



Elizabeth M. Murphy
Federal Advisory Committee Management Officer
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-9303

Stephen M. Graham, Co-Chairperson
M. Christine Jacobs, Co-Chairperson
Securities and Exchange Commission Advisory Committee on Small and Emerging
Companies

Re: Comments in Connection with January 6, 2012 Meeting
File No. 265-27

Mr. Graham, Ms. Jacobs and Ms. Murphy:

There are very, very few substantive policy proposals that achieve virtually unanimous support in Congress. Reducing the regulatory impediments to small business capital formation created by the Securities and Exchange Commission (the “SEC”) is, however, one of those areas about which virtually every member of Congress agrees. This should give the members of the Securities and Exchange Commission Advisory Committee on Small and Emerging Companies (the “Advisory Committee”) a sense of how out of step with common sense and the economic needs of the country that the current regulatory position of the SEC is. It should give the Advisory Committee the courage to move beyond the inadequate tweaks recommended by the SEC staff and the securities bar. The Advisory Committee should instead make recommendations consistent with the needs of the small business community and the working people of this country.

On November 2, 2011, the U.S. House of Representatives passed three bills with strong bipartisan support that would substantially reduce the regulatory impediments to small businesses raising capital.

The Small Company Capital Formation Act of 2011 (H.R. 1070) passed the House by a margin of 421-1. The bill would effectively amend Regulation A by increasing the aggregate offering amount of all securities sold within the prior 12-month period to \$50 million. The bill further provides that the securities may be offered and sold publicly and that the securities shall not be restricted securities within the meaning of the Federal securities laws.

Celebrating 75 Years · 1937 - 2012

1156 15th Street NW · Suite 1100 · Washington, DC 20005 · 202-293-8830 · Fax: 202-872-8543 · www.nsba.biz

The Entrepreneur Access to Capital Act (H.R. 2930) passed the House by a margin of 413-11. This bill would create a so-called crowd-funding exception that would, if audited financial statements are provided to investors, allow a company to raise up to \$2 million provided that the aggregate amount sold to any investor in a 12-month period does not exceed the lesser of \$10,000 or 10 percent of such investor's annual income. If statements were unaudited, up to \$1 million could be raised. It would pre-empt state laws that contravened these provisions (a necessity if it is to have any practical meaning because otherwise those attempting to raise capital over the internet would need to comply with 51 different blue sky laws).

The Access to Capital for Job Creators Act (H.R. 2940) passed the House by a margin of 413-11. This bill would allow for general solicitation or general advertising to find investors, provided that all purchasers of the securities are accredited investors.

Together these provisions have the potential to positively transform the ability of small businesses to raise needed equity capital.

Yet the inclination of securities regulators and the securities bar is to slow down the reform process and water down these reform proposals. This is understandable. They are highly familiar with the rules and their livelihood depends on maintaining a complex set of rules. Simplified, modernized and less costly regulation is not their priority. But the country can no longer afford such delay and prevarication. It is time to make these changes. The Advisory Committee should endorse these bills. It should urge the SEC commissioners to also endorse them. It should also urge the SEC to adopt regulatory policies immediately to achieve the goals of this legislation as the bulk of the changes that would be implemented by this legislation could be achieved by regulation.

The Small Business Investment Incentive Act of 1980 (see 15 USC § 80c-1) requires that the SEC conduct an annual Government-Business Forum on Small Business Capital Formation. Each year – for two decades -- this gathering has made a series of highly constructive and entirely reasonable recommendations to the SEC about how to streamline the regulatory and statutory regime governing securities. Each year, the SEC has either largely ignored these recommendations or made the situation worse.

It is the sincere hope of the NSBA and its membership that the Advisory Committee will prove to be more than just another group making recommendations that the SEC will pay lip service to, place quietly on a shelf and ignore.

The draft “Recommendation Regarding Relaxing or Modifying Restrictions on General Solicitation in Certain Private Offerings of Securities,” dated January 3, 2011 represents an important and welcome step in this direction. We strongly urge the Advisory Committee to endorse this proposal, which is substantial similar to *The Access to Capital for Job Creators Act* (H.R. 2940) overwhelmingly passed by the House.

Celebrating 75 Years · 1937 - 2012

Besides endorsing the legislation above, the NSBA would urge the Advisory Committee to oppose raising the accredited investor threshold. We would urge that regulatory changes be made immediately to the Broker-Dealer rules to eliminate the uncertainty created by the SEC staff regarding finders and business brokers. We urge the Advisory Committee to endorse exempting small issuers from the strictures of Sarbanes-Oxley section 404 internal control reporting requirements.

The NSBA is currently working with its membership to develop a comprehensive capital access reform package that will be designed to improve small private and public firms' access to capital. We anticipate having this proposal together soon. We look forward to working with the Advisory Committee, the SEC and the Congress to dramatically improve the regulatory environment facing small businesses as they seek to raise both debt and equity capital to grow their businesses and create jobs.

Sincerely,

David R. Burton
General Counsel

Celebrating 75 Years · 1937 - 2012

1156 15th Street NW · Suite 1100 · Washington, DC 20005 · 202-293-8830 · Fax: 202-872-8543 · www.nsba.biz