U.S. SECURITIES AND EXCHANGE COMMISSION

REPORT ON THE 43RD ANNUAL small business FORUM

APRIL 16 - 18, 2024

The U.S. Securities and Exchange Commission (SEC) annually hosts the Government-Business Forum on Small Business Capital Formation (Forum). The recommendations contained in this report were developed by the 2024 Forum participants. The recommendations are not endorsed by the SEC and, as with the remarks of SEC Commissioners and staff published in this report, do not necessarily reflect the views of the SEC, its Commissioners, or any of the SEC's staff members.

Digital copies of the prior reports and other materials relating to previous Forums, dating back to 1993, are available online.

CONTENTS

DID YOU KNOW?

99%

of all businesses are

SMALL BUSINESSES

(33.2 million businesses)

78%

of small business owners are concerned about their

ABILITY TO ACCESS CAPITAL

ABOUT THE FORUM

The SEC's annual Small Business Forum is a unique event where members of the public and private sectors gather to provide feedback to improve capital-raising policy.[1] The Forum covers a broad range of issues affecting small businesses and their investors, from early-stage entrepreneurial ventures to smaller public companies.

The SEC's Office of the Advocate for Small Business Capital Formation leads the event, in collaboration with each of the Commissioners and other offices and divisions across the agency.

Participants in the Forum bring a breadth of perspectives to the policy deliberations, approaching capital raising from a variety of backgrounds, geographies, and life cycle stages.[2]

PERSPECTIVES ON SMALL BUSINESS CAPITAL-RAISING AT EVERY STAGE

The 43rd Small Business Forum took place over three virtual sessions April 16-18, featuring appearances by each of the Commissioners and eight speakers with in-depth knowledge of the issues facing small business across the country. Each session focused on a different stage of the capital-raising lifecycle.

Participants represented perspectives from across the small business ecosystem.

Accountant
Founder
Accelerator
Advocacy/Trade Association
Investor
Advisor
Researcher
Community/Nonprofit
Business Leader
Entreprenuer
Incubator
Government
Attorney
Academia

Forum at a Glance

260+
attendees

41
U.S. states and territories

11
countries

180+
women- or minority- owned businesses or investors

5
SEC Comissioners

8
speakers

POLICY RECOMMENDATIONS

A hallmark of the Forum is the opportunity for participants to develop policy recommendations to improve capital raising. Based on feedback from prior Forums, and consistent with prior years' events, we invited participants to submit recommendations in advance, as well as "chat" them in during the live event. Doing so fostered an inclusive environment where all voices could be heard while being efficient with participants' time.

At the conclusion of each day's panel discussion, participants prioritized the relevant recommendations based on their perception of the positive impact each would have on capital formation. This report includes the top five recommendations from each day.

Alongside each recommendation is a response from the Commission, noting any corresponding policy initiatives that have been made public.[3] The Commission will consider Forum recommendations alongside other public comments for relevant policy initiatives.

42 capital-raising policy topics submitted by the public

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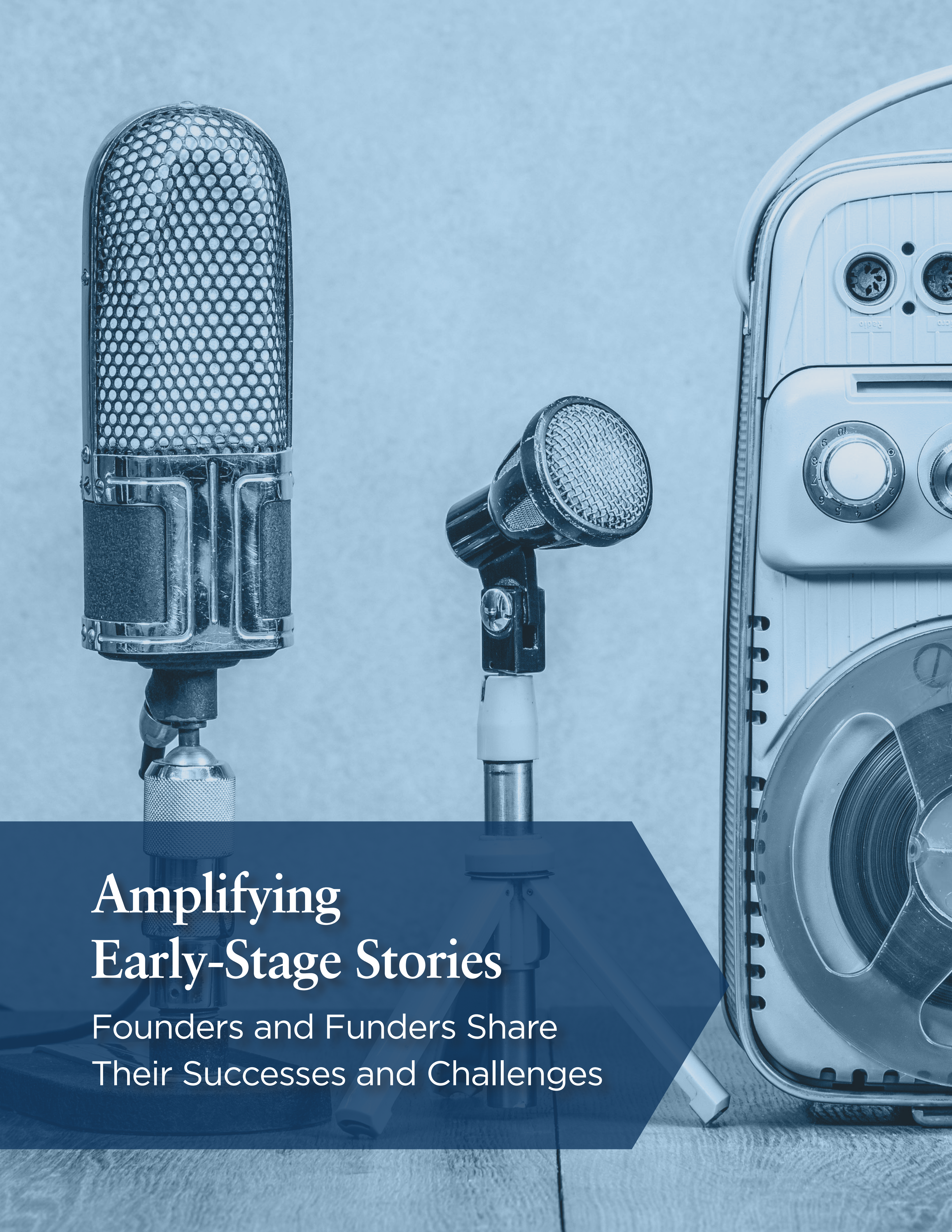
recommendations prioritized for delivery to the Commission and Congress **15**



Amplifying Early-Stage Stories

Founders and Funders Share Their Successes and Challenges

DAY 1: AMPLIFYING EARLY-STAGE STORIES

Founders and Funders Share Their Successes and Challenges

Agenda

1:00 P.M.	Opening Remarks from Stacey Bowers, Director of the SEC Small Business Advocacy Office
1:05 P.M.	Remarks from SEC Chair Gary Gensler
1:10 P.M.	Fireside Chat, moderated by T.J. Collins, SEC Small Business Advocacy Team
1:20 P.M.	Panel Discussion, moderated by Stacey Bowers, SEC Small Business Advocacy Team
2:00 P.M.	Q&A with Panelists, moderated by Julie Zelman Davis, SEC Small Business Advocacy Team
2:10 P.M.	Closing Remarks from Jenn Brady, SEC Small Business Advocacy Team
2:15 P.M.	Voting to Prioritize Policy Recommendation Submissions

Participant Perspectives

We asked participants...

How have you raised capital?

#1 **Grants, Loans, or Other Non-Dilutive Funding** (57% of respondents)

48% said **Angel Investors**
35% said **Friends and Family** and
35% said **Venture Capital Investors or Other Private Funds**

Which of the following do you believe are the biggest barriers to access capital?

#1 **Networks and Connections to Investors**

Information, Education, and Knowledge and **Personal Wealth or Assets** were the next biggest barriers

Speakers

DONALD J. HAWKINS

Entrepreneur & Angel Investor
Pipeline Entrepreneurs
Kansas City, MO

I like to compare raising capital to getting ready for the prom...You go to the barbershop...you make sure your suit is pressed. Everything is laid out, thought through very efficiently. When it comes to your startup, you've got to think about it the same way...Do you have the type of business that is investible? Do you have the team members and the skillset to do the things that you set out to do? Are you solving a real problem? Are you [and] your team...fit to build the product that you're looking to build?

With a career covering media and technology, Donald Hawkins applies a diverse mix of skills as an early-stage investor, mentor and fintech operator. A serial entrepreneur, Donald has held several leadership roles in adTech, healthTech, and finTech. In his previous role as Founder and CEO of affinity-focused digital bank Kinly, he developed a financial platform focused on improving the financial livelihood of its members through financial education, Black-focused spending, and wealth building tools. He has been named Top Fintech CEO and the 2020 Bankers' Choice recipient by the Independent Community Bankers of America (ICBA), is a member of the Pipeline Entrepreneur Fellowship and serves on a variety of boards.

Building the network with other entrepreneurs is first and foremost and the most important thing you can do. We learn more from other people that are going through the exact same thing that you're going through. And then you can also meet investors and meet community leaders, business civic leaders. Everybody can bring a little bit of value to your company.

ERIKA LUCAS

CEO, **StitchCrew** *& GP*
VEST Her Ventures
Edmond, OK

Erika Lucas is the Founder of StitchCrew, an organization that has provided non-dilutive capital and resources to more than 200 Women and Minority Entrepreneurs. Erika also founded VEST, a peer network for women professionals and investment fund investing in women-led companies building solutions for the intersection of the Care Economy and Future of Work. Erika is a LinkedIn Top Voice on Venture Capital and Entrepreneurship, currently serving on the Board of Arvest Bank, the Diversion Hub and the Oklahoma City County Health Department. She is also a member of the Latino Corporate Directors Association. Prior, Erika was a Partner at a Private Equity firm investing in Aerospace and Defense and before that she was the Global Director at the Oklahoma Department of Commerce.

JESSICA MURREY

CEO/Co-Founder
Wicked Saints Studios
Medford, OR

> The bottom line is, [investors (e.g., VCs and angels)] invest in what they're confident in. So, if they're not confident in you, your team, or your product, they're not going to invest…it really comes down to them being confident and comfortable that you can deliver.

Jessica is an Emmy-Award-winning storyteller and international peacebuilder turned game designer. Jess is the CEO/Co-founder of Wicked Saints Studios, and creative mind behind World Reborn. First to emerge from Niantic's (makers of Pokémon GO) BDI incubator, Wicked Saints is building the world's first XR adventure activism game. As CEO, Jess has raised over $4.5M in venture funding from Riot Games, Reid Hoffman, and others, joining fewer than 100 Black women founders who have raised over $1 million. American Business Journals named Jess 34 Female Founders to watch in 2023. Jess is a finalist for the 2024 BTA Awards (Black Tech Achievement) for the "Force of Good Award. The 2020 Game Awards selected Jess as a member of their "Future Class," representing the bright, inclusive future of gaming.

Highlights from Panel Discussion

- When seeking to raise capital, as an early-stage company, it is advantageous to position yourself as a heavy pre-seed company (e.g., already have paying customers/revenue) since this displays that you are addressing a market demand.
- For mentor-seeking entrepreneurs, attempting to proactively provide value to a person you hope to connect with, or receive help from, is paramount for a successful reply. Also, do not overly rely on digital connections, be flexible to meeting in-person and traveling.
- When approaching investors, remember that most investors complete a lot of due diligence to mitigate risk and to ensure alignment and growth with their priorities. Each investor can value certain aspects differently too. As a founder, you should also perform this same due diligence on investors, to ensure alignment and shared values.
- Networks and mentors are paramount to early-stage entrepreneurs. While founders need to rely on their internal team, having the support of networks and access to potential capital allocators is equally as important. Relying on local resources and entrepreneur support systems is great, but founders should also look to national resources for support.
- To address the fundraising challenges diverse founders experience, we should continue to repair the systems that place barriers to accessing capital and networks. Additionally, the view on diversity should shift, from viewing it as a chore to viewing it as a gift. Diversity provides a different prospective on how to view and cure problems.

While there are many aspects of growing a business that entrepreneurs cannot control, founders should focus on the fundamentals of how they build and run their company. Making a company strong and sustainable, while trying to speak/connect with as many people as one can, will attract investors.

Participants' Policy Recommendations

Support entrepreneurs, including underrepresented founders, with modernized educational resources to allow businesses to better understand how to access capital, including capital from investors.

COMMISSION RESPONSE

The Commission supports efforts to provide and improve accessibility of educational and technical resources to support entrepreneurs and their investors (including underrepresented founders). In 2021, the SEC's Office of the Advocate for Small Business Capital Formation, in partnership with other SEC offices and divisions, launched a centralized hub of Resources for Small Businesses on sec.gov[4], which serves as a portal for educational resources for entrepreneurs and their investors on how to comply with securities laws when raising capital. The resources are tailored to be accessible for various levels of familiarity with capital-raising rules and regulations, from very early entrants to the capital-raising framework to more experienced users seeking guidance on specific rules. They are regularly expanded in response to feedback from small businesses and their investors. The resources available from the hub have received over 1.2 million visits since its launch and include:

- Funding Roadmap[5] that illustrates various funding sources for small businesses.
- Glossary[6] of key terms that makes the language of capital raising more accessible to small businesses and their investors.
- Navigate Your Options[7] interactive tool that explores regulatory pathways available to raise capital, through which users answer a series of questions to identify the most relevant pathways to raise capital based on their specific needs.
- Capital Trends Maps[8] that provide data on where capital is being raised across the country under various offering pathways.
- Capital-Raising Building Blocks[9] that provide a suite of educational materials that break down fundamental securities law concepts into plain language.

The SEC's Office of the Advocate for Small Business Capital Formation, in partnership with other SEC offices and divisions, has engaged with small businesses, investors, and other thought leaders (including underrepresented founders) in the market to highlight these new educational resources and will continue to seek engagements with diverse audiences across the country. In addition, the Office of Small Business Policy in the SEC's Division of Corporation Finance lists its number on the Division's public website and responds to questions regarding the application of the federal securities laws to small businesses, including questions regarding "[s]maller public companies and limited, private and intrastate offerings of securities."[10] The Commission welcomes continued engagement and ideas to improve the resources.

Expand the accredited investor definition to include additional measures of sophistication, including through an investor certification course or test.

COMMISSION RESPONSE

In 2020, the Commission adopted amendments to the definition of "accredited investor" under Regulation D of the Securities Act of 1933 (Securities Act) that added ways for individuals to qualify as accredited investors and participate in private offerings (Accredited Investor Adopting Release).[11] This included amendments allowing natural persons to qualify as accredited investors based on certain professional certifications, designations, or credentials.[12] The amended rule includes a nonexclusive list of attributes that the Commission will consider in determining which professional certifications and designations or other credentials qualify a natural person for accredited investor status.[13] In a related order, the Commission designated holders in good standing of the Series 7 (Licensed General Securities Representative), Series 65 (Licensed Investment Adviser Representative), and Series 82 (Licensed Private Securities Offerings Representative) licenses as accredited investors.[14] The Commission may designate additional qualifying professional certifications, designations, and other credentials by order.

On December 14, 2023, the Commission published a staff report regarding the accredited investor definition.[15] The report was published in connection with the requirement under the Dodd-Frank Wall Street Reform and Consumer Protection Act for the Commission to review such definition as it pertains to natural persons every four years. The report focused on changes in the composition of the accredited investor pool since the definition was adopted, considered recommendations of prior Small Business Forums, among other sources, and solicited feedback from the public. The Spring 2024 Regulatory Agenda[16] indicates that the SEC's Division of Corporation Finance is considering recommending that the Commission propose amendments to Regulation D, including updates to the accredited investor definition, to improve protections for investors. The Commission will consider this Forum recommendation in connection with this initiative.

Establish a regulatory framework for finders that includes an exemption from broker-dealer registration and helps facilitate small business capital formation.

COMMISSION RESPONSE

In October 2020, the Commission proposed an exemptive order that would permit natural persons to engage in certain limited activities involving accredited investors without registering with the Commission as a broker-dealer.[17] In connection with that notice, the Commission requested public comment on all aspects of the proposed exemption. The proposed exemptive order was not finalized, and there is no rulemaking on the topic of finders on the Spring 2024 Regulatory Agenda.[18]

Expand regional, federal, and state options available for non-dilutive funding to support the earliest stages of entrepreneurship.

COMMISSION RESPONSE

The Commission supports efforts to provide and improve accessibility of resources to support entrepreneurs and their investors. As described above, in 2021, the SEC's Office of the Advocate for Small Business Capital Formation, in partnership with other SEC offices and divisions, launched and continues to update and expand a centralized hub of Resources for Small Businesses on sec.gov, which serves as a portal for educational resources to support entrepreneurs and their investors, including the recently launched Funding Roadmap[19] illustrating various dilutive and non-dilutive funding sources for small businesses. The Additional Resources section of the hub includes links to tools and information for small businesses and their investors from other agencies on non-dilutive capital.

Through the SEC's work overseeing investment products and services available to investors, staff often receive recommendations and comments from investors and other stakeholders on ways to improve the available investment opportunities. The Commission will consider this Forum recommendation in connection with its various initiatives. Expansion of federal, regional, and state options for non-dilutive funding, such as grants and loans, would require action by federal, state, and local governments, as well as other institutions and entrepreneurial support organizations.

Ensure capital raising rules provide equitable access to capital for underrepresented founders and investors.

COMMISSION RESPONSE

Fair and efficient capital markets are important to protecting underrepresented founders and investors. To that end, the Commission regularly evaluates ways to improve its capital-raising rules, and the Spring 2024 Regulatory Agenda includes an initiative to consider amendments to Regulation D, the most frequently used of the Commission's rules related to exempt offerings. As always, the Commission will carefully balance concerns relating to the impact on companies participating in the U.S. capital markets (including those led by underrepresented founders) with other aspects of its mission, including investor protection, and weigh the public comments to achieve the appropriate balance. Promoting investor confidence in capital markets and consistent and reliable disclosure is a crucial ingredient in capital formation, including capital formation for small businesses and underrepresented entrepreneurs. The Commission will consider this Forum recommendation in connection with its regulatory initiatives.

Opening the Dialogue on Investing

Investing in Early-Stage Companies and Building Ecosystems

DAY 2: OPENING THE DIALOGUE ON INVESTING

Investing in Early-Stage Companies and Building Ecosystems

Agenda

1:00 P.M.	Welcome Remarks from Sarah Kenyon, SEC Small Business Advocacy Team
1:05 P.M.	Remarks from SEC Commissioner Caroline A. Crenshaw
1:10 P.M.	Remarks from SEC Commissioner Mark Uyeda
1:15 P.M.	Fireside Chat, moderated by Sheen Munshi, SEC Small Business Advocacy Team
1:25 P.M.	Panel Discussion, moderated by Julie Zelman Davis, SEC Small Business Advocacy Team
2:00 P.M.	Q&A with Panelists, moderated by Jenny Riegel, SEC Small Business Advocacy Team
2:10 P.M.	Closing Remarks from Kim Dinwoodie, SEC Small Business Advocacy Team
2:15 P.M.	Voting to Prioritize Policy Recommendation Submissions

Participant Perspectives

We asked participants...

Where do you expect to find most investors or investment opportunities?

#1 Within your local community
(47% of respondents)

27% said **Across the Country**
20% said **Within your Broader Geographic Region** and
7% said **Internationally**

What are the greatest challenges facing emerging and regional fund managers?

#1 Regulatory Barriers to Entry

Lack of Track Record and **Access to a Network of Investors** were the next greatest challenges

Speakers

ANGELA LEE

Professor, **Columbia Business School** & *Founder*
37 Angels
New York, NY

[Investing in early-stage companies] is a tremendous amount of fun...if you are somebody who loves reading about innovative new companies... [I]f you love thinking about what the future is going to look like in the next 10, 20, 50 years, it is a really fun way to look at the world. And it's a great way to learn.

Angela Lee is an award-winning professor and former Chief Innovation Officer at Columbia Business School where she teaches venture capital and leadership courses. She has started 4 startups and is also the founder of 37 Angels, an investing network that has evaluated over 20,000 startups, invested in 100, and activates new investors through a startup investment bootcamp. She also serves as a venture partner at Fresco Capital. Angela has spoken at the White House and NASA and is a sought-after expert on CNBC, Bloomberg TV, MSNBC and Fox Business.

It's so important [to] look at who's participating, and who is making the decisions in allocating capital to entrepreneurs, and to the solutions they're bringing to the world... [There are] huge markets going untapped with solutions, because the people...impacted by the problem [are not] at the table to make investments.

TRISH COSTELLO

CEO
Portfolia
San Mateo, CA

Trish Costello is Founder and CEO of Portfolia. Portfolia works to activate the wealth of women, with nearly 2,000 women limited partners in its venture capital funds. Portfolia's 14 VC funds focus on industries that over-index for women, including active aging and longevity, women's health, sustainability, and Rising America (diversity). Trish is recognized for her pioneering work in preparing VC investment partners through the Kauffman Fellows Program, which she created and spun out from the Kauffman Foundation and continues as CEO Emeritus. Trish was Founding President of CVE Capital Corp, the holding company of a $1.7 billion venture capital fund of funds. She was named Entrepreneur Magazine's inaugural 100 Most Innovative Women Entrepreneurs in 2020. Portfolia was recognized as Fast Company's Top Ten Most Innovative Finance Companies.

BETO PALLARES

President and CEO, **Joseph Advisory Services, LLC** *& General Partner*
Audaz Capital Fund
El Paso, TX

[When people are looking to join an angel group or to learn how to invest in private companies] you don't learn to swim by reading a book. You have to get into the water. And so, the sooner you provide mechanisms to give people that experience, the more they'll develop muscle memory on how to do things (e.g., pitch, analyze investments) well.

Ebetuel (Beto) Pallares began his career as a management consultant focused primarily on the telecom and banking industries. He's also been a startup entrepreneur, a telecom executive, a restaurateur, a nonprofit director, a venture capitalist, and a professor. He is a private fund investment advisor and the general partner of a venture fund. Beto is a Kauffman Fellow and a Presidio Fellow and over the years has served on the boards of over two dozen private companies. He also serves on the board of Exagen, Inc. (NASDAQ: XGN). He holds a Ph.D. in International Business Strategy from the University of Texas at El Paso and a B.A. in economics from Brandeis University.

Highlights from Panel Discussion

- Private markets are a network driven environment. 80 to 85% of all investments that are made are through networking (i.e., the founder knows the angel or VC, or they can be introduced through somebody). So, bringing the power of your network to help your portfolio companies will make you a better investor.
- Before investing in the private markets, potential investors should consider the "four Ps", which are: *People* (e.g., what is the company's structure and abilities), *Problem* (e.g., does the company understand the problem they are solving for customers and is that market large enough), *Progress* (e.g., is the company's development repeatable), and *Price* (e.g., is the price fair to all parties).
- When raising capital in rural/regional areas, founders and fund managers should highlight attributes that are unique to them and that offer competitive advantages (e.g., money goes further in rural/regional areas and still have comparable talent to cities/coasts).
- When researching fund managers, a pivotal question to consider is who is making the capital allocation decisions; especially to impact underrepresented communities and issues.
- Founders can receive valuable insights when they become investors in other early-stage companies because they can see how the early-stage investment process operates from the capital allocation side.
- When expanding your network, as an investor or founder, it is critical to get started early, to become an expert in your space, and to adventure outside of your comfort zone.
- To have an effective fund, a fund manager should be able to fundraise (e.g., raise and deploy capital), execute on investments (e.g., track record of what you have and have not invested in), and exit well (e.g., investor return).
- When researching companies to invest in, due diligence is key; at least 45 hours of research goes into each prospective early-stage company.

Participants' Policy Recommendations

Bolster and expand tax incentives that promote equity ownership and drive investment in the startup and small business ecosystem.

COMMISSION RESPONSE

One prong of the Commission's mission is to facilitate capital formation. The Commission regularly engages with businesses, investors, and other thought leaders in the small business ecosystem to gather feedback and identify ways to facilitate capital formation. The Commission and staff will consider this Forum recommendation in connection with these efforts. Changes to Title 26 of the United States Code, the Internal Revenue Code, would require Congressional action.

Focus SEC rulemaking efforts on reducing administrative and regulatory burdens on small business and their investors to improve capital allocation efficiency.

COMMISSION RESPONSE

Over the years, the Commission has sought to promote capital formation and appropriately reduce compliance costs for smaller companies and their investors while maintaining investor protections. This includes a longstanding practice of providing exemptions, scaled disclosure requirements, delayed compliance dates, and other accommodations for smaller companies as well as carefully considering any potential disproportionate effects of new rule requirements on such companies. Consistent with this practice, the Commission will consider this Forum recommendation in connection with ongoing regulatory initiatives.

Support underrepresented emerging fund managers—specifically diverse and women managers—who are building funds that diversify capital allocation, engage sophisticated investors, and challenge pattern matching trends.

COMMISSION RESPONSE

The Commission supports efforts to improve diversity among fund managers and entrepreneurs who raise capital. As described above, in 2021, the SEC's Office of the Advocate for Small Business Capital Formation, in partnership with other SEC offices and divisions, launched and continues to update and expand the centralized hub of Resources for Small Businesses on sec.gov, which serves as a portal for educational resources to support entrepreneurs and their investors, including content to help support underrepresented emerging fund managers, their investors, and their portfolio companies.[20]

In 2021, the SEC's Asset Management Advisory Committee approved recommendations that included matters of diversity and inclusion with respect to selection of asset managers.[21] Subsequently, SEC staff issued a "Staff FAQ Relating to Investment Adviser Consideration of DEI Factors."[22] The FAQ addresses the question of whether, under its fiduciary duty, an investment adviser that recommends other investment advisers to or selects other advisers for its clients may consider factors relating to diversity, equity, and inclusion, provided that the use of such factors is consistent with a client's objectives, the scope of the relationship, and the adviser's disclosures. It also clarifies that an adviser's fiduciary duty does not mandate restricting such a recommendation or selection to investment advisers with certain specified characteristics, such as a minimum amount of assets under management or a minimum length of track record.

Support companies that offer equity ownership to employees and gig workers, and support policies that would better enable employee-owners to realize the value of their equity through transparency, appropriate tax policy, and access to secondary liquidity.

COMMISSION RESPONSE

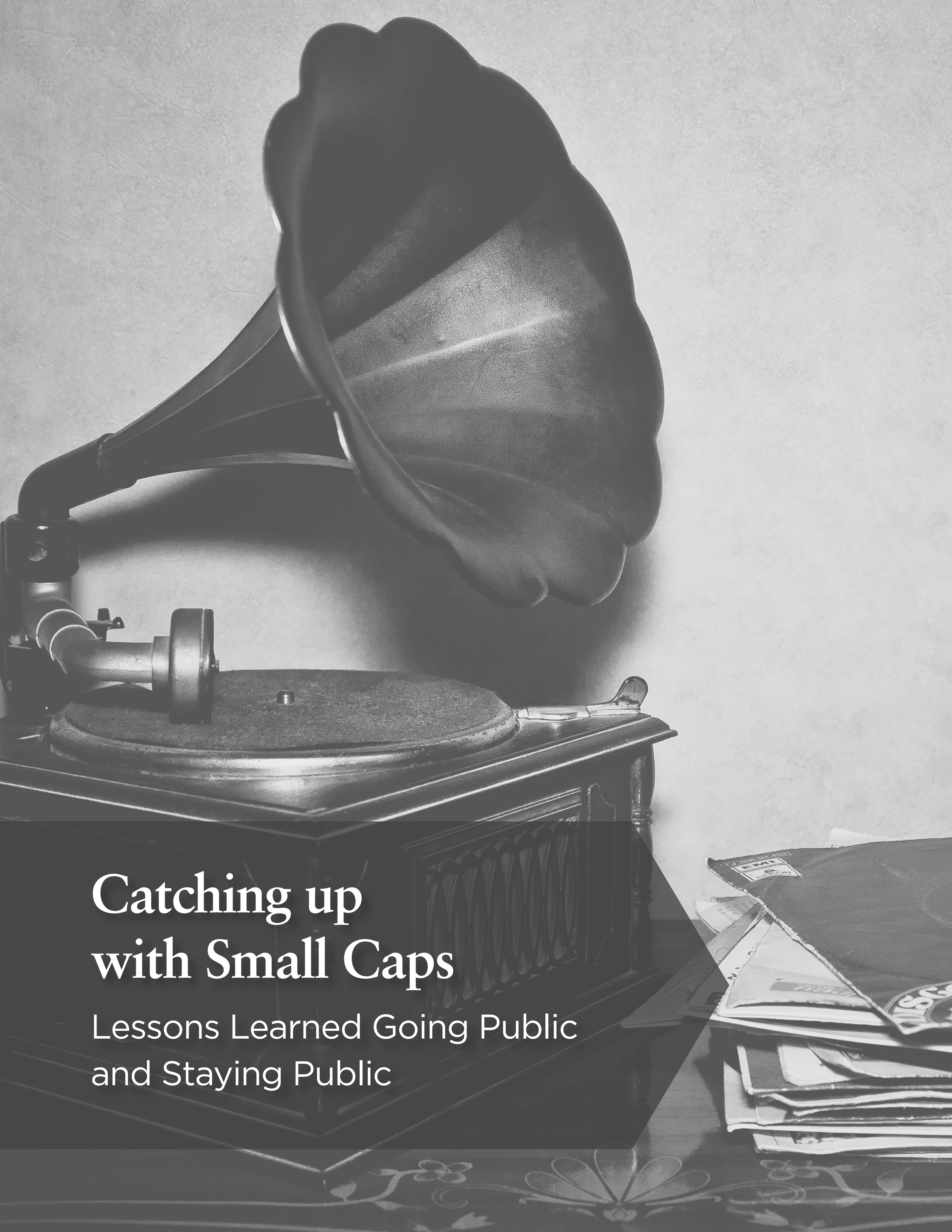
As described above, the Resources for Small Businesses hub on sec.gov serves as a centralized portal for educational resources to support entrepreneurs and their investors.[23] Specifically, the portal includes a "Building Block" on types of securities, including stock options and restricted stock,[24] as well as another on private secondary markets.[25] In addition, the SEC's Division of Corporation Finance provides resources on the Commission's Rule 701 under the Securities Act that provides an exemption from registration for offers and sales of securities made to compensate employees, consultants, and advisors issued by non-reporting issuers, many of which are smaller companies pursuant to written compensatory benefit plans.[26]

Expand venture capital funds' qualifying investments to include fund-of-funds investments in other venture capital funds and investments acquired through secondary transactions.

COMMISSION RESPONSE

An investment adviser to venture capital funds may qualify as an exempt reporting adviser that is not required to register with the SEC if the fund invests at least 80 percent of its assets in "qualifying investments" under Rule 203(I)-1 of the Investment Advisers Act of 1940.[27] A "qualifying investment" generally consists of any equity security issued by a qualifying portfolio company that is directly acquired by a qualifying fund and certain equity securities exchanged for the directly-acquired securities.

In the adopting release defining "qualifying investment," the Commission discussed the possibility of expanding the definition to include secondary purchases and investments in other venture capital funds, but ultimately decided that such investments should be made pursuant to the 20 percent limit for assets that are not "qualifying investments."[28] Since then, the SEC's Division of Investment Management issued guidance relating to the definition of "venture capital fund" to clarify whether certain fund structures or actions could jeopardize a venture capital fund adviser's ability to qualify as an exempt reporting adviser.[29] The Commission will consider this Forum recommendation and will consult, as needed, with relevant stakeholders.



Catching up with Small Caps

Lessons Learned Going Public and Staying Public

DAY 3: CATCHING UP WITH SMALL CAPS

Lessons Learned Going Public and Staying Public

Agenda

1:00 P.M.	Welcome Remarks from Pablo Echeverri, SEC Small Business Advocacy Team
1:05 P.M.	Remarks from SEC Commissioner Hester Peirce
1:10 P.M.	Remarks from SEC Commissioner Jamie Lizárraga
1:15 P.M.	Panel Discussion, moderated by Courtney Haseley, SEC Small Business Advocacy Team
2:00 P.M.	Q&A with Panelists, moderated by Stacey Bowers, SEC Small Business Advocacy Team
2:25 P.M.	Closing Remarks from Amy Reischauer, SEC Small Business Advocacy Team
2:30 P.M.	Voting to Prioritize Policy Recommendation Submissions

Participant Perspectives

We asked participants...

What are the greatest challenges facing smaller public companies?

#1 Cost of Compliance

Burden of Reporting Requirements and **Trading Volume** were the next greatest challenges

What is a top priority for smaller public companies when it comes to their investors and shareholders?

#1 Attracting More Institutional Investors

Engage With Investors and **Generating Return on Investment** were the next priorities

Speakers

Don't be surprised by the fact that all that time and money and effort that went into the IPO, as soon as you're closed and the money is in the door, you're devoting almost that same level of time, resources, and expense on a day-to-day basis going forward, to stay public.

DAVINA K. KAILE

Partner
Pillsbury Winthrop Shaw Pittman LLP
Palo Alto, CA

Davina Kaile is a Corporate and Securities partner and Co-Leader of Pillsbury's Capital Markets practice. Davina has guided companies across a wide range of sectors, including technology, life sciences, financial services, e-commerce, edtech, and retail, in many high-profile multibillion and multimillion-dollar deals. She has extensive experience in capital markets transactions, mergers and acquisitions, tender offers, RTOs, divestitures, going private, deSPAC, and other strategic transactions. She represents issuers and underwriters in IPOs, follow-on offerings, RDOs, CMPOs, rights offerings and PIPE, ATM and ELOC transactions, and has deep expertise in '33 and '34 Act reporting, NYSE/Nasdaq compliance, proxy matters, Section 16 and Section 13 reporting, and corporate governance issues.

The [U.S.] public markets are the deepest, most efficient markets out there… the quicker you can reach more investors and a broader set, the more available capital there is.

TRENT WARD

CEO and Co-Founder
Interactive Strength Inc.
Austin, TX

Trent Ward is the CEO and co-founder of Interactive Strength, a provider of specialty fitness equipment and virtual personal training services under the brand names of FORME and CLMBR. Previously, he was an equity portfolio manager at Citadel, a large alternative asset manager. He started his career as an investment banker focused on Mergers & Acquisitions. Mr. Ward holds a BS in Economics (Wharton) and a BS in Engineering (Jerome Fisher Program in Management and Technology) from the University of Pennsylvania.

Highlights from Panel Discussion

- Small-cap companies represent approximately half of the publicly listed companies and are considered the backbone of this country. Thus, supporting them is critically important as they tend to be nimble and more easily able to pivot to respond to market dynamics and changes.
- Being a U.S. publicly listed company has significant advantages, especially compared to being public in other countries, since the U.S. capital markets offer unsurpassed depth and brand recognition.
- Being a public company, and especially starting down the IPO path, is very resource intensive. Small-cap companies are typically more resource constrained and their materiality threshold is more sensitive. Time and expenses are the largest barriers for small-cap companies entering the public markets. Thus, as a leader or adviser, being thoughtful of reporting demands and a company's available resources is a crucial inflection point.
- Stock price volatility, trading momentum, and lack of research coverage are serious issues for small-cap companies. Since small-cap companies are covered less by published research reports, their stock value becomes the greatest display of information; and the stock price can shift faster than information can reach investors. This disconnect should be a top-line consideration for C-suite teams considering a public listing.
- Regardless of the resource demands and reporting challenges, companies shouldn't be dissuaded by the process of going public; especially since the U.S. market's regulatory priorities include investor protection and capital formation.

Participants' Policy Recommendations

Increase the $75 million public float threshold in the accelerated filer definition so that only larger filers are required to provide an auditor attestation of management's assessment of internal control over financial reporting under SOX 404(b).

COMMISSION RESPONSE

The Commission amended the "smaller reporting company" and "accelerated filer" definitions in recent years to expand the number of smaller issuers eligible to comply with the scaled disclosure requirements and tailor the types of issuers that are included in the accelerated filer categories.

Specifically, in June 2018, the Commission adopted amendments that raised the thresholds in the smaller reporting company definition so that a company with less than $250 million of public float is eligible to provide scaled disclosures.[30] A company with less than $100 million in annual revenues and either no public float or a public float that is less than $700 million is also eligible to provide scaled disclosures. In March 2020, the Commission adopted amendments to the accelerated filer and large accelerated filer definitions, which excluded issuers that qualify as smaller reporting companies under the revenue test of the "smaller reporting company" definition.[31] As a result, under the current rules and definitions, a smaller reporting company with less than $100 million in annual revenue and a public float of less than $700 million is not required to obtain an auditor attestation of its internal control over financial reporting from an independent auditor. The Commission adopted such amendments in recognition of the costs of the internal control over financial reporting auditor attestation for small and low-revenue issuers.

Consistent with the Commission's historical practice of periodically reviewing size thresholds for different issuer categories and providing accommodations for new and smaller issuers, the Commission will consider this Forum recommendation in connection with future initiatives.

Revise the "small entity" definition under the Regulatory Flexibility Act to better assess the regulatory costs of compliance for small and growing businesses.

COMMISSION RESPONSE

Congress enacted the Regulatory Flexibility Act ("RFA"; 5 U.S.C. §§ 601-612) in 1980 to require federal agencies to consider the effects of their regulations on small businesses and other small entities.[32] If a regulation is expected to have a "significant economic impact on a substantial number of small entities," the RFA requires the issuing agency to consider regulatory impacts and alternatives, with the goal of minimizing significant economic impacts on small entities.[33]

The RFA authorizes agencies to establish their own definitions of small entities if they determine that specialized definitions are more appropriate to the activities of the agency.[34] In 1982, the Commission chose to adopt its own definitions of "small business" for purposes of Commission rulemaking after reviewing size standards adopted by the Small Business Administration (SBA). The Commission has a longstanding commitment to understanding and addressing the concerns of small business. Consistent with this commitment, the Commission will consider this Forum recommendation and will consult, as needed, with relevant stakeholders and the SBA.[35]

Improve public trading for small companies by requiring more disclosures about short selling, institutional holdings, insider and affiliate holdings and transactions, paid stock promotion, and information about the security from transfer agents.

COMMISSION RESPONSE

In connection with short sale disclosure, self-regulatory organizations, including NYSE, Nasdaq, and FINRA, currently provide short selling information on their websites, and the Commission currently provides information on failures to deliver securities that may result from sales, including short sales. On October 13, 2023, the Commission adopted a new rule and related form designed to provide greater transparency through the publication of short sale-related data to investors and other market participants.[36] Under the rule, institutional investment managers that meet or exceed a specified reporting threshold would be required to report, on a monthly basis using the form, specified short position data and short activity data for equity securities.

The Commission currently has rules regarding the disclosure of insider and affiliate holdings and transactions, and the federal securities laws require persons who promote a security to fully disclose the receipt and amount of consideration from an issuer, underwriter, or dealer. In October 2023, the Commission adopted amendments that shortened the deadline for investors who beneficially own more than 5 percent of public company securities to file applicable forms to improve transparency and provide more timely information for shareholders and the market.[37] The Commission will continue to consider this Forum recommendation in connection with future regulatory initiatives.

In 2015, the Commission published an Advance Notice of Proposed Rulemaking and Concept Release outlining various issues related to the transfer agent regulatory regime and potential rulemaking to address those issues.[38] The Long-Term Actions of the Spring 2024 Regulatory Agenda[39] indicates that the SEC's Division of Trading and Markets is considering recommending that the Commission propose updates and refinements to the Commission's existing regulatory regime for transfer agents. The Commission will continue to consider the comments received and this Forum recommendation in connection with this initiative.

Revise the public float and revenue thresholds for smaller reporting companies and accelerated filers to be rolling averages instead of thresholds determined on a particular date.

COMMISSION RESPONSE

When determining a filer status, an issuer must calculate its public float amount, which is determined on the last business day of the issuer's most recently completed second fiscal quarter. This determination date is applicable to each type of filer, including large accelerated filers, accelerated filers, and non-accelerated filers, while also relevant in qualifying issuers as smaller reporting companies or emerging growth companies. The Commission will consider this Forum recommendation in connection with future relevant initiatives.

Revise Exchange Act Section 12(g) to remove the threshold for non-accredited investor holders and increase the asset threshold to $20 million.

COMMISSION RESPONSE

Exchange Act Section 12(g) is a statutory provision that can only be amended by Congress. However, the Spring 2024 Regulatory Agenda indicates that the Division of Corporation Finance is considering recommending that the Commission propose amendments to Exchange Act Rule 12g5-1, which sets forth the "held of record" definition for purposes of Exchange Act Section 12(g). The Commission will consider this Forum recommendation in connection with any such release and any other relevant initiatives.

FORUM ADVISORY PLANNING GROUP

The SEC's Small Business Advocacy team convened a Forum Advisory Planning Group to provide strategic input on the Forum.[40] Members brought additional perspectives to the Forum planning process, weighing in on improvement opportunities from prior Forums, identifying emerging issues impacting access to capital, highlighting potential speakers, and promoting the event within their networks.

Government & Regulatory Representatives

Karl Fooks
Outreach Manager, Office of Domestic Finance
U.S. Department of Treasury

Erin M. Houston
Dep. Secretary of State for Securities/Securities Administrator, Nevada Secretary of State
National Association of State Securities Administrators

Heath Morris
National Director, Investment Company Exams; CCO & Chief Fraud Risk Officer, Office of Patient Capital Investments & Office of Investment & Innovation,
U.S. Small Business Administration

Eric Smith
Director, Office of Innovation and Entrepreneurship
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Brett T. Palmer
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Carlo Passeri
Director Capital Markets and Financial Services Policy
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Emily Pollack
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Republic

Bonnie J. Roe
Chair of the Small Business Issuers Subcommittee, Business Law Section's Committee on Federal Regulation of Securities
American Bar Association

Ashlyn Roberts
Senior Director of Government Affairs
National Venture Capital Association

Eli Velasquez
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Investors of Color

Evan Williams
Director, Center for Capital Markets Competitiveness
U.S. Chamber of Commerce

Non-Profit and Academia

Katie Allen
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Third Way

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Victor Hwang
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Jennifer J. Schulp
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Prior Forum Participants

Brian Hollins
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Collide Capital

Dave Lu
Managing Director
Hyphen Capital

Jordan Walker
Co-Founder
Yac and Backtrack

Greg Yadley
Partner
Shumaker, Loop & Kendrick, LLP

SEC OFFICIALS' REMARKS

Opening Remarks

STACEY BOWERS, DIRECTOR, OFFICE OF THE ADVOCATE FOR SMALL BUSINESS CAPITAL FORMATION

Welcome to the SEC's 43rd annual Small Business Forum. I'd like to thank all of you for joining us over the course of the next three days to hear the voices of early-stage founders, capital allocators, and small public companies. I am excited to be here as the new Director of the Small Business Advocacy Office and to play a role in this important Commission event that brings together the small business community, the Commissioners, and other government and thought leaders.

Before I say much more, on behalf of myself and my colleagues here at the SEC, I want to make clear that the views expressed today are each speaker's own—in my case in my capacity as the Director of the Small Business Advocacy Office—and do not necessarily reflect those of the Commission, any of the Commissioners, or any of our colleagues on the Staff.

While I wish I had put a nickel in my savings every time I heard it, it nonetheless remains true that small businesses and their investors are vital to our economy, no matter their life cycle stage. For instance, did you know that small businesses created over 43% of U.S. GDP last year?[41] Or that women owned or co-owned almost 45% of non-employer small businesses—that's 11.5 million firms—and almost 40% of employer small businesses—another 2.1 million firms.[42] And were you aware that over the last 10 years, diverse businesses have created over 4.7 million jobs?[43] How about the fact that small businesses accounted for 54% of employment in rural areas?[44] Or that small public companies raised $4.6 billion in registered offerings in 2022?[45]

Over the course of the next three days, I am excited to hear from leaders who have personal knowledge of the issues facing small businesses and their investors. We will have the chance to learn first-hand from one-on-one conversations with those who have lived the small business experience and survived to tell the tale. We will also engage with panels of individuals from the small business community who will share their insights and take-aways, and you in the audience will have the opportunity to ask them questions.

"The voices of the small business community provide insight into the journeys that entrepreneurs and investors undertake as they navigate the various capital-raising pathways. These stories can motivate us to think and consider ideas in a different way and appreciate narratives that are distinct from our own."

Today's focus will be on amplifying the stories of early-stage businesses, including conversations about barriers to entry for underrepresented founders and bridging the wealth gap. Tomorrow, we will open the dialogue with investors on their role as capital allocators and some of the challenges that emerging fund managers face, and we will address broader questions, like private market liquidity. Finally, on day three we will catch up with folks in the small public company space and get insight on initial public offerings, research coverage, and other pertinent topics.

The goal of the SEC's Small Business Forum is to bring together a multitude of voices from the public and private sectors, with different ideas and perspectives on capital raising. Over the course of this year's Forum, we will have the opportunity to listen to insightful remarks from our Commissioners and learn from our presenters, as they share their stories. But we also want to hear from all of you about your experiences, suggestions, and questions. The voices of the small business community provide insight into the journeys that entrepreneurs and investors undertake as they navigate the various capital-raising pathways. These stories can motivate us to think and consider ideas in a different way and appreciate narratives that are distinct from our own.

I suspect that many of you, in our audience, have your own stories to share about capital raising or questions you are pondering. I encourage you to amplify your voice by posting questions and comments in the chat.

In addition to fostering learning and growth through conversation, a goal of the Forum is to provide an opportunity for the public to shape recommendations to the Commission and to Congress regarding policies that affect capital formation for small businesses and their investors. We have already heard from some of you about proposed policy recommendations, but we want to hear from all of you. If you have not yet shared your ideas, there is still time to submit your thoughts through the submission portal or you can email us at smallbusiness@sec.gov. Then, at the end of each day's panel, we will invite you to vote to prioritize the policy recommendations to send to the Commission and Congress.

While I've only been the Director of the Small Business Advocacy Office for three months, I have already had the privilege of engaging with a wide variety of our stakeholders to hear their experiences and perspectives. What an incredible learning opportunity it is to be able to dialogue with so many who play a role in the small business ecosystem. I look forward to continuing my journey as the Director and connecting with many more of you in the months and years to come!

And in this journey, I will be joined by an outstanding team. It is hard to quantify the amount of passion, time, and effort it takes to host this event, and the dedicated team in our Office does so with quiet perseverance. I would like to thank Amy Reischauer and Kim Dinwoodie for leading the charge and the rest of the team for all of their support, including Jennifer Brady, T.J. Collins, Julie Zelman Davis, Pablo Echeverri, Courtney Haseley, Sarah Kenyon, Sheen Munshi, Vikki Porter, Jenny Riegel, Malika Sullivan, Todd Vanlaere, and Tyneise Wilson.

Now, I'd like to introduce and welcome Chair Gensler to the Small Business Forum to share his insights and perspectives.

CHAIR GARY GENSLER

Good afternoon. Thank you, Stacey for your introduction. As is customary, I'd like to note that my views are my own as Chair of the Securities and Exchange Commission, and I am not speaking on behalf of my fellow Commissioners or the staff.

Stacey Bowers joined us in January as the new director of the Office of the Advocate for Small Business Capital Formation (OASB). We are excited to have her as part of the SEC's team advancing our important work on behalf of small businesses and their investors.

In 1980, Congress directed the SEC to hold an annual Small Business Forum so the Commission could hear directly from small businesses and their investors about the unique issues that they face. Today, I'm pleased to welcome you to the SEC's 43rd Annual Forum.

"Entrepreneurs and small businesses are integral to our capital markets."

I grew up in a small business household. My grandparents on one side opened and ran a grocery store and on the other side a bar, both in Baltimore. My dad, Sam Gensler, started a small business repairing vending machines. It grew into a small vending machine business that served hundreds of other small businesses in the process, such as small diners and bars.

In this sense, my family's business was part of a larger community of small businesses, whose owners were as diverse as the city of Baltimore.

Entrepreneurs and small businesses are integral to our capital markets. In fact, more than 99 percent of U.S. businesses are small, and their employees make up nearly half of the American private sector employees.

From 1995-2021, small businesses created nearly two out of every three new jobs.

At the SEC, our job is to serve investors building for a better future and companies of every size. We are working to make our markets more efficient, competitive, transparent, fair—and worthy of the public's trust. We work to ensure that markets serve investors and issuers alike—not the other way around.

At the SEC, we have educational resources to help equip small businesses and investors with the tools to help navigate capital raising. Please check out SEC.gov and Investor.gov.

As you discuss the various topics over the next three days—from early-stage stories to investing in early-stage companies to accessing the public markets—please share your ideas and policy recommendations with us. We greatly benefit from your perspective and willingness to engage.

This forum will inform a report that will be delivered to Congress. Further, your perspective may help the Commission consider policies to benefit small businesses, like my dad and grandad's and so many across America.

Thank you, and now turning it back to the rest of the program.

COMMISSIONER HESTER M. PEIRCE

Good afternoon and thank you to the participants in the Commission's 43rd Annual Government-Business Forum on Small Business Capital Formation and to today's panelists. This annual forum gives the Commission direct insights from the companies, practitioners, and entrepreneurs that grapple with our complex regulatory regime. Before I begin, I must remind everyone that my views are my own as a Commissioner and not necessarily those of the Securities and Exchange Commission or my fellow Commissioners.

In the past couple weeks, we experienced some unusual natural events: an earthquake in the New York City area and a total eclipse of the sun in much of the United States. No glasses will shatter, and you do not need special glasses for today's event, but I expect it will be equally noteworthy. Few topics in the securities world are of greater interest than why the number of public companies has declined so sharply.[46] Many have pondered the issue and offered solutions, but the answer to this enigma is likely multifaceted. Today's discussion will help us puzzle through it.

"Few topics in the securities world are of greater interest than why the number of public companies has declined so sharply."

Small cap companies make up almost half of public companies and are vital to a healthy, growing economy.[47] A Commission that wanted to see more companies in the public markets would reduce the barriers to going public and the costs of being public. As to the former, the Commission recently did the opposite by imposing new costs on companies looking to enter the public markets using the Special Purpose Acquisition Company route. As to the latter, the Commission has resisted tailoring regulations so that small cap companies can better afford to participate in the public markets. The Commission brushes aside the need for scaling by explaining that the rule is so important that every public company, no matter its size, should bear the rule's associated costs. Investors in these companies, who have to foot the bill, might not agree. Welcoming small cap companies into the public markets gives retail investors a chance to share in their growth. Recent research suggests that small cap companies, as a class, may offer greater investment returns than larger companies.[48] Small companies are often more disruptive, operationally nimble, and dynamic than their larger counterparts.

I hope that today's discussion will help the Commission identity a better path forward for our regulatory treatment of issues that affect small cap companies. I have the following questions.

1. As I mentioned, over the last few years, the Commission finalized many corporate disclosure requirements without meaningful tailoring. Which requirements are or will be the most onerous and unnecessary for small cap companies?
2. Should the Commission tailor for small companies other requirements that have been on the books longer?
3. Would it help small cap companies if Emerging Growth Company status lasted ten years instead of the current five years?
4. The 2023 annual report from the Commission's Office of the Advocate for Small Business Capital Formation recommended "aligning the SRC and non-accelerated filer categories."[49] The report argued that this "would allow all SRCs to enjoy all the benefits of being non-accelerated filers—namely the exemption from the auditor attestation requirement under Section 404(b) of the Sarbanes-Oxley Act."[50] Should the Commission adopt this change?
5. I have heard reports that smaller reporting companies have lost their SRC status due to temporary variations in their public float, which governs SRC eligibility. Should the Commission calculate an SRC's public float based on a rolling average, say over the course of a year?
6. Today's discussion may touch on the sparse research coverage of small cap companies compared to larger public companies.[51] What – if anything – could the Commission do to address this problem? For example, should the Commission revisit the withdrawn no-action letter that allowed broker-dealers to comply with European regulations by receiving separate payments for research, without the broker-dealer having to register as an investment adviser?[52]
7. Another frequently cited issue is disappointing liquidity for small cap companies listed on exchanges. What can we do to facilitate exchange experimentation with different approaches to cultivating better liquidity?
8. Today's discussion may also cover the initial public offering process.
    a. Is going public through a special purpose acquisition company still a viable path for private companies, given the Commission's recent final SPAC rulemaking?[53]
    b. What reforms to the traditional initial public offering process – if any – would improve the process for smaller potential public companies?
9. Some evidence suggests that Regulation A is underused. From July 2022 through June 2023, Reg. A offerings raised only $1.5 billion while traditional initial public offerings raised $17 billion and Reg. D offerings raised almost $3 trillion.[54] Is Commission pre-emption of state blue sky laws for secondary transactions of Reg. A Tier 2 securities necessary to make Regulation A a viable path? Should the Commission consider other reforms?

Thank you, and enjoy the discussion. I look forward to your recommendations.

COMMISSIONER CAROLINE A. CRENSHAW

Welcome, everyone. This is a fantastic event, and I want to thank the staff of the Office of the Advocate for Small Business Capital Formation for all the work they do to make it so productive. They also prepare the Small Business Forum report, which I know I refer to again and again, year after year. So, a big thank you to that office. I also want to thank everyone who's taken the time away from their work and other obligations to participate in the annual Small Business Forum. I appreciate that you're here today, and I'm looking forward to the discussion.

As our new Director of the Office of the Advocate for Small Business Capital Formation, Stacey has pointed out an important part of her office's and the Commission's work is to be a bridge, or facilitate connections, an exchange of ideas between small businesses and the various divisions and offices within the SEC. And the purpose of that communication is to ensure that capital formation is happening across all regions of the country, and is accessible for all those who have projects that need to tap into our capital markets. I take that duty seriously, and I welcome continued conversations, not just today, but throughout the year. Please just email my staff anytime, and I look forward to an ongoing discussion.

Now, this will be the fourth time I have provided remarks at this event. One thing I've noticed from years past about the conversations that happen outside of this annual forum, and inside the so-called Washington, DC Beltway, is that there's often a false dichotomy, either expressly stated or implied. Thoughtful conversations are stripped down to an oversimplified view that any regulatory action to further investor protection standards would be done at the expense of capital access, or particularly, capital access for early-stage companies and entrepreneurs from underrepresented communities.

"Capital raising and investor protection go hand in hand. Protections increase market integrity, which in turn increases capital raising and investment opportunities."

These two goals, however, are not in tension with one another. Capital raising and investor protection go hand in hand. Protections increase market integrity, which in turn increases capital raising and investment opportunities.

Further, I know that staff of the SEC, and entrepreneurs, innovators, and business individuals understand that decision making, including policy decision making, can be thoughtful and precise all at the same time. It can reconcile and balance multiple equities or concerns, and can still produce meaningful results. In other words, policy can further investor protection concerns and facilitate access to capital for early-stage businesses.

For example, the SEC could rework our safe harbors for registration exemptions to better calibrate them for use by small, medium, or early-stage businesses, and require more disclosure from the largest private companies that rival the size of many S&P 500 companies and take advantage of the exempt offering framework. The SEC has already implemented that concept in the public markets, where a scaled or tiered disclosure system is tailored based upon the size of the company and the attendant costs and benefits of reduced and enhanced disclosures.

It's a fair observation that the securities law framework can be technical and intricate at times. However, the staff here at the SEC are adept at administering that framework, and we want to facilitate good faith compliance. We're not playing "gotcha." If achieving that good faith compliance is a challenge, please provide feedback on the ways that the SEC can put out useful and clear information, especially to early-stage entrepreneurs. Stacey and her team do this extremely well, but if it isn't working, please let us know.

I'm looking forward, again, to the discussion today and tomorrow, and to the annual forum report, and to speaking with all of you throughout the year.

COMMISSIONER MARK T. UYEDA

Good afternoon. It is my pleasure to participate in this year's Small Business Forum ("Forum"). I recall attending my first Forum nineteen years ago in San Francisco,[55] when I was serving as Chief Advisor to the California Corporations Commissioner. The year was 2005, and it was held in a hotel near Fisherman's Wharf. I hope that we can soon return to having in-person Forums held throughout the country.

Our capital markets and the regulatory environment have changed significantly since that time. Public companies have more disclosure obligations and private companies have more ways to raise capital. The number of public companies, though, has declined significantly over the last couple of decades.[56] Smaller companies have accounted for the vast majority of this decline.[57] The retreat by smaller companies from the public markets highlights the importance of the private markets as a source of capital. For early-stage start-up companies, these sources might be angel investors and individuals who have a pre-existing relationship with the founders.

Given the increasing role of angel investors, and others who might invest in the "friends and family" round, the Commission should create an ecosystem where founders can be easily connected with knowledgeable individuals who have the ability to assess the risks and rewards of making investments in start-up companies.

> "Promoting economic growth, innovation, and jobs creation requires the side-by-side existence of vibrant public and private markets."

One way to create this environment is to make the Commission's capital raising rules for early-stage companies more understandable and reduce the need for lawyers charging $1,000 or more per hour. The Office of the Advocate for Small Business Capital Formation has an online resource[58] to aid entrepreneurs. The Commission's staff has also participated in events to help founders and others at start-up companies better understand the Commission's rules and educational resources. However, the complexity of our regulatory regime remains a challenge,[59] and this is a concern that should be addressed. Not only is capital formation part of the Commission's mission, but Congress has specifically directed the Commission to advance the interests of small business through the SEC Small Business Advocate Act of 2016.[60]

Another way that the Commission can build a vibrant ecosystem for raising start-up capital is by ensuring that its rules focus on opportunity. Paternalistic rules issued in the name of investor protection can limit individuals from investing in early-stage companies, but such rules often fail to consider the risk tolerance of prospective investors and their ability to analyze such investment. That type of a regulatory regime can make it more difficult for entrepreneurs to raise capital without the attendant investor protections. Instead, regulations should focus on creating opportunities and avoiding a broad, paternalistic approach.

Finally, a third way that the Commission can create a healthy ecosystem for entrepreneurs and investors is to encourage a growing private market for capital. Promoting economic growth, innovation, and jobs creation requires the side-by-side existence of vibrant public and private markets. The Commission's rules should not discourage companies from remaining private, especially if the rationale for such rules is that less disclosure equates to more fraud. Bad actors appear in both public and private companies and the Commission has anti-fraud rules and enforcement authority to address such behavior. The Commission's regulatory regime should not lose sight of its purpose of encouraging good actors to start businesses and allowing them to receive capital from willing investors.

These are three approaches for building an ecosystem to better serve entrepreneurs and investors. I know there are many more. I look forward to the ideas that will come from this afternoon's fireside chat with Professor Angela Lee and the later panel with Trish Costello and Beto Pallares. Thank you.

COMMISSIONER JAIME LIZÁRRAGA

Good afternoon. It is a pleasure to address the 43rd Annual Small Business Forum.

In 1980, Congress required this annual Forum to assess the state of play in small business capital formation – one of the three fundamental pillars of the SEC's statutory mission.

With U.S. equity markets representing nearly half of the world's equity market cap, today's discussions on lessons learned from going public and staying public are timely and on point.

Fulfilling our capital formation mission in as broad-based a manner as possible includes promoting and facilitating robust participation by small cap companies in our equity markets.

There is a lively debate about the widening gap between capital raised in private versus public markets, and the possible risks and implications of this trend.

As a general principle, retail investors benefit when companies go public. It results in a higher supply and greater diversity of companies to choose from when making investment decisions.

Access to expanded investment choices, all accompanied by the disclosure, liability, and other protections that come with securities registration, leads to healthier, more robust, and more transparent public markets.

For small cap companies, it can be more challenging to navigate a complex regulatory framework, compete for research analysts' attention, or ensure sufficient liquidity in the secondary market.

If the dominant model becomes billion-dollar unicorns being backed by many rounds of VC funding and then going public as mega cap companies, it would work against the goal of broad-based capital formation.

At the Commission, our scaled disclosure requirements and phased-in compliance dates are two ways in which we address some of the unique challenges that smaller public companies face.

"Fulfilling our capital formation mission in as broad-based a manner as possible includes promoting and facilitating robust participation by small cap companies in our equity markets."

Under the climate risk disclosure rule finalized last month, smaller reporting companies are exempt from the greenhouse gas emissions and attestation requirements. These companies also benefit from a delayed compliance period, in recognition that additional time is helpful for them to get up to speed as they prepare disclosures for the first time.

Similarly, in the cyber incident reporting rule, smaller reporting companies were provided with additional time to phase in compliance. The Commission adopted the same approach in its reforms to insider trading rules for corporate insiders.

That said, aspiring to improve how we implement our capital formation mission is a worthwhile endeavor, one that best serves the public interest.

To that end, today's Forum will hopefully yield new and innovative ideas that inform how the Commission can best fulfill its capital formation mission.

Thank you to Courtney and to today's panelists, and I look forward to gaining new insights from the discussion.

ABOUT THE OFFICE OF THE ADVOCATE FOR SMALL BUSINESS CAPITAL FORMATION

While the content of the Forum comes from participants, the planning, organizing, and executing of the Forum is done by the SEC's Small Business Advocacy Office. The Forum is one of many of the Office's responsibilities as it advocates for pragmatic solutions to address challenges faced by small businesses and their investors raising and deploying capital. "Small business" for the Office spans from early-stage start-ups raising seed capital, to later-stage private companies whose founders and investors are seeking liquidity in the public markets, all the way to smaller public companies. Congress established the Office via the bipartisan SEC Small Business Advocate Act of 2016 as an independent office within the SEC that reports to the entire Commission as well as to multiple committees of Congress.

Meet the Team


STACEY BOWERS


JENNIFER BRADY


T.J. COLLINS


JULIE ZELMAN DAVIS


KIM DINWOODIE


PABLO ECHEVERRI


COURTNEY HASELEY


SARAH KENYON


VIKKI PORTER


AMY REISCHAUER


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ENDNOTES

1 The SEC conducts the Forum annually and prepares this report in accordance with the Small Business Investment Incentive Act of 1980 [15 U.S.C. 80c-1 (codifying section 503 of Pub. L. No. 96-477, 94 Stat. 2275 (1980))].

2 Participants voluntarily submitted the presented information in connection with their registration online. The report solely includes submitted data, without inclusion of non-responses.

3 The SEC responds to the Forum recommendations pursuant to the Small Business Investment Incentive Act of 1980, as amended by the Economic Growth, Regulatory Relief and Consumer Protection Act of 2018. 15 U.S.C. 80c-1. Section 503 of the Economic Growth, Regulatory Relief and Consumer Protection Act of 2018 [Pub. L. 115- 174, 132 Stat. 1296 (2018)] amended Section 503 of the Small Business Investment Incentive Act of 1980 to add this requirement in new paragraph (e). The responses do not include any Commission initiatives that are not yet public. Where a Forum recommendation relates to an initiative as to which the Commission has solicited or expects to solicit public comment, the recommendation will be considered as part of that initiative, along with other comments received.

4 *See* https://www.sec.gov/resources-small-businesses.

5 *See* https://www.sec.gov/files/funding-roadmap-capital-raising.pdf.

6 *See* https://www.sec.gov/resources-small-businesses/cutting-through-jargon-z.

7 *See* https://www.sec.gov/resources-small-businesses/navigating-your-options#1.

8 *See* https://www.sec.gov/resources-small-businesses/capital-trends.

9 *See* https://www.sec.gov/resources-small-businesses/capital-raising-building-blocks.

10 *See* https://www.sec.gov/about/divisions-offices/division-corporation-finance/division-corporation-finance-contact-us.

11 *See* "Accredited Investor Definition," Release Nos. 33-10824; 34-89669; File No. S7-25-19 (Aug. 26, 2020) *available at* https://www.sec.gov/rules/final/2020/33-10824.pdf.

12 *See* "SEC Small Entity Compliance Guide for Amendments to Accredited Investor Definition," (March 29, 2021) available at https://www.sec.gov/corpfin/amendments-accredited-investor-definition-secg. *See also* https://www.sec.gov/resources-small-businesses/capital-raising-building-blocks/accredited-investor.

13 *See* 17 CFR § 230.501(a)(10)(i)-(iv).

14 *See* "Order Designating Certain Professional Licenses as Qualifying Natural Persons for Accredited Investor Status," Release No. 33-10823 (Aug. 26, 2020) *available at* https://www.sec.gov/rules/other/2020/33-10823.pdf.

15 *See* "Review of the 'Accredited Investor' Definition under the Dodd-Frank Act," (Dec. 14, 2023) *available at* https://www.sec.gov/files/review-definition-accredited-investor-2023.pdf.

16 *See* "Office of Information and Regulatory Affairs, Office of Management and Budget, U.S. Securities and Exchange Commission Agency Rule List," (Spring 2024) *available at* https://www.reginfo.gov/public/do/eAgendaMain?operation=OPERATION_GET_AGENCY_RULE_LIST&currentPub=true&agencyCode=&showStage=active&agencyCd=3235&csrf_token=709E7368BCA6E602BBD4F353C42FC3EA337F35A5EDB3D91B1296502551A5F5817CCE0F88D6AD836B1BFBD6D2203818B36FAB.

17 *See* "Notice of Proposed Exemptive Order Granting Conditional Exemption from the Broker Registration Requirements of Section 15(a) of the Securities Exchange Act of 1934 for Certain Activities of Finders," Release No. 34-90112; File No. S7-13-20 (Oct. 7, 2020) *available at* https://www.sec.gov/rules/exorders/2020/34-90112.pdf.

18 *See supra* note 14. We note that the Consolidated Appropriations Act of 2023 amended Section 15 of the Securities Exchange Act of 1934 (Exchange Act) to add a new subsection 15(b)(13) that provides an exemption to allow an "M&A Broker" to effect certain securities transactions in connection with the transfer of ownership of a privately-held company without registering as broker-dealer, subject to certain conditions. The statutory exemption became effective on March 29, 2023.

19 *See supra* note 5.

20 *See supra* note 4.

21 *See* "SEC Asset Management Advisory Committee - Subcommittee on Diversity and Inclusion Recommendations for Consideration by the AMAC on July 7, 2021," *available at* https://www.sec.gov/files/amac-recommendations-di-subcommittee-070721.pdf.

22 *See* "Staff FAQ Relating to Investment Adviser Consideration of DEI Factors," *available at* https://www.sec.gov/tm/staff-faq-relating-investment-adviser-consideration-dei-factors.

23 *See supra* note 4.

24 *See* https://www.sec.gov/resources-small-businesses/capital-raising-building-blocks/common-startup-securities.

25 *See* https://www.sec.gov/files/oasb-prvt-sec-mrkt-building-block.pdf.

26 *See* "Employee Benefit Plans – Rule 701," *available at* https://www.sec.gov/resources-small-businesses/exempt-offerings/employee-benefit-plans-rule-701-0.

27 *See* Investment Advisers Act of 1940, Rule 203(l)-1 *available at* https://www.ecfr.gov/current/title-17/section-275.203(l)-1.

28 *See* "Exemptions for Advisers to Venture Capital Funds, Private Fund Advisers With Less Than $150 Million in Assets Under Management, and Foreign Private Advisers," Release No. IA-3222; File No. S7-37-10 (June 22, 2011), at 15-16, 21, 23-27, *available at* https://www.sec.gov/files/rules/final/2011/ia-3222.pdf.

29 *See* "Guidance on the Exemption for Advisers to Venture Capital Funds," No. 2013-13 (Dec. 2013) *available at* https://www.sec.gov/divisions/investment/guidance/im-guidance-2013-13.pdf.

30 *See* "Smaller Reporting Company Definition," Release Nos. 33-10513; 34-83550; File No. S7-12-16 (June 28, 2018) *available at* https://www.sec.gov/files/rules/final/2018/33-10513.pdf.

31 *See* "Accelerated Filer and Large Accelerated Filer Definitions," Release No. 34-88365; File No. S7-06-19 (March 12, 2020) *available at* https://www.sec.gov/files/rules/final/2020/34-88365.pdf.

32 *See* "The Regulatory Flexibility Act: An Overview," Congressional Research Service (Aug. 16, 2021) *available at* https://crsreports.congress.gov/product/pdf/IF/IF11900 ("The Regulatory Flexibility Act: An Overview"); *see also* 5 U.S.C. §§ 601-612.

33 *See* The Regulatory Flexibility Act: An Overview, *supra* note 30; *see also* 5 U.S.C. §§ 602, 603, 604, 605, 609, 610.

34 *See* 5 U.S.C. §§ 601(3), 601(4); see also "Definitions of "Small Business" or "Small Organization" Under the Investment Company Act of 1940, the Investment Advisers Act of 1940, the Securities Exchange Act of 1934, and the Securities Act of 1933," Securities Act Release No. 7548, Exchange Act Release No. 40122, Investment Company Act Release No. 23272, Investment Advisers Act Release No. 1727, 63 FR 35508, 35509 (June 30, 1998), *available at* https://www.govinfo.gov/content/pkg/FR-1998-06-30/pdf/98-17387.pdf ("1998 Amendments").

35 *See* "Final Definitions of "Small Business" and "Small Organization" for Purposes of the Regulatory Flexibility Act," Securities Act Release No. 6380, Exchange Act Release No. 18452, PUHCA Release No. 22371, Trust Indenture Act Release No. 693, Investment Company Act Release No. 12194, Investment Advisers Act Release No. 791, 47 FR 5215, 5216 (Feb. 4, 1982), *available at* https://archives.federalregister.gov/issue_slice/1982/2/4/5214-5223.pdf#page=2; see also 1988 Amendments, supra note 32 at 35509.

36 *See* "Short Position and Short Activity Reporting by Institutional Investment Managers," Release No. 34-98738; File No. S7-08-22 (Oct. 13, 2023) *available at* https://www.sec.gov/files/rules/final/2023/34-98738.pdf.

37 *See* "Modernization of Beneficial Ownership Reporting," Release Nos. 33-11253; 34-98704; File No. S7-06-22 (Oct. 10, 2023) *available at* https://www.sec.gov/files/rules/final/2023/33-11253.pdf.

38 *See* "Transfer Agent Regulations," Release No. 34-76743; File No. S7-27-15 (Dec. 22, 2015) *available at* https://www.sec.gov/rules/concept/2015/34-76743.pdf.

39 *See supra* note 14.

40 The SEC's Small Business Advocacy team convenes the advisory planning group to participate in Forum planning pursuant to 15 U.S.C. 80c-1(b).

41 *See* Office of the Advocate for Small Business Capital Formation, "Annual Report for Fiscal Year 2023," (Dec. 14, 2023) at 4, *available at* https://www.sec.gov/files/2023-oasb-annual-report.pdf.

42 *Id.* at 39.

43 *Id.* at 50.

44 *Id.* at 65.

45 *Id.* at 16.

46 The number of listed companies has dropped from a high of around 8,000 in 1996 to around 4,200 by mid-2022. See The World Bank, Listed domestic companies, total – United States *available at* https://data.worldbank.org/indicator/CM.MKT.LDOM.NO?end=2019&locations=US&start=1975&view=chart (last accessed, Apr. 11, 2024); see Office of the Advocate for Small Business Capital Formation, "Annual Report: Fiscal Year 2022," (Sept. 15, 2022) at 39, *available at* https://www.sec.gov/files/2022-oasb-annual-report.pdf.

47 *See supra* note 39 at 35, n.139 (noting that small public companies, defined as those with a market capitalization of less than $250 million, represent 47% of all public companies).

48 According to Goldman Sachs, small cap companies generally "outperform[] large caps by roughly two percentage points (pp) on an annualized basis." See Goldman Sachs, "David vs Goliath: Don't Underestimate the Small (Caps)," (Mar. 14, 2022) *available at* https://www.gsam.com/content/gsam/us/en/institutions/market-insights/gsam-connect/2022/David_vs_Goliath-Dont_Underestimate_The_Small_Caps.html. Their definition uses the MSCI US Small Cap Index and MSCI US Large Cap Index. *Id.*

49 *See supra* note 39 at 84.

50 *Id.*

51 *See, e.g.*, *supra* note 39 at 38 ("The average number of analysts covering a mega-cap public company is more than 4x higher than at small public companies.") (citing Noemi Distefano, "Targeting new investors top priority at small caps," *IR Magazine* (Aug. 25, 2023) *available at* https://www.irmagazine.com/small-cap/targeting-new-investors-top-priority-small-caps.

52 *See* Securities Industry and Financial Markets Association, SEC Staff No-Action Letter (Oct. 26, 2017), available at https://www.sec.gov/divisions/investment/noaction/2017/sifma-102617-202a.htm.

53 *See* "Special Purpose Acquisition Companies, Shell Companies, and Projections," Release Nos. 33-11265; 34-99418; IC-35096; File No. S7-13-22, 89 FR 14158, 14306 (Feb. 26, 2024) *available at* https://www.govinfo.gov/content/pkg/FR-2024-02-26/pdf/2024-01853.pdf.

54 *See supra* note 39 at 14.

55 *See* Press Release 2005-115, "SEC Holds 24th Annual Small Business Capital Formation Forum with Advisory Committee Meeting," (Aug. 15, 2005) available at https://www.sec.gov/news/press/2005-115.htm.

56 *See supra* note 39 at 33.

57 *Id.*

58 *See supra* note 4.

59 *See supra* note 39 at 70 ("Many of the entrepreneurs we met—no matter how business savvy or technologically sophisticated—noted that the capital-raising rules are complex and expressed the need for accessible resources at every stage to help them understand what capital-raising pathways may be available to them.").

60 Pub. L. No. 114-284.

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