 4 massive data breaches have become commonplace. Cyber
 5 security is clearly a concern that the entire business
 6 community shares, but it represents an especially
 7 malicious threat to smaller businesses. The reason is
 8 simple. Small and midsize businesses are not just
 9 targets of cyber crime. They are its principal target.
 10 In fact, the majority of all targeted cyber attacks last
 11 year were directed at small and mid-sized businesses. The
 12 most predominant reason for this is also the most
 13 obvious. Smaller companies pose easier targets than
 14 larger organizations and must protect against such
 15 threats with far fewer resources.
 16 Despite these threats and the heightened
 17 vulnerability to which smaller businesses are subject,
 18 there is reason to believe that the smaller business
 19 sector may not be taking cyber security as seriously as
 20 it should. One recent survey of 400 small firms found
 21 that 27 percent of them have no cyber security protocols
 22 at all and that a similar number of firms had difficulty
 23 implementing even the most rudimentary cyber defenses,
 24 such as routinely backing up their data. This apathy is
 25 ill-advised given the increasing sophistication and

1 expertise of cybercriminals. Instead, a proactive
 2 approach appears to be warranted.
 3 These cyber attacks are becoming more
 4 prevalent, and their impact on small businesses and their
 5 investors can be devastating. This is a subject that
 6 Commissioner Aguilar will cover in more detail in a
 7 forthcoming article in the Autumn 2015 edition of Cyber
 8 Security Review, and he would encourage this Committee to
 9 also give this subject attention.
 10 We all look forward to a vibrant discussion of
 11 all of your agenda topics. Thank you.
 12 CO-CHAIR GRAHAM: Okay. Thank you.
 13 Commissioner Gallagher?
 14 COMMISSIONER GALLAGHER: Well, it is hard to do
 15 thank you because you invariably forget people. I
 16 totally agree with you, Stephen. But I am going to thank
 17 you, and I am going to thank Chris. And, in particular,
 18 I want to thank you for your service as co-chairs of this
 19 Committee. It has been not only an exemplary Committee
 20 in our sort of constellation of committees that provide
 21 advice to us but your participation and leadership have
 22 been exemplary, too. So thank you very much for all that
 23 you have done. And also thank you to the work of
 24 Sebastian and Julie, in particular, at the staff level.
 25 As Keith knows, you know, of all of the

1 divisions I have had disagreements with over the years,
 2 CorpFin features prominently on some of the Dodd-Frank
 3 related issues but on things that aren't mandated by
 4 Congress; in particular, the small business initiatives.
 5 It has been one of the best and most fruitful
 6 relationships I have had in four years working with you
 7 guys. I am going to miss it, and I wish you the best.
 8 I am also, you know, a little sad to not have
 9 Luis up on screen, especially with no voice because then
 10 he can't rebut me.
 11 (Laughter.)
 12 COMMISSIONER GALLAGHER: As he knows, yesterday
 13 I tried to get out a special shout-out to him in an open
 14 meeting, but I barely got through my other remarks to my
 15 colleagues. I am going to miss them all; uniquely,
 16 though, going to miss Luis. We have had a good
 17 friendship for four years as commissioners, but what most
 18 people don't know is that the friendship started when he
 19 started as a commissioner and I was a staffer. And so it
 20 surprised a lot of people when I came back as a
 21 commissioner that we sort of hit our stride as
 22 colleagues, especially for two people who disagreed as
 23 much as we did on policy issues. But it didn't surprise
 24 us. So I hope he gets better. And I am going to miss
 25 him. Luis, it will be something like the movie

1 Shawshank. I will send you a card.
 2 (Laughter.)
 3 COMMISSIONER GALLAGHER: It could be a box in a
 4 wall somewhere near a beach and --
 5 COMMISSION CHAIR WHITE: Send the --
 6 COMMISSIONER GALLAGHER: Yes. We will meet up
 7 somewhere where it is sunnier. I wish him the best and
 8 my colleagues, too, as I said yesterday. I know and
 9 respect you all. I am going to be cheering you on from
 10 the outside within the limits of the Obama ethics pledge.
 11 (Laughter.)
 12 COMMISSIONER GALLAGHER: And so thank you to
 13 all of the Committee's members for not only braving the
 14 papal visit traffic -- I actually thought it was the best
 15 commute I have had in about four years; hopefully it
 16 wasn't too bad for you guys -- but also for the
 17 commitment of your time and energies over the past two
 18 years. And, like Chair White, I hope we will be seeing
 19 many of you here as members of the reconstituted
 20 Committee.
 21 As has been said, the work of this Committee is
 22 critical in helping to bring forward the voice of small
 23 and emerging companies - a voice that is too often
 24 unheard or ignored, particularly in the post-Dodd-Frank
 25 rush to regulation. This Committee has examined issues

1 of critical importance for small business. You have
2 deliberated over how best to address them, and you have
3 issued to the Commission well-reasoned and well written
4 and reasonable recommendations. I, for one, believe the
5 least we can do as a Commission is to commit to providing
6 this Committee with written responses to those
7 recommendations. And I hope that is something the
8 Commission can take up, even after I leave.

9 It is not just a matter of showing respect for
10 your work, but it would be a tangible sign of our
11 commitment to fulfilling our statutory mission to
12 facilitate capital formation. And, unfortunately, these
13 days, there are few other visible signs of that
14 commitment. And I am glad that the Committee is being
15 renewed for another two years. And, although I,
16 unfortunately, will no longer be here as a consumer of
17 your recommendations, believe me, as with my colleagues,
18 I will be cheering you on and your work on from the
19 outside.

20 The voice of the Committee is needed now more
21 than ever. As we have seen with the Commission's recent
22 rulemakings advancing the executive compensation-related
23 provisions of the Dodd-Frank Act, it is far too easy to
24 simply sweep smaller reporting and emerging-growth
25 companies into the scope of these new regulations,

1 despite the ever-mounting compliance burdens that the
2 SEC's regulations place on those companies. And then we
3 all wonder why so many successful startups look to stay
4 private as long as possible before selling out to a
5 multi-billion dollar valuation to an established industry
6 incumbent.

7 The JOBS Act may have jumpstarted the IPO
8 market, shocking that patient back into life with a
9 deregulatory jolt, but the IPO market is still
10 convalescing. And we should be administering strong
11 medicine in the form of regulatory relief to grow our
12 economy, create jobs, and help lift our anemic economic
13 recovery into robust growth. The Committee's thoughts
14 regarding the expansion of simplified disclosure for
15 smaller issuers generally would be, if implemented, a
16 tremendous step in that direction.

17 Failing to pursue these and similar ideas for
18 actively facilitating small business capital formation
19 would leave in place regulations that are not
20 well-tailored for small companies or where the costs do
21 not justify the benefits or where the cumulative impact
22 of the regulations taken together are smothering small
23 business; in turn, suffocating the IPO market that
24 Congress tried so hard to save.

25 On a similar but related note, I would hope to

1 see consideration of recommendations relating to the
2 Division of Corporation Finance's disclosure
3 effectiveness review more broadly. This will be a vital
4 subject for the Committee to monitor closely. We have
5 already seen this project transition from disclosure
6 overload to disclosure effectiveness, and some would like
7 to take this as a perfect opportunity to advance
8 pro-regulatory ends. War is peace. Ignorance is
9 strength. And disclosure effectiveness is more
10 disclosure.

11 If more disclosure were the price we must pay
12 in order to make information useful for small business
13 investors, then we would now have excellent disclosure.
14 Not to state the obvious, but we do not have excellent
15 disclosure. And we all know that eliminating or scaling
16 disclosures is a more fruitful path to that end.

17 I hope the Committee can also continue to
18 pursue a robust agenda of its own, including a continued
19 focus on secondary markets for small business securities.
20 Robust, liquid secondary markets are critical for the
21 success of our reforms on small business security
22 issuance, including Regulation A+, and the Committee's
23 input on venture exchange or other similar liquidity
24 venues will be of tremendous use in advancing the ball on
25 those issues.

1 One of my many regrets as I leave the
2 Commission is that no meaningful steps have been taken to
3 facilitate venture exchanges. And it appears the
4 Congress will have to take that up for progress to be
5 made.

6 I am, as always, excited by the work of this
7 Committee. And I look forward to seeing what the renewed
8 Committee will do in the future, as always, assisted by
9 the wonderful talent in the Division of Corporation
10 Finance Office of Small Business Policy.

11 I wish you a fruitful and stimulating day of
12 discussion and an easy ride home. Thanks.

13 CO-CHAIR GRAHAM: Thank you, Commissioner
14 Gallagher.

15 Commissioner Piwowar?

16 COMMISSIONER PIWOWAR: Thank you, Stephen. And
17 I want to thank all of the members of the Committee who
18 were able to join us today. I, too, want to recognize
19 you, Stephen, and Christine for your leadership as
20 co-chairs of this Committee over the past several years.
21 Under your leadership, this Committee has done great work
22 on a number of issues. So thank you.

23 I also want to express my appreciation for the
24 efforts of Sebastian, Julie, and everyone in the Office
25 of Small Business Policy for their great support over the

1 last couple of years.
 2 I am pleased that the Commission intends to
 3 renew the charter of this Committee for another two
 4 years. I look forward to working with the Committee on
 5 continuing to find ways to stimulate capital formation
 6 for small and emerging companies. And as the
 7 rechartering process is underway by the Commission, I
 8 want to state my support for the comment raised by
 9 Commissioner Gallagher. Any recommendation from this
 10 Committee deserves a response from the Commission. We
 11 have a statutory obligation to provide a response to our
 12 Investor Advisory Commission, and we should adopt a
 13 similar requirement for this Committee.

14 And, Dan, although you are leaving us, I will
 15 continue to champion the suggestion.

16 I will just note that, you know, Dan, when he
 17 said he was leaving, he used the reference to the movie
 18 Shawshank Redemption, which, of course, is about escaping
 19 from a prison.

20 (Laughter.)

21 COMMISSIONER PIWOWAR: So we all know how it
 22 feels. I still have a three-year sentence here. So I
 23 wasn't aware you could actually leave early.

24 COMMISSIONER GALLAGHER: When I took the
 25 posters off my walls and the pictures, you could see the

1 marks.

2 (Laughter.)

3 COMMISSIONER GALLAGHER: I did it on a weekly
 4 basis.

5 COMMISSIONER PIWOWAR: There you go.

6 COMMISSION CHAIR WHITE: Then you gave them to
 7 me.

8 (Laughter.)

9 COMMISSIONER PIWOWAR: There you go.

10 COMMISSIONER GALLAGHER: Just joking. It is an
 11 honor and a privilege to be on the Commission.

12 COMMISSIONER PIWOWAR: Right. Last week I had
 13 the pleasure of participating in a forum on opening up
 14 capital in the energy and tech sectors, which was
 15 sponsored by the Congressional Black Caucus. The subject
 16 of the discussion was making sure that minority
 17 entrepreneurs have colorblind access to capital. It was
 18 a wonderful and fruitful discussion.

19 One of my fellow panelists was Javier Saade,
 20 who doesn't look like he was able to make it here today,
 21 from the Small Business Administration, of course, our
 22 observer. Now, Javier doesn't get a chance to really
 23 speak in this forum, but what I learned from that is he
 24 is doing some great work at the SBA in terms of promoting
 25 and encouraging investments in small businesses. And

1 when this Committee gets rechartered, I suggest that
 2 maybe we open up a forum for Javier to talk about all the
 3 great work that is being done there and the various funds
 4 that they have in that space, so do that.

5 And, finally, I look forward to the Committee's
 6 consideration today of the recommendations on disclosure
 7 effectiveness, intrastate offerings, and finders. Thank
 8 you.

9 CO-CHAIR GRAHAM: Thank you, Mike.

10 I would like to turn it over to Keith Higgins.

11 COMMITTEE CONSIDERATION OF WRITTEN RECOMMENDATIONS

12 ON PUBLIC COMPANY DISCLOSURE EFFECTIVENESS

13 MR. HIGGINS: Thanks, Stephen. Good morning,

14 everyone. And before getting started, let me give the
 15 standard disclaimer that anything that I or any other
 16 member of the staff says today reflects only our views
 17 and doesn't necessarily reflect the views of anybody else
 18 on the Commission or other colleagues on the staff.

19 I would like to add my voice in thanking all of
 20 you not only for making it today but for serving over the
 21 past couple of years, which has been coextensive with the
 22 term I have had as division director in Corporation
 23 Finance. I have enjoyed the discussions. I am looking
 24 forward to the discussions today on topics that I know
 25 are very important to you and very important to the

1 division's work.

2 So I would like to introduce, as if they need
 3 an introduction, Sebastian Gomez Abero, who is the chief
 4 of our Office of Small Business Policy; and Julie Davis,
 5 who is senior counsel, special, special counsel, in the
 6 office, who have greatly supported the group.

7 So I will just welcome you and turn it back to
 8 Stephen and Christine to kick off the proceedings.

9 CO-CHAIR GRAHAM: Okay. Thank you, Keith.

10 Our first recommendation is the one that has to
 11 do with public company disclosure. I think everyone has
 12 a copy. Hopefully you have had an opportunity to read
 13 it.

14 Again, we have spent the last two meetings, you
 15 know, talking about this issue and trying to draw this
 16 particular recommendation into focus. As it says, you
 17 can see the key points would be expanding the definition
 18 of a smaller reporting company to broaden that, really,
 19 to more smaller companies and also to provide smaller
 20 reporting companies with the same accommodations that we
 21 give to emerging-growth companies.

22 So the recommendation in this current form, I
 23 would ask for someone to move that we adopt that
 24 recommendation.

25 MEMBER: Move adoption.

1 CO-CHAIR GRAHAM: A second?
 2 MEMBER: I will second.
 3 CO-CHAIR GRAHAM: Okay. So the floor is open
 4 for any discussion. Does anyone have any comments,
 5 suggested changes?
 6 (No response.)
 7 CO-CHAIR GRAHAM: Okay. In that case, I will
 8 ask all of those in favor of the recommendation to so
 9 indicate.
 10 (Chorus of ayes.)
 11 CO-CHAIR GRAHAM: Anyone opposed?
 12 (No response.)
 13 CO-CHAIR GRAHAM: Abstentions?
 14 (No response.)
 15 CO-CHAIR GRAHAM: The recommendation is
 16 approved.
 17 Sebastian, Chris indicated that I didn't
 18 formally ask you for a quorum. I am assuming that we do
 19 indeed have a quorum and that recommendation that had
 20 just been approved is valid.
 21 MR. GOMEZ: We did, Steve. Thank you.
 22 CO-CHAIR JACOBS: Thank you.
 23 COMMITTEE CONSIDERATION OF WRITTEN RECOMMENDATION
 24 ON SECURITIES ACT RULE 147
 25 CO-CHAIR GRAHAM: Okay. The next

1 recommendation has to do with the modernizing of Rule
 2 147. Again, as you know, Rule 147 deals with the
 3 exemption for offerings that are purely at the exemption
 4 from federal regulation of companies or offerings that
 5 are solely intrastate in nature. This rule was adopted
 6 some time ago. And it is out of step with the current
 7 state of affairs.
 8 The areas that our recommendation addresses
 9 primarily are the fact that the rule doesn't allow even
 10 offers to people that are outside of a particular state,
 11 which is a pretty difficult thing to do with social media
 12 and the internet. The rule also is a set of 80 percent
 13 requirements having to do with where are you doing
 14 business, where you are generating revenues, and where
 15 are you spending the proceeds of the offering, which also
 16 strike the Committee as unrealistic. The issuer also has
 17 to be incorporated in the state of where the offering
 18 exists, which kind of gets in the way of the substance,
 19 if you will, when a company is deciding where it should
 20 be incorporated.
 21 As we have indicated, this rule dovetails into
 22 what the states are doing today with respect to
 23 crowdfunding. There are a number of states that have
 24 already enacted legislation, you know, having to do with
 25 crowdfunding. And last time around, Mike Pieciak from

1 NASAA brought this issue before us. And maybe I could
 2 get Mike to just kind of briefly recap why the states are
 3 interested in modernizing that Rule 147.
 4 MR. PIECIAK: Sure. I would be glad to. Thank
 5 you, Stephen. And thank you to the chair and the
 6 commissioners.
 7 You know, intrastate crowdfunding as of June
 8 3rd, which I think was the last time I addressed the
 9 Committee, we had a number of states that had enacted
 10 such crowdfunding, a number of states that were
 11 considering adopting crowdfunding that was state-based.
 12 Today -- I shouldn't say today. It is as of September
 13 16th. We now have 26 states and the District of Columbia
 14 that had adopted some form of state-based crowdfunding.
 15 So I see in the recommendation here I said, "In the near
 16 future, a majority of states will have adopted."
 17 So it looks like my prediction was right on
 18 that front. And these are also major states. I mean,
 19 Florida, Colorado, Illinois will become effective on
 20 January 1st of 2016. So there is some movement that is
 21 still happening. I think it is four states that are
 22 still awaiting signature from the governor and/or final
 23 rulemaking. And then seven states are still considering
 24 doing some investigation and/or in the legislative
 25 process.

1 So the need for modernizing Rule 147 is still
 2 an issue that is on the front burner for NASAA. The
 3 recommendation that is before us I think is well-drafted,
 4 perfectly hits on the issues and the impediments that
 5 small businesses are facing. It is specifically drafted
 6 to address the what should happen and open as to how it
 7 should happen. So I think the drafting is well-done.
 8 And as a state administrator in Vermont, with I
 9 think the most progressive state-based crowdfunding
 10 regime in place, I highly endorse this recommendation.
 11 And also as my position with NASAA, I think this will
 12 benefit the states on the whole.
 13 CO-CHAIR GRAHAM: Thank you.
 14 You all have a copy of the recommendation. And
 15 I should note for those who might be tuning in on the
 16 webcast, copies of the recommendations, you can find them
 17 at sec.gov.
 18 Can I get someone to move that we adopt this
 19 recommendation?
 20 MEMBER: So moved.
 21 CO-CHAIR GRAHAM: Can I get a second?
 22 MEMBER: I will second.
 23 CO-CHAIR GRAHAM: Okay. Any discussion? Yes,
 24 Greg?
 25 MR. YADLEY: During the first term of the

1 Advisory Committee, we expressed some skepticism about
2 crowdfunding in the equity securities area. This was
3 pre-JOBS Act. Of course, the JOBS Act includes a very
4 prescriptive directive to the SEC to implement rules.
5 And the Commission has gotten some criticism for not yet
6 having those rules. I, for one, am happy that the
7 Commission has been deliberate in addressing this. Like
8 many very detailed, although hurriedly, drafted and
9 passed pieces of legislation, there are gaps in it. And
10 there are unintended consequences. So we and everyone
11 here relates to the final rules, but I am not that
12 disappointed that it has taken this long. And I am sure
13 you will get it as right as you can.

14 On the other hand, the states have moved
15 forward with a patchwork, nevertheless. I am from
16 Florida. As you mentioned, we have a crowdfunding
17 statute. It is also pretty detailed, and we will see how
18 useful it will be. But that is up to each state to
19 decide what to do. I think this is a great opportunity
20 for the SEC to show its leadership in a way that enhances
21 federal-state coordination and cooperation. And by
22 addressing Rule 147, I think the SEC will be able to put
23 its voice behind its commitment to small business. And
24 so I endorse the recommendations.

25 CO-CHAIR GRAHAM: Thank you, Greg. And, as

1 some of you will recall, as Greg just mentioned a few
2 years ago when just before the JOBS Act was adopted, the
3 Committee, as then constituted, did express some concern
4 with respect to federal crowdfunding. And then we felt
5 that that was something that we couldn't endorse. You
6 know, I think we are sympathetic to the unmet need and
7 understood that something should be done, but it is still
8 waiting for what looks like the right answer. We both
9 have a system that not only protects and investors and
10 doesn't do anything significantly, you know, promote
11 fraud while at the same time, you know, establishing a
12 framework that is actually workable, you know, from a
13 small business point of view, as opposed to the need to
14 avoid having a regime that is just too complicated, too
15 burdensome, too expensive to be effective.

16 Yes? Yes?

17 COMMISSION CHAIR WHITE: Thank you.

18 Just in response to Greg's comment, first,
19 thank you for complimenting our deliberateness on the
20 crowdfunding rules. We get other comments as well from
21 time to time.

22 (Laughter.)

23 COMMISSION CHAIR WHITE: But seriously -- and I
24 will say this. It is not just the staff in the Division
25 of Corporation Finance, the whole Commission. You know,

1 obviously we are working with the statutory directives
2 that are included in the legislation but also -- I have
3 said this many times. You know, the goal is to make it
4 workable also. And also -- and this I think is reflected
5 in the work on Rule 147 -- we are looking more broadly
6 also at the array of issues but appreciate the
7 perspective which we share.

8 CO-CHAIR GRAHAM: Thank you.
9 Yes, David?

10 MR. PAUL: You can call me D.J. at this point,
11 I think.

12 CO-CHAIR GRAHAM: Yes, D.J. Yes. Yes.

13 MR. PAUL: I would simply want to echo the
14 comments. I, too, appreciate the deliberateness with
15 which the SEC seems to be contemplating leading up to
16 title III. I am ecstatic at the prospect of it being
17 actually available in the near term. And particularly in
18 light of these recommendations, this is not much of a
19 point, but I am interested and curious to see what the
20 interaction between title III is and this. I endorse the
21 recommendation. I am not so much less enthusiastic, but
22 I wonder how much it will be utilized. I hope Michael is
23 right and I am wrong and that it becomes another tool, in
24 addition to title III, which I am looking forward to. So
25 that was just the quick comment that I wanted to make.

1 CO-CHAIR GRAHAM: Okay. Well, thank you for
2 that, D.J.

3 I think that the way I look at the modernizing
4 of Rule 147 is kind of the way I look at the new
5 Regulation A. And that is that you wonder and have to
6 wait and see to what extent it actually becomes useful,
7 it is actually employed on a broader basis. The
8 important thing is to give it a chance. And so let's get
9 some things out there and see, see what does happen.

10 Any more? Yes, John?

11 MR. HEMPILL: Yes. This is maybe a little
12 technical question, but given the requirements of
13 3(a)(11); for example, that you do have to be organized
14 under the laws of the state, should we mention in here
15 that maybe this rule is -- you have a new rule adopted,
16 as opposed to amending 147, and that it be adopted, for
17 example, pursuant to 3(b) or something along those lines,
18 as opposed to 3(a)(11), just, again, given the statutory
19 requirements of that section?

20 CO-CHAIR GRAHAM: Good point. Sebastian or
21 Keith, do you have a --

22 MR. GOMEZ: It is a good point. It is, of
23 course, up to the Committee on that, but I think, John,
24 you make a good point.

25 MR. HEMPILL: I just raise that point because

1 Mr. Higgins made the point when we were discussing this
 2 last time.
 3 CO-CHAIR GRAHAM: Can we make that
 4 modification? Okay.
 5 COMMISSIONER GALLAGHER: I guess just to follow
 6 up, Sebastian, is that the only way to get there?
 7 Exemptive authority isn't another route or --
 8 MR. GOMEZ: So there is also exemptive
 9 authority under section 28. The Commission has general
 10 exemptive authority.
 11 CO-CHAIR GRAHAM: I think we can be broad in
 12 the recommendations of this.
 13 MR. GOMEZ: So it is up to the Committee to
 14 decide which way to go. I mean, John, you mentioned
 15 3(b). There is section 28 as well. So the Committee
 16 could if it desired just be broader and just, say,
 17 consider other exemptive authority, other than 3(a)(11).
 18 COMMISSIONER GALLAGHER: Which is focus on the
 19 ends, not the means, really, right?
 20 CO-CHAIR GRAHAM: Exactly, exactly.
 21 COMMISSIONER GALLAGHER: Yes.
 22 CO-CHAIR GRAHAM: But thank you for that, John.
 23 So Tim?
 24 MR. REESE: Yes. I just want to also go on
 25 record. I think this issue of broker-dealer and what we

1 are looking at is critical.
 2 CO-CHAIR GRAHAM: You know we are going to get
 3 to that next.
 4 MR. REESE: Okay. Okay. So this is not there
 5 yet?
 6 CO-CHAIR GRAHAM: Right.
 7 MR. REESE: Okay. All right. I will wait.
 8 CO-CHAIR GRAHAM: How was your train ride?
 9 MR. REESE: The train ride was good. I got
 10 ahead of everything.
 11 (Laughter.)
 12 MR. REESE: But go ahead, yes.
 13 CO-CHAIR GRAHAM: Any other comments?
 14 (No response.)
 15 CO-CHAIR GRAHAM: So let's consider the
 16 recommendation amended to basically, you know, focus on
 17 the end, not the means. And we will redraft that over
 18 the noon hour.
 19 As modified, can we get a motion to approve
 20 again?
 21 MR. PAUL: So moved.
 22 CO-CHAIR GRAHAM: D.J. Second?
 23 MEMBER: I will second.
 24 CO-CHAIR GRAHAM: Okay. Last chance for
 25 discussion.

1 (No response.)
 2 CO-CHAIR GRAHAM: All those in favor?
 3 (Chorus of ayes.)
 4 CO-CHAIR GRAHAM: Anyone opposed?
 5 (No response.)
 6 CO-CHAIR GRAHAM: Abstentions?
 7 (No response.)
 8 CO-CHAIR GRAHAM: Okay. We are good. Okay.
 9 COMMITTEE CONSIDERATION OF WRITTEN RECOMMENDATION
 10 ON THE "FINDERS" ISSUE
 11 CO-CHAIR GRAHAM: Moving to the recommendation
 12 regarding finders, you know, again, we have all probably
 13 worked with an early-stage company that is in need of
 14 private capital but its founders don't have the time,
 15 resources, or know-how to locate potential investors.
 16 They want to hire a friend or other contact to help
 17 secure investors, but that contact is not a registered
 18 broker and, thus, can't engage or, at a minimum, is
 19 unsure as to whether or not they would be permitted to
 20 engage.
 21 A number of our members are keenly aware of
 22 this finders issue, including Greg Yadley, who has been
 23 looking at the issue for a number of years. And based on
 24 the discussions at our June and July meetings, Greg
 25 helped to prepare a written draft of the recommendation

1 that is now before us. And I would ask for a motion to
 2 approve this recommendation.
 3 MR. PAUL: Can I make a comment?
 4 CO-CHAIR GRAHAM: Yes. We will move, second,
 5 and then open it up.
 6 MR. PAUL: Okay. All right.
 7 MEMBER: I will make the motion, Steve.
 8 CO-CHAIR GRAHAM: Okay.
 9 MEMBER: Second.
 10 CO-CHAIR GRAHAM: It has been moved and
 11 seconded. Discussion?
 12 MR. PAUL: Second.
 13 CO-CHAIR GRAHAM: Okay. D.J.?
 14 MR. PAUL: Yes. I have got two comments. The
 15 first is in the number 2, the first sentence, I am not
 16 sure that is right, actually. I could be wrong, may be
 17 referring to something else. Perhaps what is meant to be
 18 said is that over 95 percent of private offerings rely on
 19 506 and that very few use, you know, the other
 20 exemptions, 504 and 505, or perhaps I am just unaware or
 21 misreading that, meaning what are the 5 percent of
 22 private offerings that don't rely on reg D? Is that a
 23 statistic that I am simply not aware of, which is
 24 possible?
 25 CO-CHAIR GRAHAM: Okay. I will ask statistics

1 person.

2 MR. GOMEZ: Steve, we can confirm with our

3 colleagues in DOL. Well, the conversation is ongoing.

4 MR. PAUL: A small point. I just want to be

5 sure.

6 MR. GOMEZ: Yes. You know, a good point. Good

7 point, D.J.

8 MR. PAUL: And my second comment is --

9 MR. YADLEY: Can I just --

10 MR. PAUL: Oh, I am sorry. Answer.

11 MR. YADLEY: Yes. In the paper that I

12 presented at the last Advisory Committee meeting, this

13 statistic was in a capital-raising survey that was done

14 by Vlad Ivanov and Scott Bauguess in February 2002 from

15 the Division of Risk Strategies. So I am sure that is

16 where that came from.

17 MR. PAUL: I wonder how current that is, but

18 that is fine. Maybe I misunderstood it. It is not a

19 major point, but I was not aware that 5 percent of

20 private offerings were made outside of the bounds of reg

21 D. But we can leave aside, and we will check it. It

22 certainly doesn't impact the significance of the

23 necessity for the recommendations or the recommendations

24 themselves.

25 I would say that I do support these

1 recommendations. I don't think it will come as much of a

2 surprise to anybody here that I had hoped beyond hope

3 that there would be a touch more specificity with respect

4 to them, but this is a great start. And I am happy that

5 we are making them. I hope that we may have an

6 opportunity to revisit in the future and perhaps make

7 more specific recommendations, but I certainly endorse

8 this now. So thank you.

9 CO-CHAIR GRAHAM: Thank you.

10 And, Tim, were you going to?

11 MR. REESE: Yes. Now is my time.

12 (Laughter.)

13 MR. REESE: You know, I look at this issue or

14 the passage for dealing with this issue as critical to

15 formation of capital. And the ambiguity out there, where

16 we are really dealing with broker-dealers and folks who

17 are holding themselves as broker-dealers in capital

18 formation and that, you know, there needs to be with this

19 passage and others that may come with more, that we

20 really get a hold of this.

21 And I do think where I see from the discussion

22 where some of the ambiguity is being even done by law

23 firms who represent these unregistered broker-dealers

24 when they have a potential for a reward. And so people

25 play on the edge around this issue, around raising

1 capital. And when that grows into a larger pool of

2 capital, I see a level of unsophistication where

3 nonregistered brokers are trying to extend themselves,

4 even beyond the current capital raise, into other areas,

5 which has caused in some cases I have seen some real

6 concern and having to have to go to court to fight those

7 sort of issues on small capital raises, on amounts that

8 are within our jurisdiction below this amount, around a

9 couple of million dollars or more.

10 So when I read this, I just felt like this is

11 something that is critical. It is timely. And I am glad

12 to see it. Okay? And I can't overemphasize it, having

13 personally dealt with this issue with unsophisticated

14 unlicensed broker-dealers involved in transactions and

15 demanding fees and getting representation and causing the

16 firms to have to pay legal fees to fight it. And nothing

17 good has come about, no growth, no job creation, just

18 pure lawyer bills being paid at the end of the day. So

19 that is what I would like to go on record and say.

20 CO-CHAIR GRAHAM: Okay. Thank you.

21 COMMISSIONER GALLAGHER: Stephen, can I just

22 weigh in on this, too?

23 CO-CHAIR GRAHAM: Yes.

24 COMMISSIONER GALLAGHER: I agree with Timothy.

25 I think it is a real critical issue. It seems like on

1 paper to be something much smaller than it actually is.

2 It is an area where we can and should just provide

3 guidance. It is, unfortunately, one of the strange

4 situations where the good people suffer the most.

5 CO-CHAIR GRAHAM: Right.

6 COMMISSIONER GALLAGHER: Right? The legitimate

7 people who are aware of the restrictions don't engage in

8 the activity to avoid the registration process and

9 everything that comes with it. And those who are

10 blissfully ignorant are collecting fees. It is just not

11 a good situation for anybody. And so the good people

12 pulling back from facilitating capital formation is a

13 horrible situation. I think, you know, having made

14 progress on M&A Brokers a year or two ago with the

15 no-action letter, it just is a natural that we should

16 clarify, you know, what triggers registration in this

17 space.

18 So I think it is a great recommendation. I

19 think it is wholly within our capability to do it. I

20 think I saw one of our folks from the trading and markets

21 chief counsel's office in here. And, you know, they

22 handle these sorts of things. And, you know, I think

23 from a policy perspective, when you look at registration

24 requirements generally, what is the purpose being served.

25 And in the broker-dealer context with this type of

1 activity, there is not a lot of purpose being served.
2 You know, you are not interested in someone who is
3 holding customer assets. You are not interested in
4 someone, you know, coming in to examine their books and
5 records. They are not trading. You know, there are just
6 so many reasons why the regulatory policy purpose behind
7 registration isn't called into question in this space.
8 And that IO think gives us all the more impetus to
9 address it. So I am glad you guys teed it up.

10 CO-CHAIR GRAHAM: Thank you, Dan.
11 Any other comments? John?

12 MR. BORER: So I wholeheartedly agree that this
13 issue should be clarified because it has been a constant
14 thorn for as long as I have been in the broker-dealer
15 business when people show up with a good idea that
16 requires some action and they cannot be compensated in a
17 transparent fashion because of the regulations that FINRA
18 has on the broker-dealers. And that is clearly where we
19 look first. There are workarounds that people have used
20 in the past, but it always creates some level of
21 discomfort.

22 My question here -- and maybe this can come
23 from our representative from NASAA or from someone on the
24 Commission. How much work will be required between -- I
25 guess it is the third point in our recommendation -- and

1 the coordination with NASAA, which according to our
2 recommendation is somebody who is helping find investors
3 and helping with the process, is going to be regulated or
4 licensed at the state level? And with FINRA, who I
5 understand SEC has influence on FINRA, they are created
6 at their direction and oversees all the broker-dealers to
7 actually have this implemented.

8 Are we talking a multi-year process here or is
9 this something that can be done in a relatively
10 straightforward fashion? And, depending on what that is,
11 is there a way to more focus this recommendation to help
12 that process along.

13 CO-CHAIR GRAHAM: Mike, do you want to take
14 that?

15 MR. PIECIAK: Sure. I will answer it, and I
16 will let Sebastian, you know, add to it.

17 Thanks, John, for the question. I mean, I
18 think, to an extent, it is how willing are the sides on
19 each three of the sort of triangles coming together and
20 discussing this? And, you know, I can speak, you know,
21 in our role in Corporation Finance. I mean, we would be,
22 you know, more than ready and willing to sit at the table
23 and have these discussions and move the ball forward in
24 our arena. I am sure the same can be said, you know,
25 here. And FINRA I can't speak for, but, you know, in

1 terms of our process among the states, it would be, you
2 know, up to individual states to some degree, but a
3 recommendation usually can go from beginning to end
4 within a year in the NASAA process.

5 MR. BORER: Is the state already regulating
6 people who are not under the purview of FINRA who are
7 doing these, performing these activities?

8 MR. PIECIAK: I mean, there is such a thing as
9 a state-based broker-dealer. In Vermont, we require that
10 they are a member of FINRA. When an individual comes to
11 my office and is conducting the type of actions described
12 in the first bullet point here, I tell them that, you
13 know, state registration is not required in Vermont for
14 that type of activity. So it is sort of again an area
15 that could use some more clarity, I think. You know,
16 from the federal counterparts. So that is why I think
17 this recommendation has some really good merit to it.
18 But that is what I can speak to towards Vermont.

19 MR. GOMEZ: Joanne, I will defer to you if
20 there was anything else you wanted to add.

21 MS. RUTKOWSKI: Just at this point, you know,
22 federal status and state status are two different issues,
23 but definitely I think most states do regulate in this
24 space. There is ambiguity in the present. There is no
25 question.

1 And, you know, the ABA did the report 10 years
2 ago. They called out this very question. So it is
3 really a good thing that you all are coming forward with
4 the recommendation.

5 MR. YADLEY: John, I think the harder part in
6 this is FINRA. So the question about how the SEC might
7 constructively work with FINRA because back in the old
8 days, when I was on the staff, we had, you know, SEC-only
9 brokers, but it is FINRA. And it has been unwilling and
10 not entirely without reason. I mean, having a whole new
11 population of very small people with limited activities
12 who they are responsible for and will have to regulate
13 would be a self-regulatory burden. On the other hand,
14 their activities are so limited that it really shouldn't
15 be hard.

16 And FINRA has adopted or proposed nearly a
17 half-dozen limited broker-type status classes. And it
18 would seem that this should be the next one that they
19 should address. And I think part of this recommendation
20 is while the SEC can't make FINRA do something, trying to
21 get them focused on it would be an important step
22 forward.

23 CO-CHAIR GRAHAM: D.J.?

24 MR. PAUL: I think the SEC can make FINRA do
25 things, actually. I think that they might be the only

1 entity that can.
 2 MR. YADLEY: I like your smile when you said
 3 that.
 4 MEMBER: He is trying to be very polite.
 5 MR. PAUL: And I am, you know, typically not
 6 trying to be very polite.
 7 (Laughter.)
 8 MR. PAUL: But I am glad you are around because
 9 otherwise I would just horrible.
 10 I do think that the SEC has the power to tell
 11 FINRA what to do. I also would like the SEC to
 12 contemplate creating some sort of regime that doesn't
 13 involve FINRA because if the activities of these -- let's
 14 call them finders; we could call them connectors -- in
 15 any case, is limited. And it may not be necessary for
 16 FINRA to be involved at all. And I will just leave that
 17 there because I don't want to tell any more bad jokes.
 18 MS. RUTKOWSKI: Just to follow up on that,
 19 could I ask a question on recommendation number 2?
 20 CO-CHAIR GRAHAM: Yes.
 21 MS. RUTKOWSKI: When you all are talking about
 22 private financings, are you thinking about a dollar
 23 amount or what is that universe? Is that the \$250
 24 million?
 25 MR. PAUL: No. Well, there were some proposed

1 just kind of ballpark things that were arbitrary, but the
 2 notion being that perhaps there could be a safe harbor
 3 for a connector/finder that didn't participate in the
 4 structuring but simply said, "Hey, I am going to put you
 5 guys together." And if that individual or maybe even
 6 entity was very limited in the scope of its work in a
 7 year, perhaps it only took a certain dollar amount of
 8 compensation, a couple of hundred thousand dollars,
 9 perhaps only participated in 5 deals or 10 but a number
 10 of deals and perhaps only facilitated the raising of a
 11 relatively low number, say \$10 million or 5, some number.
 12 MS. RUTKOWSKI: Okay.
 13 MR. PAUL: So a specific recommendation is to
 14 just say, "Look, if you don't make more than this much
 15 dough doing this process, if you don't do more than X
 16 number of raises and if you don't raise more than this in
 17 the aggregate, then you are in a safe place and you are
 18 exempt and you don't need to be, you know, a registered
 19 rep." Does that answer?
 20 MS. RUTKOWSKI: That is the first one. Then
 21 the second one about deferring to the states, are you
 22 just thinking private offerings generally or, once again,
 23 it would be just as long as they are subject to state
 24 regulation --
 25 MR. PAUL: Yes.

1 MS. RUTKOWSKI: -- and it doesn't involve a
 2 public offering.
 3 MR. REESE: I was thinking private offerings.
 4 MS. RUTKOWSKI: Okay. Great. Thank you.
 5 CO-CHAIR GRAHAM: John?
 6 MR. BORER: Just one more comment back to the
 7 issue around FINRA. When the JOBS Act was put into
 8 place, there were certain provisions in there that were
 9 intended to modify the behavior of Wall Street,
 10 specifically with respect to research publication, et
 11 cetera, et cetera, that, to my knowledge, because of what
 12 I consider to be, in a principal in a broker-dealer for
 13 many, many, many years, FINRA's resistance to, despite
 14 the legislation, wanting to encourage those activities
 15 have not been carried out broadly on Wall Street. And I
 16 think that the ability to influence FINRA with respect to
 17 enhancing the ability for these brokers that may be doing
 18 it on a one-off basis, I would actually be resistant to
 19 putting dollar limits on things like that because if
 20 somebody makes one phone call and can raise \$100 million
 21 one time and we say, "Well, you can't do that unless you
 22 are a broker-dealer," that to me is just as significant
 23 as somebody raising a million dollars or somebody with
 24 tenfold calls because it may be a one-off type of a
 25 thing.

1 I think the ability when these issues are
 2 considered to have a more proactive dialogue with FINRA
 3 to encourage them along these lines may be quite useful
 4 because, again, pre-offering publication of research I
 5 haven't seen. And Wall Street is -- and we talked to the
 6 big banks. And they said, "Well, we are not going to
 7 touch anything that we know FINRA doesn't like, despite
 8 the fact that Congress may."
 9 And I don't know how those things get
 10 transferred to the bureaucracy, which I consider FINRA to
 11 be. This is a very proactive organization here at the
 12 SEC. FINRA in my experience is not. So anything that
 13 can be in the writing or changing these rules that will
 14 encourage them or perhaps leave them out of it I would
 15 encourage.
 16 CO-CHAIR GRAHAM: Thanks, John.
 17 Sara?
 18 MS. HANKS: Yes. I just wanted to build on
 19 something in point 4 of the recommendations. We say that
 20 to begin to address this set of issues incrementally. I
 21 just want it to be very clear that this set of issues is
 22 not just points 1, 2, and 3 but what we raise in here and
 23 that there is a desperate, urgent need for clarification
 24 as to broker-dealer status in the online investment
 25 platform community as well.

1 CO-CHAIR GRAHAM: Thanks. Thanks. So that
2 certainly was the intent. So maybe we can expand that a
3 little bit, Julie. And we can talk. Okay. John?

4 MR. HEMPILL: This is actually going back to
5 something that D.J. was talking about earlier in the
6 preamble in paragraph number 2. When I was reading it,
7 the second sentence says, "How are less than 15 percent
8 of regulation de offerings used financially in
9 intermediaries?" I assume that is basically just
10 statistical information, just taken from Form D's that
11 are filed.

12 MR. GOMEZ: That is correct, John. That comes
13 from the Form D filings.

14 MR. HEMPILL: So then the next sentence goes on
15 and says, "This is due, in part, to lack of interest on
16 registered broker-dealers," which is true for smaller
17 offerings. I think there is like a sentence missing,
18 though, after that because, I mean, what you have to say
19 is that because of this lack of interest, people go out
20 to unregistered broker-dealers; i.e., finders, and that
21 this creates a problem because these people are not
22 regulated and just go through the dangers that you point
23 out in the last two points in the last sentence there.
24 In other words, I just think there is a point that needs
25 to be made that what we are dealing with here is a

1 MR. REESE: Greg, is that?

2 MR. YADLEY: Yes.

3 MR. REESE: Okay. Because I think there are
4 three things, then, right? You either use a registered
5 broker-dealer, use an unregistered broker-dealer, use no
6 broker-dealer.

7 MR. YADLEY: Tim is right. One of the things
8 that -- I have been accused of being too polite. I think
9 the thrust of these recommendation is not to do what we
10 accuse Congress of doing with crowdfunding, which is
11 making this very, very detailed and then making it
12 difficult for the staff to do, as John says, use its
13 creativity in coming up with answers. Our Advisory
14 Committee has discussed lots of things, including what
15 D.J. and Tim have said in terms of putting some meat on
16 the bones of this. And we have lots of ideas that we are
17 happy to share again in any way that would be helpful to
18 the Commission.

19 But, on the specific point Tim raised, yes, you
20 can raise capital without engaging a third party, but,
21 even there, the ambiguities are legion. You hire
22 somebody who can help do all of these things that finders
23 do and negotiate and help you put together a business
24 plan and set up meetings and things like that. But, even
25 though they are an employee, if their compensation is

1 problem of there being unregulated broker-dealers that
2 people rely on that caused them problems later on; for
3 example, when we try to go public.

4 CO-CHAIR GRAHAM: And, you know I think that is
5 one prong of the problem. And there are at least two
6 prongs. The other is that people just simply don't go
7 out and capital just simply is not raised. So let's
8 expand the -- well, we will add some language to
9 paragraph 2 in the preamble.

10 MR. REESE: Steve, is the paragraph really
11 intended only for capital raise by an intermediary or is
12 it for all capital raise, regardless of whether you use
13 an intermediary or not?

14 CO-CHAIR GRAHAM: We were just talking about
15 the problem with intermediaries, right?

16 MR. REESE: Right. But when we say,
17 "Ninety-five percent of private offerings rely on
18 exempt," I just wanted to make sure that universe, we are
19 only talking about 95 percent of a subset.

20 CO-CHAIR GRAHAM: No. That universe covers
21 everything. It is my understanding that that is not a
22 subset.

23 MR. REESE: So it is the entire --

24 CO-CHAIR GRAHAM: So it is 95 percent rely and
25 run reg D.

1 based on the money that comes through these
2 capital-raising efforts, they may be a broker. And the
3 SEC does have a sort of safe harbor on this, but it is
4 pretty unhelpful.

5 So yes. The whole point is we don't want there
6 to be questions that are so scary given the consequences
7 of violation of the law and rescission of the transaction
8 and people not getting paid their fees that, in fact,
9 people say, "Well, we are just not going to go forward.
10 You know, we don't understand it. Our lawyer is not
11 giving us any help. There is no clarity." So we would
12 like guidance, and it is the whole spectrum of
13 unregistered offerings.

14 Joanne, I think in answer to your question, we
15 are talking primarily about smaller offerings. I think
16 we are talking primarily about companies that are not yet
17 public. But, again, as we look at it and with the line
18 between public companies and private companies blurring,
19 there is plenty of room to address the issues, which are
20 striking that balance between helping companies raise
21 capital and not doing it in a way that creates
22 enforcement issues and predators for investors.

23 CO-CHAIR GRAHAM: Thank you, Greg.

24 Any other comments?

25 (No response.)

1 CO-CHAIR GRAHAM: So I think that we have only
 2 made one change. And that was with the lead-in in
 3 paragraph 2 in acknowledging that we are focused on the
 4 situation involving being forced to enlist someone who is
 5 unregistered or being in a situation where there is just
 6 simply no help in capital formation.
 7 MS. DAVIS: I think there was also -- didn't
 8 Sara have a change in recommendation 4?
 9 CO-CHAIR GRAHAM: Oh. To make it clear what we
 10 mean by -- because that was clearly the intent, but yes.
 11 We can clarify that, what the set of issues is. Okay.
 12 Okay.
 13 So, with those modifications, does someone want
 14 to move that we adopt the amended recommendation?
 15 (No response.)
 16 CO-CHAIR GRAHAM: Second?
 17 MEMBER: Second.
 18 CO-CHAIR GRAHAM: Any further discussion?
 19 (No response.)
 20 CO-CHAIR GRAHAM: All of those in favor?
 21 (Chorus of ayes.)
 22 CO-CHAIR GRAHAM: Opposed?
 23 (No response.)
 24 CO-CHAIR GRAHAM: Abstained?
 25 (No response.)

1 CO-CHAIR GRAHAM: The recommendation is
 2 approved.
 3 Well, thank you all for being extraordinarily
 4 efficient. I think, you know, what we could do is go
 5 ahead and, as Chris suggests, and begin the afternoon
 6 session.
 7 MR. GOMEZ: Steve, one suggestion. Since the
 8 agenda had had the afternoon discussion specifically
 9 starting after lunch, I wonder if someone who might have
 10 been waiting to tune in in the afternoon may miss it.
 11 CO-CHAIR GRAHAM: Okay. That is a valid point.
 12 MR. GOMEZ: So should we maybe consider us
 13 breaking at this point? That way we
 14 CO-CHAIR GRAHAM: That is a valid point. Okay.
 15 Okay. Good idea, though.
 16 (Laughter.)
 17 CO-CHAIR GRAHAM: So what we are going to do,
 18 then, is break early, but we want to first have a group
 19 photo taken, as I understand it. Yes, yes. Your
 20 intuition was right.
 21 So logistics?
 22 MR. GOMEZ: So we will officially now and then
 23 move to administrative session.
 24 CO-CHAIR GRAHAM: Right. Okay.
 25 MR. GOMEZ: Thank you.

1 (Whereupon, at 10:38 a.m., the Committee went
 2 into administrative session and, at 1:34 p.m., returned
 3 to open session as follows.)
 4 A F T E R N O O N S E S S I O N
 5 CO-CHAIR GRAHAM: Okay. Welcome back. I hope
 6 everyone is not only satiated in terms of eating but that
 7 you are also awake. We are going to start this afternoon
 8 by kind of marking the fact that this is the last meeting
 9 of the Committee as currently constituted with some
 10 remarks that Chris wanted to make. And so I will turn it
 11 over to Chris before we get to the balance of the
 12 afternoon.
 13 CO-CHAIR JACOBS: Thank you.
 14 Since we have wrapped up the formal agenda and
 15 our recommendations, I thought I would take just a moment
 16 and to say that, as you have heard, this is our last
 17 official meeting. And the Committee now has completed
 18 its tenure with today's session. As a Committee, we were
 19 charged with three tasks by the Commission. Number one
 20 was capital raising by emerging, privately held small
 21 businesses and publicly traded companies with less than
 22 250 million in public market capitalization; second,
 23 trading in securities of such companies; and, third,
 24 public reporting and corporate governance requirements,
 25 to which such business and companies are subject.

1 To recap, the current iteration of this
 2 Committee held its first meeting December 17th, 2014. In
 3 less than one year's time, we have held five meetings:
 4 four of them in person, one telephonic. And we provided
 5 the Commission with five sets of recommendations. Those
 6 recommendations encompass the codification 4(a)(1-1/2),
 7 accredited investor definition, the modernization of Rule
 8 147, finders issues, and public company disclosure
 9 effectiveness. We listened to experts in the field for
 10 each of these recommendations, deliberated, discussed.
 11 And at all times, we stayed consistent with the
 12 Commission's three-pronged mission.
 13 My co-chair and I would like to thank you all
 14 for your attendance, which has been incredibly stellar
 15 given all of the logistics, your commitment to the
 16 Committee's work and your time spent helping us reach
 17 consensus on these five timely and important topics.
 18 To the SEC staff, we thank you again for your
 19 tireless efforts on behalf in helping us with experts,
 20 with meeting logistics, and with drafting these important
 21 recommendations. It has been an invaluable exercise.
 22 And thank you.
 23 We would also like to thank Chair White, the
 24 commissioners, and Keith Higgins for their support and
 25 their interest in this Committee's proceedings. Like

1 you, we feel that the open dialogue and the interaction
2 of groups such as ours provide insight. This Committee
3 is populated by business leaders who are in the trenches
4 every day. I am sure that I speak for all of us when I
5 say that we appreciate the Commission's wanting to hear
6 about these issues that impede capital formation for our
7 small and emerging companies. So thank you. We did a
8 great job.

9 (Laughter.)

10 (Applause.)

11 CO-CHAIR GRAHAM: Thank you, Chris.

12 ROUNDTABLE DISCUSSION

13 ABOUT FREQUENCY OF ONGOING REPORTING

14 CO-CHAIR GRAHAM: As we all know, disclosure
15 effectiveness is a pretty hot topic. And there are
16 subtopics within it that, well, you know, can come across
17 as quite bold and worthy of more exploration. And one of
18 these came more publicly into view last month when a
19 named partner from Wachtell Lipton, a prominent law firm,
20 as I think most of you know, suggested doing away with
21 quarterly reports of public companies altogether.
22 Eliminating the 10-Q is not a totally new idea. There
23 has been an ongoing debate over the frequency of
24 financial reporting. And many argue that too many
25 executives make decisions based in short-term

1 the points of view of this Committee on this particular
2 issue this afternoon. So, with that, I would like to
3 throw it open for comment. D.J.?

4 MR. PAUL: Well, I certainly am cognizant and
5 sympathetic, if not empathetic, to the concerns of
6 companies that, particularly smaller companies and the
7 ones that this Committee attempts to serve, the burdens
8 of quarterly reporting. I am equally concerned about
9 kind of the prevalence of short-term motivations when
10 asked to report as a company on a quarterly basis. I
11 mean, it is just natural that if you are going to be
12 graded on a scorecard every three months or so, that you
13 are going to perhaps -- and your stock price may reflect
14 what it is that you put out there, that that could become
15 the motivation, which is not as effective if one is
16 trying to do something long-term.

17 I think that there is a distinction perhaps.
18 And maybe we can split the baby a little bit here if we
19 were going to make some sort of recommendation about it,
20 which is not to get rid of quarterly reporting entirely
21 but perhaps to abridge or eliminate the financial
22 component of it, the financial forecasting, the thing
23 that perhaps impacts both the motivation to run a
24 business in more of a short-term stock price manner. But
25 then maintain the thing that perhaps does need to be

1 considerations, regardless of the impact in the long-run
2 performance of their firms. And they say that the
3 quarterly reporting exacerbates this problem.

4 The memo from Marty Lipton asserted that the
5 SEC in pursuing its disclosure reform initiatives should
6 consider the U.K.'s move toward discontinuing quarterly
7 reporting altogether. Lipton noted that Legal and
8 General Investment Management, a global investment firm
9 with more than 700 billion pounds under management,
10 contacted the boards of the 350 largest public companies
11 on the London Stock Exchange, basically expressing their
12 view that discontinuation of quarterly reporting was
13 something that they would support.

14 Legal and General emphasized that short-term
15 reporting is not necessarily conducive to building a
16 sustainable business and adds little value for companies
17 that are operating in long-term business cycles. Other
18 commentators, of course, have been skeptical as to the
19 benefits of eliminating quarterly reports. This whole
20 subject clearly touches on some of the things that we
21 have, you know, talked about over the years, you know,
22 relating to figuring out a way, a sensible way, to reduce
23 the disclosure burden incidence on smaller public
24 companies.

25 So we thought that it might be helpful to get

1 maintained, which is the material disclosure or
2 disclosure on a regular basis, quarterly basis, of the
3 activities or perhaps the threats or whatever pitfalls,
4 whatever it is that is going on in the business that an
5 investor ought to be evaluating on a more present basis.

6 Certainly I personally don't advocate for doing
7 this across the board, which is to say, you know, for all
8 companies at all market capitalization levels. I think
9 that it is really a burden more for smaller companies and
10 lesser capitalized companies, but I would like to
11 entertain some sort of modification perhaps that relieves
12 the companies, both of the burden of doing the financial
13 forecasting and all of them, you know, accounting work on
14 a quarterly basis and also, perhaps in so doing,
15 deemphasizes the short-term nature and the short-term
16 perception that seems to accompany the quarterly
17 reporting as it is now.

18 CO-CHAIR GRAHAM: Thanks. Sonia?

19 MS. LUNA: So, as it relates to the smaller and
20 emerging companies, if we were to make a recommendation
21 on reducing the frequency of the reporting, I have asked
22 a few folks prior to the meeting just to kind of get some
23 of their thoughts, CFOs and some board members, audit
24 committee members in particular. And their question to
25 me was, well, then how would investors really know what

1 is going on in the company?
 2 And then I did my own kind of digging around
 3 and was curious, you know, if we, the Committee, needed
 4 more information, let's say, on what would happen if we
 5 had semiannual reporting versus quarterly. And then,
 6 just to play devil's advocate, I was thinking, well, part
 7 of the article that you provided, which was good
 8 information, again, to play devil's advocate, is, well,
 9 what is the value proposition we are gaining in long-term
 10 investments; right? So how do we know that long-term
 11 investments are better than short-term investments and
 12 just kind of clear the air that way? I don't know the
 13 data points on that.

14 In terms of the leg work for smaller reporting
 15 companies, the average size that we deal with have a
 16 financial reporting staff of, let's say, three, five. So
 17 this would give them bigger breathing room, not just from
 18 their day-to-day work, but it would allow them to
 19 actually give better, more meaningful reports, I think,
 20 to the Board. That was the feedback I got from them
 21 versus the check the box, I have got to do this for the
 22 quarter. They can actually think about strategic
 23 alliances, whether it is an M&A transaction or an
 24 acquisition or going into, you know, additional markets.
 25 So they would invest their time somewhere else, and that

1 somewhere else is, you know, more financial strategic
 2 objectives that they want to achieve, but they feel that
 3 they are just in a constant grind trying to meet
 4 quarterly deadlines.

5 So I think in aggregate, the feedback that I
 6 have gotten from folks is that they would love to see
 7 some type of recommendation on reducing not only the
 8 volume but the frequency of, you know, reporting if there
 9 were some outlet. So an expanded 8-K might be needed in
 10 terms of significant or material items. That was an idea
 11 thrown out from some of the people that I have talked to.

12 I think the marketplace for small and emerging
 13 companies is very open to hearing recommendations of how
 14 to reduce the frequency and the quantity of filings.

15 CO-CHAIR GRAHAM: Thank you.

16 Dan?

17 MR. CHACE: I would agree that short-termism is
 18 a problem, but I think that the quarterly reporting cycle
 19 is an enabler of it. It is not the cause of it. I think
 20 you have companies. It is essentially a choice in terms
 21 of beyond the filings, it is a choice to provide
 22 guidance. It is a choice to even do a conference call.
 23 We do investing companies that don't even do calls. So I
 24 think the filing is kind of a fair requirement.

25 Quarterly information to me as an investor is a

1 reasonable minimum, although we do also invest in
 2 companies in the U.K. that are semiannual filers. But I
 3 do think quarterly filings, we have talked in the past
 4 about reducing the amount of disclosure that goes along
 5 with it and making it easier, but I like getting the
 6 financials every quarter.

7 CO-CHAIR GRAHAM: Okay. Charles?

8 MR. BALTIC: Well, I think it appropriate to
 9 sometimes visit basic principles in disclosure. I think
 10 this is one of those basic principles. I would note that
 11 it is not only market cap-specific but also
 12 industry-specific as to how important quarterly reporting
 13 is. I would note that a sector that I am involved with
 14 significantly in biotechnology, really emerging-growth
 15 companies, small cap companies, don't trade on their
 16 financial quarterly reporting. They trade on their
 17 fundamental clinical development events and regulatory
 18 events. Those follow their own cycle and aren't really
 19 captured on a quarterly basis. They are captured in
 20 8-K's. So I do think there is an industry specificity
 21 around it.

22 I would also make note that we should be
 23 mindful that most capital-intensive companies probably
 24 trade most significantly on basic business developments
 25 like new products. That is also in technology as well as

1 biotechnology, as opposed to incremental revenues or
 2 earnings on a quarterly basis. So the sector that we are
 3 most concerned about, which is small cap
 4 capital-intensive companies, perhaps the most important
 5 aspects of their disclosure is not quarterly financial
 6 reports. I would just note that.

7 I would also say that we have a regime in
 8 place. And I think that it is important to have some
 9 kind of quantification if there were going to be serious
 10 consideration for recommendations to change a regime that
 11 is already in existence and very important to investors
 12 in industry alike. And I note that there is some
 13 reference to academic studies and data in the article
 14 that we were given. I think quantification of the cost
 15 of capital and how quarterly reporting might benefit the
 16 cost of capital and on the other side quantification to
 17 some extent about the burdens and maybe short-term versus
 18 long-term, as Sonia mentioned, would also be important to
 19 the Committee. So it is hard to judge without more
 20 understanding of what the real impacts might be.

21 CO-CHAIR GRAHAM: Thank you.

22 David?

23 MR. BOCHNOWSKI: Just to follow up on Charles'
 24 comment on industry-specific regulation, and I guess I
 25 will be maybe touching upon the functional regulation

1 issues that sometimes appear here in Washington.
 2 Speaking just about the banking industry, the quarterly
 3 reports are very interesting that we have to file with
 4 the SEC as a public company. And, yet, as a banking
 5 company, there is a whole army of regulators because
 6 banking is a privilege, not a right, that come into our
 7 banks once a year. And we have to file something known
 8 as a cull report, which we file every quarter. I sign
 9 that under the penalties of perjury. It is a federal
 10 crime for me to misrepresent anything that is there. And
 11 everything that is on those quarterly reports is
 12 basically no different than anything that we file with
 13 our Q except the Q has a narration factor to it.

14 There are outside organizations that keep an
 15 eye. They do it for profit. They keep an eye on banks.
 16 And they publish their own review and even rate banks
 17 based upon those quarterly reports. Within, though, the
 18 context of the industry itself, there are two things that
 19 are really important. One is that banks fail for one of
 20 two reasons. And I guess if we are worried about the
 21 investors -- and we should be worried about the
 22 investors, but we are also worried about the general
 23 public -- they usually fail because bad loans have been
 24 made or because we don't have liquidity. Everybody shows
 25 up in one day and wants to take their money out of the

1 bank.

2 On all of these reports that, again, these
 3 outsiders do and, in fact, there are investment bankers
 4 who do the same thing just for informational purposes,
 5 not for profit, there is something called the Texas
 6 ratio. And everybody watches what is known as the Texas
 7 ratio. The Texas ratio is simply this. You can predict
 8 whether or not a bank is going to fail on its lending
 9 side because its nonperforming loans in dollar value
 10 exceed the amount of capital that it has. Whenever that
 11 approach is 100 percent, it is 99.9 percent accurate that
 12 that bank will fail.

13 And so all of these publications, whether they
 14 are done by the investment banking houses or by those who
 15 do it for profit, have what is known as a Texas ratio.
 16 You can find it for everybody. Also, when we file that
 17 quarterly report, within three days, it is up on the FDIC
 18 website. So that something that is really interesting
 19 for all banking companies is that, even though we have to
 20 file a 10-K if we are a public company at the end of the
 21 year, our audit work has to be completed by the 31st of
 22 January because on that day, we have to file the call
 23 report that covers the year. And, certainly, none of us
 24 wants to have a different report filed, between whether
 25 we file with the SEC and the FDIC.

1 If I could just kind of continue on a couple of
 2 points? Commissioner Aguilar today talked about IT
 3 concerns. If Marty Gruenberg, who is the very capable
 4 chairman of the Federal Deposit Insurance Corporation,
 5 were here, he would say that the number one priority he
 6 has for all bankers, in addition to safety and soundness,
 7 is making sure that our systems are sound, our IT systems
 8 are sound.

9 And there is something that is known as an IT
 10 specialty exam. Examiners actually come in and look at
 11 whether or not our systems are up to the standards that
 12 the FDIC would like us to have. If you are not up to
 13 that standard, it can be very, very painful. So
 14 everybody tries to work to that end.

15 There is quite a bit of discussion in the
 16 public right now about stock repurchases and how those
 17 affect different companies and whether it is a good use
 18 of capital. I don't want to get into that, but I would
 19 point out that banking regulators have the authority to
 20 limit stock repurchases. They can just tell you not to
 21 do it. And they do that because they get your call
 22 report, and they see where you are positioned. And they
 23 sometimes wonder aloud as to whether or not it is a good
 24 idea to repurchase stock because if your capital goes
 25 down, it causes other issues.

1 So I would just urge the Commission and this
 2 Committee to think about whether or not those call
 3 reports are a good substitute and are they redundant when
 4 it comes to the filing of a Q because anyone who needs to
 5 know our information sees it publicly.

6 In the case of my company -- I will just close
 7 with this -- we hit the trifecta. We are regulated by
 8 the Indiana Department of Financial Institutions, the
 9 Federal Deposit Insurance Corporation, and the Federal
 10 Reserve. Again, those are all publicly -- our results in
 11 terms of our quarterly information, I am prohibited by
 12 regulation from talking about exam reports, but the
 13 public reports that are on that call report are
 14 well-known.

15 And so I would hope that we would as we look at
 16 whether or not there are necessary forms that we need to
 17 file to keep investors aware of what we are doing. We
 18 should keep in mind that for a company our size -- and I
 19 am repeating myself, I know, here -- we spend between
 20 \$250,000 to \$300,000 a year complying with the SEC
 21 regulations.

22 I am not suggesting that we should not file the
 23 10-K or the annual reports. I do think we don't need to
 24 file, as we do now, the extensive Q that we do. But
 25 where that comes out is this, is over 10 years, that

1 could be \$2.5 million to \$3 million. If we are supposed
2 to leverage our companies up, say, at a 10 percent rate,
3 that is \$30 million of lending we can't do. That is \$30
4 million potentially of job creation that we can't do.
5 And I think when we look at that across the whole banking
6 industry, the question is whether or not the filing that
7 we are required to do balances appropriately with the
8 other things we could do with that capital.

9 CO-CHAIR GRAHAM: Thank you, David.

10 MR. BOCHNOWSKI: Thank you all for your time
11 and for listening. And so I will no longer be a whining
12 banker.

13 CO-CHAIR GRAHAM: At least today.
14 (Laughter.)

15 CO-CHAIR GRAHAM: Others?

16 MR. WALSH: Could I make a comment there since
17 I am a shareholder in David's bank? David is 100 percent
18 correct. The banking industry is way overregulated. But
19 that is another issue, not even for the SEC. There are
20 state regulators, et cetera, that I think in the crisis,
21 only one banking agency was eliminated. Right? It was
22 the OCC. There was only one. OTS. Sorry. OTS. Sorry
23 for the OCC.

24 But as a shareholder, I do like the quarterly
25 reports. I don't like you have to spend \$200-\$300

1 thousand on it, but I do like the quarterly reports. You
2 know, when you hear people talk about, "We want to go to
3 the European model. You know, we do dividends once a
4 year. We do, you know, meetings once a year," instead of
5 quarterly reports, "I go back to the concept that the
6 U.S. capital markets are by far the world's most liquid.
7 I mean, there is no one even in the -- it is the Ferrari
8 relative to a lot of Pintos.

9 And as far as transparent, if it is not the
10 most transparent, it is in the top 5 percent. So it goes
11 back.

12 I will just sort of close. The one way to
13 think of it, if it is not broke, let's not try to fix it.

14 CO-CHAIR GRAHAM: Okay.

15 MR. WALSH: And that is how I feel about it.

16 CO-CHAIR GRAHAM: Okay.

17 MR. WALSH: It is not perfect, but it is pretty
18 darned close.

19 CO-CHAIR GRAHAM: Okay. When you say you like
20 the quarterly reports, what do you have in mind? Is
21 there room for scaling the disclosure without eliminating
22 the report?

23 MR. WALSH: You know, I think some of the
24 earlier comments were, you know, do you keep it under 250
25 or something along those lines, which I think has a

1 little bit of merit. But you can just see a lot of
2 scenarios where I think we are sort of overregulating the
3 concept. The market comes back down again. You have 500
4 more companies now that are under 250. And then the
5 markets go back up again.

6 I think just right now, the quarterly reports
7 with the U.S. system, the transparency, the information
8 disclosure on the whole is the best model for investors.

9 CO-CHAIR GRAHAM: Okay. Tim?

10 MR. REESE: Yes. This is one in which I feel
11 like my new role, being a state treasurer, gives me
12 another perspective here. And that is, as my colleague
13 Tim has just said, the transparency aspect of the
14 reporting and the economic relationship between
15 pensions -- and we have a big pension issue in America.
16 And a lot of pensions are mature pensions, CalPERS,
17 Pennsylvania pension, PSERS, and SERS, and Illinois and
18 New York. You could name them. They are vested in all
19 kinds of cap: small cap, large cap, real estate, et
20 cetera. And there is the issue of the actuarial trying
21 to meet your mandate.

22 One of the key things when we get an adviser
23 and you are trying to determine what to do in this very
24 turbulent time, the stock market is not our friend right
25 now to anyone with a pension.

1 And so information, quality of information, the
2 ability to balance your portfolio, rebalance your
3 portfolio, based on industry sector and getting insight
4 and guidelines into what may be occurring in a company
5 that is coming back up from our advisers is critical.
6 And that information on a quarterly basis or whatever
7 basis you may receive it will allow -- as a matter of
8 fact, pension meetings are timed such that after
9 reporting requirements happen so that the advisers could
10 roll it back up and report it back to us so that we can
11 also know where we are from a funded balance basis.

12 So the issue here is not just the company and
13 the requirement of you to report. It is the fact that
14 because of this process, other processes have been
15 developed that rely on it and be able to meet their
16 mandates and their portfolio-funded mandates based on
17 that information.

18 CO-CHAIR GRAHAM: Thank you, Tim.

19 Did I see Sara?

20 MS. HANKS: Just to build on that point of
21 processes that have been built on the Q, quarterly
22 system, there is a lot of companies who do not permit
23 trading by insiders except during certain windows, which
24 open upon filing of quarterly financials and then close
25 maybe 10 days later. So one of the things that we should

1 just bear in mind is to the extent we did away with the
2 Q's and we had only semiannual, you would be permitting
3 those insiders only to trade during much narrow windows
4 during the year. There are solutions to that but just
5 something to bear in mind.

6 The other thing is we must not forget that it
7 is smaller companies who are a little more volatile on a
8 quarterly basis. And, therefore, the Q's do play a role
9 in giving an early warning system to something that could
10 be going on. Again, there may be other solutions, but
11 just we would need to bear those two things in mind.

12 CO-CHAIR GRAHAM: Sonia?

13 MS. LUNA: Yes. I think our Committee needs
14 to -- so I wouldn't want you to double disclose if you
15 are already as a bank disclosing identical financial
16 information that is in the Q. I think we need to look at
17 industries trade in terms of what they are disclosing and
18 if they are already duplicative.

19 The second is, you know, I heard a lot of
20 rebalancing, you know, opportunity to trade on certain
21 information. I think the Committee would need some data
22 to prove that people are rebalancing their portfolio
23 literally every quarter on small cap, our group, right?
24 So if we had enough data to say, "You know what? These
25 quarterly reports are so timely that a lot of folks that

1 do invest in this particular group are rebalancing their
2 portfolio based on quarterly information." Then they
3 think that is a stronger argument to say, "Yes. People
4 are really acting on that information."

5 Some of the people I have talked to say that no
6 one is really following them, that it is more of an
7 annual process of looking at the entire portfolio of what
8 they have. So I don't know how much of that is true
9 because this is just, you know, people just verbally
10 telling me from CFOs, but I think the Committee would
11 need to get some type of data point on are people really
12 rebalancing their portfolio investments in the smaller
13 and emerging companies on a quarterly basis.

14 CO-CHAIR GRAHAM: Okay. Chris?

15 CO-CHAIR JACOBS: Yes. I have got a couple of
16 things, a couple of statements, obviously, from having
17 done this for a year. First of all, D.J., forecasting is
18 not a policy or a rule. And a lot of the smaller
19 companies opt not to do that. Okay? So on the face of
20 it, I would think that the CEOs and folks would have
21 absolutely no doubt that the reasoning is sound on this
22 proposal because the reality is you spend so much time on
23 reporting as a sitting CEO and/or chairman of the board,
24 it is onerous how much time is spent on these quarterly
25 reports because, remember, it is not just quarterly

1 reporting. It involves your board meetings. It involves
2 meeting with the shareholders and updating them. I mean,
3 this started out at 20 percent and by the time I left was
4 at 60 percent of my time. You cannot argue with the
5 reasoning of this.

6 And then there is the expense, which for a
7 small reporting company I think would be material if you
8 are down to twice a year. And that would be the auditors
9 and the lawyers who work with us to do these quarterly
10 reports.

11 On the flip side, there is a part of me that
12 says this will never have a chance of going anywhere
13 because the PCAOB, the lawyers, and all of the people
14 that benefit from our hardships are going to be lining
15 up --

16 (Laughter.)

17 CO-CHAIR JACOBS: -- to say, "No, no, no, no,
18 no, no. Now, come on. We are here to help you. We are
19 here to save you." But I think there is an awful lot
20 lined up against this idea because there are whole
21 industries set up to keep us on that quarterly."

22 Lastly is the issue of liquidity. This
23 Committee has come forward, especially the prior
24 Committee, talking about liquidity. We already know, as
25 little, small public companies, do not have liquidity,

1 but think this through. Go up to 30,000 square feet with
2 me, all the traders. Look at all of the people that make
3 money on the liquidity associated with quarterly
4 reporting. I think this is a tough mountain to climb
5 that, even on its face, is incredibly valuable. But
6 there is a lot against this because there is a lot of
7 people making money in the stock markets: the traders,
8 the analysts, and all of these people. CNBC would be
9 going berserk. What would they have to report on? Other
10 quarterly earnings.

11 However, we can go back to some of the
12 Committee's premises, which are, rather than one size
13 fits all, how about we go back to our roots, which say,
14 "Wait a minute. Small and emerging companies, market
15 capital less than \$250 million. Rather than, you know,
16 sit and argue the pluses and the minuses, go back to what
17 we have already said?"

18 Here are a couple of facts. Publicly traded
19 companies with \$250 million in market cap, 48 percent of
20 the companies on the exchanges today have a market cap of
21 less than. It sounds like a big number. Guess what. It
22 is 5 percent of the average trading volume, not much.
23 Less than 10 percent of the public flow of all exchanges
24 have the population of 250 million in market cap. So,
25 rather than one size fits all, let's stay away from

1 absolutes and maybe think this isn't a bad opportunity to
2 give the little guys. We already know they don't have
3 liquidity. So it is not like you are stripping anything
4 away from them.

5 So I am coming from a little bit different
6 angle in that what is stacked up against this proposal --
7 and it happens to be a whole lot of money and fees and
8 groups that I think would line up to go against this.

9 CO-CHAIR GRAHAM: Thank you, Chris.

10 John?

11 MR. BORER: Just to make a point here, I assume
12 that, even if the rules were changed, requiring less
13 frequent reporting, to the extent that investors are
14 going to put their money with companies that they are
15 able to follow, track, predict, and Wall Street would be
16 doing the same thing because a lot of analysts aren't
17 going to know what to do for 11 months out of the year if
18 they are not going to be adjusting their model and
19 updating for the quarterly reports, e cetera.

20 I would assume that there would be a class of
21 companies that would say, "Well, we don't have to report
22 quarterly, but we are going to anyway because Dan wants
23 it and Fidelity wants it and Wellington wants it and all
24 these other people."

25 And those portfolio managers -- forget the

1 which goes against a lot of constituencies, including a
2 very important one, which is the investment community,
3 the people who put the money to work, and then creates
4 two different classes of companies out there, voluntarily
5 perhaps, that decide to set up their own regime because
6 then, by virtue of the people who don't do it, they are
7 going to be penalized. The people who opt into
8 once-a-year or twice-a-year reporting I think would
9 suffer.

10 CO-CHAIR GRAHAM: Thank you, John.
11 D.J.?

12 MR. PAUL: Yes. I have a question. Somebody
13 mentioned this at lunch and knew more about the history
14 of it. Quarterly reporting was only required as of the
15 '70s. Is that correct?

16 MR. HIGGINS: Nineteen seventy.

17 MR. PAUL: Right. Nineteen seventy, which
18 seems, you know, going back -- Christine, if I could cut
19 your reporting costs by a quarter, just 25 percent, would
20 that be worthwhile and the time it takes and all of the
21 onerousness of it, meaning we report now on a quarterly
22 basis since 1970. Twelve months out of the year breaks
23 down into six-month units and also breaks down into
24 four-month units. What if quarterly became, you know,
25 trimesterly, which is to say that reporting was every

1 accountants and the lawyers and those people who make
2 fees by doing all of these things for the companies --
3 say, "We are not going to invest unless we get more
4 frequent information." And you may then create a set of
5 sort of voluntary disclosures from companies that tracks
6 very similar to what has been taking place now for
7 decades.

8 And I don't know what taking away the -- there
9 seem to be two different things here. One is it is
10 costly, it is time-consuming, et cetera; whereas, Marty
11 Lipton was saying, "The management teams are focusing on
12 the very short-term, instead of the very long-term."

13 They didn't seem to be saying that this is
14 causing pain for small companies, especially when Legal
15 and General, who run \$750 billion, is saying, "We think
16 people should focus long-term." And maybe a way to do
17 that is to make it so that they don't report as often."
18 I forget who said it. Maybe it was D.J. The
19 shortsightedness is perhaps more the issue than the
20 reporting causing the shortsightedness I think. I don't
21 know if there is anything we can do about that because it
22 seems like management is incentivized to do certain
23 things they have bonus programs, as do other people in
24 the world.

25 I would hate to see some change in the system,

1 four months, instead of every three? Certainly I would
2 think that that would not interfere with investors'
3 ability to have access to information. And, yet, it
4 would cut this -- this is, you know, obviously just a
5 simple solution or a simple proposal.

6 But if three times a year, rather than four,
7 that alone would -- you know would address some of the
8 issues that we have discussed. I don't think it
9 necessarily addressed the short-termism that we were
10 talking about because that is still pretty short-term.
11 But in terms of the cost basis and in terms of, you know,
12 the balance to be structured so that the investors don't
13 feel like they are losing money, something like that,
14 while sort of -- I don't know -- not unprecedented since
15 the U.K. is semiannual and we have been on quarterly
16 since 1970, still, it might be an improvement. So that
17 would just be something that I would put out there just
18 as almost as --

19 CO-CHAIR JACOBS: I don't know that the
20 accounting and the attorney fees would be material going
21 from three to four. I think the time being able to spend
22 on long-term would be greater. I mean, that would be a
23 bit of a break, you know. And, remember, with small
24 companies, you are not only reporting quarterly, but
25 there is a watershed effect. Then you have got your

1 board coming in. And it is like "All right. What are we
2 going to do there? Who is going to present here?";
3 whether you forecast or you don't. So I think it could
4 be a start.

5 But, you know, when I met with other public
6 company CEOs, to Marty Lipton's point, I think the
7 investing public would be shocked at how sitting CEOs of
8 public companies are forced to think quarterly in what
9 they announce and what they do strategically because
10 "What will it do to my EPS?" And that is just the way it
11 is. That is why I said, on the face, his point is so
12 valid. And we know in some instances, it leads to fraud.

13 MR. PAUL: Do we think that would lead to less
14 fraud? If it were not only required on a quarterly basis
15 and only on an annual, it gives a dubious CEO in 12
16 months to hide something.

17 CO-CHAIR JACOBS: I can't. I wouldn't know,
18 right, because I haven't lived on that.

19 Let me ask one question of those folks familiar
20 with the London Exchanges. Are they more liquid? Are
21 they more efficient? I don't have a comparison, but I
22 would certainly like one to understand if we are going to
23 entertain this idea. What are the differences? Are they
24 more efficient? What is their volatility index?

25 CO-CHAIR GRAHAM: Well, you know, I think this

1 problem that we need to deal with, which is liquidity,
2 but there is also some chicken and egg aspect to it as
3 well.

4 As Charles said when he made his comments,
5 talked about like a capital-intensive small company.
6 Well, the market is going to want that data. Having the
7 data every quarter I think will make it easier. If you
8 are going to need to raise money, then you have it.
9 Getting some quantification of the cost would really be
10 important as well as what the expectations are and how
11 many voluntary quarterly filers would be if we got rid of
12 it. And we may get some experience with that under new
13 reg A and crowdfunding, which I don't think, you know, we
14 will have quarterly requirements. So if people do it
15 because they are always raising money, so they always
16 need to have financials or their investors or analysts
17 want it, then we will see.

18 In particular, it would be very nice to
19 investigate and if reconstituted Committee looks at this
20 get some information from accountants about what costs
21 would be less because I will say this for smaller
22 companies, 10-Q's, we don't review them for most of our
23 public companies. They don't send them to us. They call
24 us if they have a question. If we bid on something for a
25 smaller public company and they say, "Well, okay. How

1 might go back to -- I think Charles mentioned this and
2 maybe some others as well and that is, you know, the need
3 to quantify the cost, quantify the burden, and just kind
4 of, you know, somehow measure the effect of quarterly
5 reporting.

6 I also think it is important. And people can
7 have a different view, but I think it is important for
8 purposes of this Committee, notwithstanding the fact
9 that, you know, I have represented a lot of public
10 companies over the years. There is kind of this
11 short-termism issue that you are always trying to guide
12 management and boards away from and to have more focus in
13 actually building the business long-term. That is an
14 issue. I am not sure if it is the issue for this
15 Committee. I think that the way this all relates to our
16 workup, I think, is -- I think in terms of, you know,
17 what disclosure really is appropriate for smaller public
18 companies and to what extent does this current system
19 impose a burden and weighing that, you know, undertaking
20 the appropriate cost-benefit analysis with that in mind.

21 Greg?

22 MR. YADLEY: Yes. I agree with just about
23 everything that has been said, but when you put it all
24 together, I don't think that there is a clear answer. I
25 think, Chris, the statistics that you shared bring up the

1 much is it going to cost to review our proxy statement,
2 our K and our Q's?"; you know, the Q's is a couple of
3 hours max unless there is an issue. If there is an
4 issue, they are going to be calling their lawyer anyway.

5 In terms of who needs it, I am glad Sara
6 brought up the point about affiliate trading, not that we
7 want to, you know, make that easier or harder, but it is
8 pretty hard for a company with very little liquidity
9 where an insider wants to trade now because there is very
10 little market. And your windows, particularly, you know,
11 between the end of the year and the first quarter are so
12 short that they really have no time to trade.

13 Boards want information quarterly, I think. I
14 know it is a pain to have the board in every quarter, but
15 I think now there is pretty much a tradition of having
16 quarterly board meetings. And companies are pretty
17 active. Maybe this was the fault of lawyers, but lawyers
18 certainly counsel their directors every day that the only
19 way to be a bad director is not to pay attention. And
20 you have a diverse independent board. Getting together
21 semiannually for a company that is active, even if it is
22 small, I think would be a bad idea.

23 In terms of what we do with 10-Q's, we
24 definitely should look at this in that context. And one
25 of the most important part of the Q's, of course, is

1 MD&A. That is something where I think investors would
 2 like and the SEC certainly promotes more meaningful MD&A.
 3 It may not get shorter, as I think Keith said in his
 4 paper, whenever it was, a year and a half ago, with -- I
 5 can't remember whether it was the securities
 6 simplification or whatever it was called, but the point
 7 is we want to eliminate boilerplate disclosure,
 8 duplicative disclosure, disclosure that is not helpful to
 9 investors. Unfortunately, I think financial information
 10 is important to investors except in those cases that
 11 maybe some of the sectors that Charles alluded to, you
 12 know, where there is liquidity, it is not based on, you
 13 know, their profit and loss statement because they don't
 14 have any profits and they may not even have any revenues.

15 I guess I think it is worth looking at, but I
 16 am not sure that unless we find that it will really
 17 decrease costs, particularly auditor costs, that this
 18 would be my first priority of a change to make.

19 CO-CHAIR GRAHAM: Thank you, Greg.
 20 Charles?

21 MR. BALTIC: Just I wanted to follow up with
 22 maybe three points. And I think, Steve, you made the
 23 point that short-term versus long-term really cuts across
 24 all market caps and in that sense is broader than the
 25 specific focus of the Committee. So I think that is

1 quantification of the burdens of reporting, but if there
 2 is any way to get hands around what it does to the cost
 3 of capital, I think that is important as well.

4 CO-CHAIR GRAHAM: Right. Milton?

5 MR. CHANG: I think, based on all that we have
 6 heard, the logical decision may, in fact, be to leave
 7 alone to be quarterly, but every other one does not
 8 require auditing to reduce costs. So you satisfy
 9 reducing costs. You satisfy investor information. But
 10 there are two other benefits of doing that. One is that
 11 I think the companies' investors are going to be really
 12 more likely to rely on analysts' analyses of the company
 13 as a result because then they are likely to take deeper
 14 into the company and write meaningful reports that you
 15 couldn't get any other way.

16 And then the other reason is that if we leave
 17 it alone, then in some sense, we can take the world
 18 economy out of the equation to compare our financial
 19 markets with that of the British, right, because both
 20 countries see the same world economy. And, yet, in terms
 21 of the liquidity, et cetera, all of the measures we are
 22 worrying about, we can see how they relatively work,
 23 relative to the British system.

24 CO-CHAIR GRAHAM: Thanks, Milton.
 25 Any other thoughts? Oh, yes, Keith?

1 worth noting.

2 I do have some concerns about unintended
 3 consequences if we would go down in the direction of a
 4 different level of reporting for small cap companies in
 5 terms of the frequency because it could be an unintended
 6 consequence that with less frequent reporting for small
 7 caps, you might call into question the investors'
 8 confidence in those companies and create the perception
 9 or the reality of a two-tiered market.

10 I mentioned earlier that smaller caps tend to
 11 be probably more capital-intensive. So they actually
 12 need more access to the capital markets. And confidence
 13 might be more important to them. And, actually,
 14 confidence is more important in bad markets than good
 15 markets. So I just make the point that unintended
 16 consequences about a two-tiered reporting system based on
 17 the frequency of reports would be something we should be
 18 very mindful of.

19 And then on the data quantification point, just
 20 to reiterate, -- I know we have all echoed that. You
 21 know, one of the notes in this article was that there is
 22 some academic literature that more frequent reporting
 23 actually reduces the cost of equity because it increases
 24 the confidence of investors and shareholders. And so,
 25 you know, I think not only let's look at the

1 MR. HIGGINS: I just want to raise the
 2 question, should it be different whether you are raising
 3 capital or whether you are just reporting on a quarterly
 4 basis? Should there be different rules on, you know, if
 5 you have raised all the capital you need and you are
 6 simply a public company that has a public float? Should
 7 the rules be different than when you are out trying to
 8 raise money from investors? I raise that as a question.

9 MR. CHACE: I mean, I would argue not because
 10 you are an owner of the stock. In one case, you are
 11 deciding whether to own it. In the other, you own it.
 12 You still deserve that information on a regular basis in
 13 my opinion.

14 MR. BALTIC: Just along those lines, it might
 15 be interesting to think about companies have access to
 16 shelf registration statements goes along with capital
 17 need and capital intensity. And it could be that a
 18 two-tiered system might involve around the access/utility
 19 of shelf registration statements. For companies that
 20 don't feel like they need access to capital markets and
 21 don't make use of a shelf, perhaps they could have a
 22 different regime. It is an interesting --

23 CO-CHAIR GRAHAM: So how would that -- I mean,
 24 that drive is kind of the disclosure triggers a bit.
 25 That just kind of brings into play the system that

1 already exists in that regard. You know, when do you
2 have a disclosure obligation?

3 MR. HIGGINS: You always do when you are
4 selling securities.

5 CO-CHAIR GRAHAM: Yes, you do. Right. So that
6 pretty much answers that.

7 MR. YADLEY: Yes, but you don't always know
8 when you are going to need to, which is one of -- back
9 when we were working on easing the S-3 rules for smaller
10 companies, I mean, part of that was, you know, to make it
11 easier for incorporation by reference so that when we
12 need capital, it will be quicker.

13 CO-CHAIR GRAHAM: And so there is nothing to
14 incorporate by reference, then.

15 MR. YADLEY: And so, I mean, I guess I am
16 agreeing with Dan that it is probably better to have the
17 information there because investors are entitled, but it
18 will also be there when you need it.

19 MR. HIGGINS: One question I have, Dan, for the
20 companies in the U.K. that report every six months, what
21 do you do differently and what do your folks do
22 differently with those companies in sort of following the
23 investment?

24 MR. CHACE: A lot of those companies do put out
25 interim data, whether it be revenues on a quarterly basis

1 not to go forward."

2 You know, and you still have 8-K or 8-K-type
3 disclosures for new reg A. You know, not that this is a
4 great reason for having more frequent disclosure, but the
5 flip side of that is that there are going to be more
6 circumstances where you are going to have to think about
7 what you have to do and what is an 8-K event now when you
8 haven't said anything and what you said 6 months ago, you
9 know, is starting to get stale.

10 CO-CHAIR GRAHAM: Okay.

11 MR. REESE: Yes. I just wanted to respond,
12 Keith, in your question because it is an open question.
13 And what I kind of want to ask you is I wasn't sure if it
14 was either/or or the amount of data, one amount of data,
15 versus another. You know, yes, I don't. I just think
16 that in recent -- my last deal we did, which was a small
17 cap refinance deal, we went in. We did a PIPE. Then
18 there were a lot of other -- they took out the PIPE.
19 Then they added another line of credit. There is so much
20 going on in small cap companies in terms of raising
21 capital, recapping that has to be reported because it has
22 huge effects on the shares, the dilution of the shares.
23 You see a lot of volatility in the shares as a result of
24 those along with hitting their -- you know, even if they
25 don't give a projection. The other companies that I know

1 or even margins or EBITDA. It varies. I am not totally
2 clear on what they are required to do versus what they
3 choose to do, but you follow them with less information
4 is essentially the answer. You know, it is what it is.

5 We haven't talked about it, but it does -- I am
6 not clear in the U.K. how it complicates the quiet period
7 and how you can have conversations with the companies
8 because in the U.S. on a quarterly basis, typically most
9 companies will not talk to investors for a given period
10 prior to the earnings release. You could think of how
11 that would complicate that. And I think the article
12 mentions that, but you essentially just have less data.

13 MR. YADLEY: Another thing, I hate to quote
14 Keith because I have already said I am nice, but in that
15 same article, you noted that the process built around
16 reporting that we have, internal controls,
17 certifications, just the discipline of producing those
18 painful reports does add a layer of protection to the
19 information being valid.

20 You know, companies just putting out a press
21 release saying, "Hey, our revenues" -- I have represented
22 some real estate companies where they always wanted to
23 put out a press release because they have signed a
24 contract to do this or that. I said, "Well, okay. But
25 then you have to do another press release when you decide

1 didn't give guidance. And what the analyst kind of comes
2 up with, what they expect the company to do based on that
3 10-Q or 8-Q filing, they don't hit that. And then, you
4 know -- so there is just a lot.

5 I mean, I think what makes America great is the
6 transparency inside of our financial markets so that you
7 do have something to hold up against the CEO. I do
8 understand from Chris' standpoint having watched that CEO
9 and knowing the CEO that I know who has to -- he is
10 focused on the long-term vision of the company, has a
11 vision, which made the initial investors buy in. But
12 relatively on a quarterly basis, he is trying to prove
13 that he is hitting that vision. And this is sort of the
14 balance of the argument I am hearing, is how much runway
15 do you need to know that you are hitting your vision? Do
16 you want to have no reporting for a year and then say,
17 "Oh, you know what? I didn't quite hit it. And we are
18 almost there. But give me another year, and I will give
19 you more data" or is it on a quarterly basis, we can
20 measure, how are you trying to produce your results
21 against your stated vision or the vision which brought in
22 the initial investors, like Dan, and giving us the
23 ability to know how we are going to manage our portfolio?
24 I don't think it is repositioning your stock, but it is
25 more so positioning your investment theses because you

1 have a portfolio and you have certain things that have to
2 be met. And understanding where you are in any given
3 basis from an individual investment standpoint allows you
4 to roll that data back up into a bigger picture.

5 CO-CHAIR GRAHAM: Okay. Any other thoughts on
6 this particular subject?

7 (No response.)

8 WRAP-UP/ADJOURNMENT

9 CO-CHAIR GRAHAM: Okay. Thank you for that. I
10 thought that was a good discussion. We have got a few
11 more minutes before we let you go and adjourn. Since
12 this is our last meeting, as currently constituted, I
13 just wanted to go around the room and take any last
14 comments that the folks might have in terms of maybe
15 topics this Committee should pick up in its reconstituted
16 form or just anything else you might want to say.

17 So I will start with you, Mr. Pieciak.

18 MR. PIECIAK: I was hoping you were going to go
19 to me last, not first.

20 (Laughter.)

21 MR. PIECIAK: Had to put the dollar in the jar
22 or something.

23 Well, you know, I mean, I don't necessarily --
24 I was asked this at lunch, and I couldn't recall anything
25 that, you know, we hadn't hit I thought that were sort of

1 more orphan companies out there or can we come up with
2 something there?

3 I think that the presentations that we have
4 gotten from the SEC staff, not just CorpFin but DERA and
5 the other presentations, have helped us a lot. As Sonia
6 says, I mean, we all have good ideas and we all have
7 contacts that we talk to in preparation for a meeting,
8 but it is anecdotal. So having some real true
9 information -- and it is great when our members or
10 observers like you show up and let us take shots at you,
11 which we did.

12 But, beyond that, I think seeing how
13 eliminating the prohibition on general solicitation will
14 work is going to take another year or two. And so there
15 will probably be issues that would be worthy of the
16 Committee's review and suggestions for tweaking that new
17 regulation.

18 CO-CHAIR GRAHAM: Thanks, Greg.

19 Tim?

20 MR. WALSH: Well, this is actually my second
21 stint on the Committee. When I was asked three or four
22 years to join the Committee, I was actually the CEO of a
23 large East Coast state pension fund. And when I was
24 asked by a group here in D.C. to be considered to join
25 the Committee, they said, "There is another large

1 important items for capital formation among small
2 businesses and I guess emerging-growth companies as well,
3 you know, from my perspective, but in the work that I
4 have been most engaged on, state-based crowdfunding, I
5 really applaud this Committee for taking the time to
6 listen to me present and then also to issue the
7 recommendation today that I thought was right on in terms
8 of how we need to progress. So I just wanted to say, you
9 know, thank you and I appreciate the time.

10 CO-CHAIR GRAHAM: Okay. Thank you.
11 Greg?

12 MR. YADLEY: I was hoping to go second to last.
13 (Laughter.)

14 MR. YADLEY: I, too, appreciate being part of
15 the Committee and having the wisdom of my colleagues.
16 And thank you, Stephen and Chris, for your leadership.

17 The last discussion that we just had I think
18 points up an issue that we have been struggling with all
19 along, which is now that you are public, what do you get
20 from it, you know. And liquidity is what is the greatest
21 thing about owning a public stock. So our discussions
22 about secondary trading ventures and how all of that
23 works I think would be something for the Committee to
24 consider to consider, particularly when we will have new
25 reg A and crowdfunded securities. You know, will we have

1 Southern pension fund that is going to be on there with
2 you."

3 I said, "Okay. Well, that sounds good. I will
4 do my pro bono and help the institutional investors."

5 When I got here three or four years ago, the
6 other group didn't show up. So I was the only large
7 institutional pension fund left. So I said, "I had
8 better stick it out" because at the time, I wanted to
9 make sure that the SEC and the Committee didn't do
10 anything crazy. Those were my terms at the time.

11 And so three and a half, four years later, I do
12 have to say that I have been very impressed by the SEC
13 staff. I thought they have been excellent to work with.
14 But I want to give most of my applause to the two
15 co-chairs, Steve and Chris. I think they just did an
16 exceptional job of being nonpolitical, staying on focus.
17 And, Steve, especially, you run a great meeting, by the
18 way.

19 CO-CHAIR GRAHAM: Thanks.

20 MR. WALSH: You should be in the Senate or
21 something.

22 (Laughter.)

23 CO-CHAIR GRAHAM: Tim?

24 MR. REESE: Wow. I have to follow my three
25 colleagues here? This is tough. I would want to say

1 that I think that the issues that we dealt with over the
2 last year have been some of the most critical issues that
3 I have seen in my life, in my 20 years as an investor and
4 in understanding some of the issues that are facing small
5 business, small business formation, some of the obstacles
6 right now as we look at how do we as a country continue
7 excellence in the 21st Century for job creation, small
8 business development. And so that is one part.

9 The second part has been, as Tim said, working
10 with the staff at the SEC. There are times I have made
11 calls back in on things. And it was immediately answered
12 by Julie and Sebastian. They got on the phone.

13 And so, Keith, I just want you to know, and
14 Michael, the organization is to be commended for their
15 responsiveness to us, not just that we are names. We are
16 not just names to fill out on an advisory board. So,
17 even when I am going through my process to be confirmed
18 with the governor, one of the things that I asked for is
19 that I could remain on this Commission, south you guys'
20 approval. And I was just happy. I am happy to be here
21 because it gives me insight that I think that can help in
22 the Commonwealth of PA.

23 My last two comments would be I echo. We had
24 lunch, but I think Steve and Chris. There is no ego. I
25 mean, it is amazing for, as accomplished as you two are,

1 despite the fact we have done some great work, I really
2 have liked a lot of the recommendations, I have learned a
3 lot, there is more to do, you know. I won't go through a
4 litany of it, but one that sticks out in my mind that
5 caused me a lot of personal and perhaps philosophical
6 concern is the role of FINRA in capital formation for
7 smaller companies and what FINRA is doing to the smaller
8 broker-dealers that are really the only ones who serve
9 the small and emerging companies that we are here to
10 serve. I think FINRA has perhaps overgrown its position.
11 It seems to be in need of reform.

12 As an entity that has quasi-government powers
13 with no government oversight or none of the equivalent
14 oversights, to have that authority without having that
15 level of responsibility is something that I think is
16 dangerous. And I think it is something that is dangerous
17 to the small and emerging companies that we are here to
18 advocate on behalf of. So that would be the one thing.

19 I really just don't want to leave with a
20 negative. I really have enjoyed my time here. And I
21 have enjoyed, particularly, arguing with people because I
22 get smarter when I argue with people who disagree with
23 me. And I don't get any smarter if I am just talking to
24 people who agree with me. So I have gotten a lot
25 smarter, and I appreciate that.

1 that you really just kind of nestle right in and go,
2 "Let's go get it." And I think that has been commendable
3 to allow all of our voices to be heard. I mean, this is
4 a body. It is a body.

5 And I think my last comment would be as a
6 group, that it has been absolutely great to meet all of
7 you and to work with you and to give me different
8 insights and perspectives in things that I personally had
9 never had. So I just wanted to make those my final
10 comments.

11 CO-CHAIR GRAHAM: Thank you, Tim.

12 D.J.?

13 MR. PAUL: I am still surprised that I am
14 sitting here, you know. So I echo everybody's comments
15 in terms of appreciating the environment that has been
16 created by the chairs, the commissioner and the chairs,
17 you know, for the desire to include me in the first
18 place. And, of course, I appreciate being able to take
19 shots at Michael and his graciousness with respect to
20 that.

21 In terms of future topics that I would like to
22 see this body address, I think you guys probably already
23 know what they are since I sent an email out about what I
24 would like on the agenda. And, without getting into all
25 of them, I think that there remain a lot of good --

1 CO-CHAIR GRAHAM: Okay. Thank you.

2 MS. LUNA: And I echo what has been said so
3 far, especially in regards to the SEC staff. You guys
4 have been phenomenal. Sebastian and Julie, I think you
5 do a great job.

6 In terms of this Committee, I really appreciate
7 the opportunity to serve my country. That is how I view
8 this, as a great way to kind of give back.

9 In relation to the question of topics, a couple
10 of things come to my mind. One is -- well, the FINRA
11 issue is something that I want to echo, but two other
12 issues. Cyber security, I guess I am lacking the impact
13 to the small and emerging companies. I know there is a
14 disclosure requirement, but, you know, what is the
15 impact? Should we revisit that? Should it be adjusted
16 for this particular group of companies?

17 And then something that is closer to heart is
18 kind of the PCAOB's -- I don't want to say the rulemaking
19 process but just the PCAOB's impact on the smaller and
20 emerging companies when it comes to the external audit.
21 I am not sure quite if it is in alignment to this group.
22 And maybe it is not. I think the marketplace is feeling
23 pretty hammered when it comes to certain inspections.
24 And the audit just keeps getting harder and harder and
25 harder to achieve the goal of what the PCAOB deems to be

1 a very appropriate audit. So, again, I am not sure it is
2 this Committee that needs to address it but something
3 that some folks have told me.

4 I want to thank you for leading such a great
5 team here, Stephen and Chris. I really appreciate the
6 opportunity of being here as part of this Committee.
7 Thank you.

8 CO-CHAIR GRAHAM: Okay. Thank you.

9 MR. HEMPILL: Yes. I just want to echo
10 everything that everyone else has said as well. I could
11 tell you it has been a real honor to be on this
12 Committee. I was kind of stunned when I first got the
13 phone call from Sebastian. I said, "Why me?" I am still
14 trying to figure that out, but it has been a real great
15 learning experience for me. I have learned so much.
16 And, you know, being 58, I didn't think I had that much
17 more to learn, but every meeting here I just learned
18 something new and something fascinating.

19 The people on the Commission's staff, you are
20 just wonderful. You are great. And I really appreciate
21 not just stuff that you have helped me to do and learn
22 here, but just all of the information that you have given
23 to us I think has really been great.

24 Stephen and Chris, I really think that you
25 guys -- I forgot who said it, but you run a great

1 meeting. You know, things are done really, really well.
2 We achieve stuff. We get recommendations out. I think
3 that is really important and also the fact that the
4 commissioners are here and that they are really, really
5 plugged in and they really listen to what we are saying.
6 I really appreciate everyone coming and spending time
7 with us.

8 As far as topics to be addressed in the future,
9 you know, I think the one thing that still puzzles me is
10 why 506(c) has not been more utilized. I think that,
11 really -- you know, I don't know if that is an immediate
12 thing or we need more time to look at it, but I think it
13 is important to look at it because it has not clearly
14 succeeded as well as people have thought that it was
15 going to.

16 Certainly when I saw the proposal out there, I
17 said, "This is great." And I thought it was going to be
18 widely used, and it hasn't been. So I think that that is
19 something that should be looked at. And perhaps the rule
20 needs to be tweaked some or perhaps there needs to be
21 more clarity on what you need to do in order to verify
22 that your investors are accredited.

23 The other thing I think that needs to be looked
24 at is why we don't have any more of -- I won't call them
25 bucket shops but the small broker-dealers. When I first

1 started practicing in the '80s, there were a whole slew
2 of your D.H. Blairs, your Whale Securities. And, you
3 know, not all the companies they brought out were great,
4 but they certainly served a purpose. And they are gone.
5 Why is that? And how can we bring them back? And how
6 can we revitalize that, that marketplace? I think that
7 that is kind of the important feeder ground that is
8 perhaps missing in the IPO market right now.

9 And, again, thank you so much.

10 CO-CHAIR GRAHAM: Thank you, John.

11 MS. HANKS: Well, I would like to echo thanks
12 to the staff, to the commissioners, to the co-chairs, and
13 to all of the Committee members. I know I have learned a
14 lot as well.

15 One thing that I would like to see this
16 Committee do on a going-forward basis is maybe work a
17 little closer with the other committees. There is a
18 tendency for this Committee to be referred to as a
19 counterbalance or a counterweight to the Investor
20 Protection Committee as if it were antithetical to have
21 investor protection and capital formation. They are
22 absolutely linked together. You can't protect the
23 investors unless you help the companies they are invested
24 in thrive. So we all have all of the same objectives.
25 And I would like to see those, the two committees, work

1 more closely together, maybe on just some topics but
2 would be great.

3 MR. CHANG: It is my honor and privilege to
4 serve on this Committee and echo the same about the staff
5 and the commissioners and the leaders of this Committee
6 and all of the members.

7 When a company needs some seed capital, I think
8 the crowdfunding really addresses that and then the next
9 level, which I think actually has a more significant
10 economic impact of the company size that -- at a startup
11 company at a stage where they need \$50 million to grow.
12 And that part is all a peripheral address but not really
13 head on.

14 One of the things that I noted is that 20-30
15 years ago, a lot of the funding at that stage especially,
16 the funding comes from public companies. But due to the
17 rule change where they cannot own more than 20 percent
18 and also they cannot really have pre-agreement in terms
19 of when you acquire, that became a hindrance in terms of
20 these public company-investing startup companies. So
21 that could be a very important source of capital
22 formation that we need to address, I feel.

23 Thank you.

24 MR. CHACE: Likewise, thanks to the co-chairs
25 and the commissioners and the staff and everybody else.

1 It has been fun to be on this both times, and I have
 2 really enjoyed participating.
 3 You know, I kind of echo what John was saying
 4 in terms of next steps because if you look at the number
 5 of IPOs this year, they are actually down from last. You
 6 know, I think the work that we especially did in the
 7 first version of this was really helpful. But I think
 8 there is more to be done. And I think a broader look at
 9 the EUCO system -- you mentioned the smaller
 10 broker-dealers. They really did power a lot of that IPO
 11 formation in the '90s and prior. I think to the extent
 12 that that falls within the SEC purview, it is worth a
 13 broader look at that ecosystem, not just the
 14 broker-dealers but also the mutual fund structure, other
 15 investors, and just how that has contributed to a still
 16 kind of lackluster IPO market.
 17 CO-CHAIR GRAHAM: Okay.
 18 MR. BORER: I appreciate everybody's comment.
 19 I think we have all done a lot of hard work. And having
 20 been to every one of these meetings since I was
 21 appointed, I guess, four years ago, it is the West Coast
 22 style and the Southern charm that make it work.
 23 (Laughter.)
 24 MR. BORER: Absolutely, that plays very, very
 25 well. Whoever put that first combination together got it

1 right.
 2 A couple of things. One, obviously, the small
 3 broker-dealer community is what I am advocating for her.
 4 I was a little bit surprised when I was first appointed
 5 last session that I was the only broker-dealer
 6 represented here. I am very happy now to have Charles
 7 carrying the other half of this burden, but I think that
 8 is an area where the ecosystem has been destroyed for the
 9 small firms. And I was telling somebody earlier I
 10 wouldn't encourage anybody to go into this business. I
 11 discourage all of my children's friends from going into
 12 the business. So if we can do something, yes, that is
 13 great.
 14 A couple of old topics for me. One is forward
 15 incorporation for small companies. Either through S-1 or
 16 expanding the use of S-3 I think would be very, very,
 17 very helpful. I know there was a presentation that I was
 18 scheduled to give at the last meeting of the last session
 19 or last term of this Committee, which, by the way, I
 20 still have.
 21 (Laughter.)
 22 MR. BORER: It is in the record somewhere
 23 because it was distributed and put onto the web. I think
 24 that is an area that the Committee could spend some time
 25 on and be very helpful with recommendations.

1 CO-CHAIR GRAHAM: David?
 2 MR. BOCHNOWSKI: You know, I didn't get to go
 3 first, but by the time you get towards the end,
 4 everything has already been said. So, again, my
 5 appreciation to the fellow members and ladies of the
 6 Committee. It has been great to have been on both
 7 iterations. I hope that the public, certainly I know I,
 8 appreciate -- and I think all of the members do. The
 9 fact that the commissioners actually come to these
 10 meetings is pretty significant. And certainly the staff
 11 support has been fantastic. I can't say enough about our
 12 chairs. You guys have done a great job.
 13 As to the future, I think we have to remember
 14 that our task is small and emerging companies. On the
 15 legislative side, Legislative Branch of the government, I
 16 think there is a great deal of discussion now about
 17 scaling the regulation. And it probably to most folks
 18 doesn't make sense that the small cap and the micro cap
 19 companies have to follow the same rules as the most
 20 broadly held companies. That is what we really have to
 21 address.
 22 There was a suggestion. Great discussion we
 23 had earlier. Obviously lots of different points of view,
 24 but I think Chris gave us pretty good insight in that we
 25 need to have some statistical base. We don't know how

1 many small cap companies don't ever get formed because
 2 they don't want to fight the fight. And we don't know
 3 how many leave the system because they don't want to
 4 fight the fight.
 5 And so I think that somewhere we have to think
 6 about the balance that we need in the 21st Century so
 7 that the job formation and job creation that has happened
 8 at the smaller companies that have blossomed into larger
 9 companies is something that can be continued.
 10 MR. BALTIC: Every time I think about the
 11 issues that we address as a Committee, I try to start
 12 from the premise that we have the deepest and most liquid
 13 and most transparent capital markets in the world. And I
 14 think that is a tribute to the Commission and the
 15 enforcement of securities regulations. So I think we
 16 start from a position of privilege when we address these
 17 issues as a body.
 18 In terms of things that I think would be
 19 helpful to focus on going forward, I know it is a
 20 difficult topic perhaps, but, you know, I think
 21 industry-based disclosure and regulation is important to
 22 keep in mind because they are such vastly different
 23 frameworks for companies if they are in biotech or social
 24 media versus mining or banking. And I just think that is
 25 a fundamental lens to try and bring to some of the

1 problems we address.
 2 And then I will echo things that John and Dan
 3 and John all said about the ecosystem for public company
 4 formation. We are still well below levels of public
 5 company formation that we had in the '80s. And I think
 6 we could ask whether that is a secular trend or that is a
 7 function of the costs of being a public company or maybe
 8 internationalization of markets and international
 9 competition for companies. But I will note that we have
 10 had articles in the Wall Street Journal about unicorns in
 11 the technology industry, which are private companies that
 12 have achieved billion-dollar-plus valuations in
 13 technology that don't seem to choose or have to choose to
 14 go public anymore. So I think we need to think about
 15 that whole ecosystem and how to make it better and
 16 richer.
 17 And then, finally, I would just say that I
 18 would like to thank Chair White and the commissioners and
 19 the staff and our chairs of the Committee for chartering
 20 and enabling this excellent body and my colleagues. It
 21 has been a pleasure and a privilege to be a part of it.
 22 Thank you.
 23 CO-CHAIR GRAHAM: Thank you.
 24 Chris, we heard your remarks earlier.
 25 CO-CHAIR JACOBS: I am not repeating them.

1 (Laughter.)
 2 CO-CHAIR GRAHAM: I know. I know.
 3 CO-CHAIR JACOBS: Thank you all for the kind
 4 statements. I guess where I would be coming from on next
 5 steps is asking the first question, did what we did here
 6 matter? I think it did, but I want to continue to know
 7 that what we have done in this iteration and the prior
 8 iteration of the Committee matters.
 9 Where I would start with next steps would be to
 10 take things like tick size. Tick size meant a lot to
 11 this Committee because of the liquidity associated with
 12 existing small companies and the disclosure, which,
 13 again, we have done a second recommendation on that,
 14 which I am thrilled about. And I don't think there is
 15 anything to report. We just finished the recommendation
 16 this morning. But I would go to the JOBS Act.
 17 I have got a burning set of questions that
 18 several of you brought up, like "Where are we? Did the
 19 JOBS Act help with capital formation? Where are we on
 20 the IPOs?" In that report, we may find some pearls.
 21 There are some stumbling blocks. There are some pitfalls
 22 in the JOBS Act that we as a committee could meaningfully
 23 put forward recommendations that would help tweak that
 24 JOBS Act or tweak some implementation aspect of the JOBS
 25 Act to see where we are.

1 So my recommendation is actually not a
 2 recommendation. It is a set of questions that I think we
 3 might have some insight on once we get to.
 4 CO-CHAIR GRAHAM: Okay. Well, thank you,
 5 Chris. And I would just like to say thank you, all. As
 6 far as I am concerned, it has been a pleasure and a
 7 privilege to help facilitate, you know, what we do here.
 8 And I think that you folks have proven to be a great
 9 team. And I have enjoyed my tenure.
 10 We said that we would get you out of here with
 11 enough time to make planes and trains, which is before
 12 3:00. We have got four minutes.
 13 MEMBER: Yet again.
 14 CO-CHAIR GRAHAM: Yet again. Okay. So I guess
 15 we are adjourned. Thank you.
 16 (Whereupon, at 2:57 p.m., the meeting was
 17 adjourned.)
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1 PROOFREADER'S CERTIFICATE
 2
 3 In The Matter of: MEETING OF SEC ADVISORY COMMITTEE
 4 ON SMALL AND EMERGING COMPANIES
 5 File Number: OS-0923
 6 Date: Wednesday, September 23, 2015
 7 Location: Washington, D.C.
 8
 9 This is to certify that I, Donna S. Raya,
 10 (the undersigned), do hereby swear and affirm that the
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I, Kevin Carr reporter, hereby certify that the foregoing transcript of 112 pages is a complete, true and accurate transcript of the testimony indicated, held on September 23, 2015, at Washington, D.C. in the matter of: MEETING OF SEC ADVISORY COMMITTEE ON SMALL AND EMERGING COMPANIES.

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