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ADVISORY COMMITTEE ON SMALL AND EMERGING COMPANIES

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Securities and Exchange Commission

100 F Street, NE

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2
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4 Mary Jo White, Chair
5 Michael S. Piwowar
6 Kara M. Stein
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8 Stephen Graham, Co-Chair
9 Sara Hanks, Co-Chair
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11 Robert Aguilar
12 Julie Davis
13 Sebastian Gomez
14 Xavier Gutierrez
15 Brian Hahn
16 Kyle Hauptman
17 Keith Higgins
18 Jenny Kassan
19 Betsy Murphy
20 Jonathan Nelson
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1 PROCEEDINGS
2 MR. GRAHAM: We will go ahead and get started.
3 Thanks to everyone for coming. This is good to see you
4 all again.
5 Sebastian, I assume we have a quorum.
6 MR. GOMEZ: As soon as the rest of the members
7 come to their chairs, we will.
8 (Laughter.)
9 MR. GOMEZ: So in the room we have a quorum.
10 Maybe not at the table yet.
11 MR. GRAHAM: Okay. Our agenda today
12 encompasses a variety of matters.
13 First there will be a discussion of Regulation
14 S-K, the integrated disclosure requirements used both
15 for registered offerings and ongoing reportings.
16 Congress passed legislation last December that requires
17 the Commission to consult with both this advisory
18 committee and the investor advisory committee in
19 connection with the disclosure requirements in
20 Regulation S-K. This committee has spent time in the
21 past discussing the benefits of scaling certain of
22 those disclosures for smaller companies. And I am
23 fairly certain we will have thoughts to share.
24 Secondly we will turn to a topic that Xavier
25 Gutierrez suggested, and we are pleased to take up, and

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1 that is diversity in corporate boards. Our focus, as a
 2 committee, is capital formation and preservation with
 3 regard to small and emerging companies, and we believe
 4 that there is a correlation between board diversity and
 5 the level of a corporation's success.

6 Indulge me a minute or two as I digress
 7 briefly for an analogy. As some of you may know,
 8 Jackie Robinson tried out for the Boston Red Sox before
 9 winding up with the Dodgers. He was rejected by the
 10 Red Sox, and that organization made it clear they had
 11 no intention of allowing black players on the team,
 12 ever. As it turns out, the Red Sox were the last team
 13 to integrate. Is there any correlation between that
 14 and going 86 years without a championship?

15 (Laughter.)

16 MR. GRAHAM: We will hear this morning from an
 17 outside expert in this area as to the bottom-line
 18 benefits that research has shown. I hope that we can
 19 have a fulsome discussion about the importance of
 20 diversity from an economic standpoint and a shareholder
 21 information standpoint, and whether there might be ways
 22 the SEC's disclosure requirements in this area could be
 23 improved so as to actually encourage diversity. Now,
 24 this is not a mandate. This is not social policy. But
 25 I admit there is some overlap.

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1 This afternoon we will get an update from
 2 Stephen Luparello, director of the division of trading
 3 and markets, on several topics this committee has been
 4 interested in for a long time: equity
 5 for smaller companies, tick-size, and finders.

6 And we will end the meeting with a discussion
 7 of public outreach about ways smaller companies can
 8 more effectively use the securities markets to raise
 9 capital.

10 But before moving to our agenda today we are
 11 honored to start with opening remarks from both
 12 Commissioners Stein and Piwowar. But I don't see
 13 Commissioner Stein yet. So shall we --

14 MR. GOMEZ: We will start with Commissioner
 15 Piwowar, please.

16 (Laughter.)

17 COMMISSIONER PIWOWAR: That's great, I never
 18 get to go first. I guess I'm the designated survivor,
 19 I guess, of the Commission.

20 (Laughter.)

21 COMMISSIONER PIWOWAR: So that's great. As
 22 the junior-most member, I usually get the last word.
 23 I've never done this before, get to lead off. This is
 24 great.

25 Thank you, Stephen, and thank you, Sara, for

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1 your great leadership on this committee. Nice to see
 2 everyone this morning. Again, thank all of you for
 3 your service to the committee. It's a significant
 4 commitment of time and effort on your part, and I just
 5 want to mention that I personally find the advice and
 6 ideas generated by this committee to be very helpful in
 7 my role as commissioner.

8 As Stephen mentioned, today's agenda consists
 9 of several important topics, including discussion about
 10 our disclosure effectiveness initiative and corporate
 11 board diversity, as well as issues related to equity
 12 market structure that are overseen by our division of
 13 trading and markets.

14 I am pleased that Steve Luparello, the
 15 director of the division of trading and markets, will
 16 provide you with an update on the tick-size pilot,
 17 which just started this week, and the treatment of
 18 finders. For small and medium-sized enterprises,
 19 finding sources of capital is particularly important,
 20 and we need to ensure that persons who play a limited
 21 role in connecting issuers and investors for a fee are
 22 regulated appropriately.

23 And as some long-time members of this
 24 committee have correctly pointed out in the past,
 25 subjecting finders to the full panoply of broker-dealer

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1 regulation is not the appropriate way to do it. I look
 2 forward to individual committee members' insights on
 3 this topic following the discussion, including those of
 4 our newer members.

5 The last topic for discussion today, as
 6 Stephen mentioned, is outreach to smaller companies
 7 about capital raising. This reminds me of the French
 8 economist Frederic Bastiat's famous essay on what is
 9 seen and not seen. Bastiat wrote over a century ago
 10 that an act, a habit, an institution, or a law -- or,
 11 in this case, regulations -- do not produce only one
 12 effect, but a series of effects. The first effect is
 13 immediate and usually appears simultaneous with its
 14 cause. As a result, it is visible or, in Bastiat's
 15 words, it is seen. But other effects only emerge
 16 subsequently, and those effects are not seen.

17 In regulating the capital markets, the
 18 Commission adopts rules such as crowdfunding,
 19 Regulation A-plus, Rule 506(c). We can observe the
 20 number of filings filed with us in response to those
 21 rule changes. These companies can be seen. But we
 22 lack visibility into those companies and start-ups that
 23 do not raise or are not able to raise capital. Why is
 24 that? How much do our regulations play a part in this
 25 decision? These are the companies that are not seen.

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1 Thus, as we move forward with thinking about
2 how to facilitate capital formation for small
3 businesses, we need to do our best to consider both the
4 seen and the unseen consequences of our regulatory
5 actions. Your outreach efforts in this area could be
6 particularly helpful in this regard.
7 I hope that you have productive discussions
8 today. Unfortunately, I won't be able to enjoy you for
9 the entire meeting, but I hope to be able to join you
10 again at various parts throughout the day. And if
11 there are any particular issues you would like to
12 follow up with me on, please feel free to reach out to
13 my office any time. Thank you.
14 MR. GOMEZ: And Steve, the -- and for the
15 committee members, the chair wanted to join this
16 morning, but she has a meeting at the IMF. And she
17 will be joining the committee this afternoon.
18 And I guess we probably should proceed to the
19 first item on the agenda, and when Commissioner Stein
20 comes in we can take a break and then she can provide
21 her remarks.
22 MR. GRAHAM: Okay. Before we get to that,
23 let's talk about who you are. So, Keith?
24 MR. HIGGINS: Well, I'm Keith Higgins, and I'm
25 director of the division. And with me are Betsy

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1 Murphy, associate director in the division; Sebastian
2 Gomez, who you know; and Julie Davis from the office of
3 small business policy.
4 But let me turn it over to Betsy to do the
5 formal introductions.
6 MS. MURPHY: Okay. I think you covered the
7 intros, but I will give the standard disclaimer for any
8 SEC staff member speaking today. So that's to say that
9 any remarks made by any of the SEC staff members
10 reflect their own views, and not necessarily those of
11 the Commission or any other member of the Commission
12 staff.
13 Back to you.
14 MR. GRAHAM: Well, before back to me I want to
15 just extend my thanks again to Sebastian and Julie for
16 all the help they gave to this committee. None of this
17 would happen without them.
18 So, Commissioner Stein, we will turn it over
19 to you.
20 COMMISSIONER STEIN: Wonderful. I'm sorry I
21 got held up by traffic. I have a long commute in the
22 morning, and it's a little hit or miss.
23 I want to welcome everyone here. Thank you
24 very much for your pro bono contributions. I want to
25 keep saying that, because I don't know if everybody

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1 realizes people do this for free to advise the
2 Commission.
3 I am really excited about today's agenda
4 covering Reg S-K disclosure requirements -- we've been
5 delving deep into those at the Commission -- corporate
6 board diversity disclosure, and the recently-launched
7 tick-size pilot project.
8 And these agenda items call on the committee
9 to consider, I think, what investors want to know in
10 order to make investment decisions; how smaller
11 companies can best give them that information in order
12 to attract and maintain investment in the company; and
13 how quality information may be linked to enhance
14 liquidity in small to mid-cap companies. So sort of
15 understanding do the companies that have better
16 disclosure get more people willing to invest in them,
17 or is there any connection there? And I think that's
18 something really important for us to keep considering.
19 I'm going to -- section 72003 of the Fixing
20 America's Surface Transportation Act might be
21 surprising to you -- requires the Commission, in
22 consultation with the committee, this committee, and
23 the Investor Advisory Committee, to study the
24 disclosure requirements that are set forth in
25 Regulation S-K. And that's, to some degree, one of the

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1 reasons we started this project, although I think the
2 Commission was focused on this pre-Congress.
3 The non-financial disclosure requirements --
4 so the non-financial requirements of Reg S-K tell us
5 the story of each business. What level of disclosure
6 and information is needed to tell the story of a small
7 company in a way that will produce interest,
8 investment, market confidence and growth?
9 To date, much of the discussion about the
10 appropriate level of disclosure for smaller reporting
11 companies has focused on scaling or eliminating
12 disclosure. The cost of disclosure to smaller
13 companies is sometimes characterized as burdensome.
14 Yet the cost to smaller companies providing
15 insufficient or inadequate disclosure has been shown to
16 negatively impact the level investment in the company.
17 The liquidity of its shares and its growth.
18 So it's sort of understanding the benefits
19 that come from disclosure, because people are more
20 willing to invest because they understand what they're
21 investing in. And then, on the flip side, how can we
22 help the companies not have a burdensome, you know,
23 process? And I think we're in a new age here with
24 computers, and we need to be thinking differently about
25 what gets disclosed, when it gets disclosed, and in

1 what form.

2 So today I want to encourage all of you to
3 address whether or not scaling benefits for smaller
4 companies should be done at all points along their
5 growth curve. The complete story behind a company
6 requires fulsome and accurate disclosure. And such
7 disclosure may be of critical importance to small
8 companies who are seeking a new following or competing
9 against similar companies.

10 How can small companies get their stories out
11 in a way that attracts investors? So rather than
12 focusing on scaling, which usually means making less,
13 or eliminating disclosure, how could it be reformatted
14 and structured so that it actually benefits small
15 companies, it makes it easier for them to submit the
16 information, it's information people want?

17 How can digital disclosure and modernization
18 versus elimination of disclosure uniquely assist
19 smaller companies in a cost-effective way? So again,
20 looking at both parts of this equation, we want people
21 to invest. How do we best, you know, get that done?

22 Finally, the concept release on Reg S-K asked
23 commenters to consider whether our rules should provide
24 scaled disclosure to only a subset of smaller companies
25 that obey our securities laws, or that have achieved a

1 size, are widened. So, in a certain groups of stocks,
2 we are going up to a nickel difference, instead of a
3 penny. And what difference is that going to have? And
4 we have sort of a -- and Mike might explain this, but
5 we have sort of three different categories that people
6 are going to be in for this pilot.

7 The two-year pilot will focus on data
8 collection to examine whether or not, across our three
9 test groups, the widening of the tick-size from a penny
10 to five cents for selected small-cap stocks will have
11 an impact on trading, liquidity, and market quality.
12 This committee and others have theorized that this move
13 may facilitate market-maker interests in trading in the
14 smaller-cap stocks. They can make more money and lead
15 to greater research and analyst coverage of these
16 small-cap stocks, and possibly enhance liquidity. They
17 will trade more often.

18 So I look forward to this data-driven
19 analytical assessment. Also, recognizing the myriad of
20 issues that contribute to small company viability and
21 growth, I hope that this committee collaborates with
22 our equity market structure and our investor advisory
23 committees to continue contemplating the full range of
24 issues that are impacting investment and smaller
25 companies. Investor protection and confidence in

1 track record of disseminating quality information into
2 the market over some period of time. What are your
3 thoughts on this?

4 So it might be, if you're a company that's
5 been sort of a good citizen, good at reporting, doing
6 everything you can, maybe that's when you get to kick
7 into the gifted program, you know, or something like
8 that, right?

9 The committee will also address the issue of
10 board diversity disclosure. Diverse boards and
11 leadership are quintessential components of successful,
12 innovative, and adaptive companies. The link between
13 diverse boards and improved company performance has
14 been recognized repeatedly. Companies of all sizes
15 benefit from inclusionary and diverse viewpoints and
16 perspectives.

17 Disclosure regarding the diversity of a board
18 is also now material information that investors find
19 important to their investment decisions. How can our
20 current disclosure rules be revised to better address
21 and elicit information about board diversity?

22 Finally, this afternoon you will discuss the
23 pilot program launched this past Monday, three days
24 ago, which will examine the impact on smaller companies
25 if the minimum quoting and trading increments, or tick-

1 company growth -- I think each advisory committee is
2 looking at it from a different angle, and you would
3 benefit immensely from having some interaction with the
4 folks on the other committees.

5 So, thank you. I look forward to the meeting
6 today, and I will pass it back to our chair, our co-
7 chairs. Are you guys vice chairs or co-chairs?

8 MR. GRAHAM: Whatever you want.

9 COMMISSIONER STEIN: Okay. I like the vice.
10 The super-important people.

11 MR. GRAHAM: All right. That includes
12 everybody. Thank you, Commissioner.

13 And Sara, I will turn it over to you.

14 MS. HANKS: Okay. So, as was mentioned, we're
15 going to be discussing Regulation S-K. And I just
16 wanted to give a little bit of context about Regulation
17 S-K. Everybody on this table knows this, but maybe the
18 folks back out in webcast land don't.

19 Reg S-K is not just a regulation. It is the
20 bedrock of disclosure. It is the repository of
21 disclosure requirements for registration statements,
22 ongoing disclosure by reporting companies. All of the
23 various forms that are used by U.S. companies to
24 register offerings or to comply with ongoing disclosure
25 requirements point the companies to various bits of

1 Regulation S-K. So S-K is like the building blocks for
2 all of the disclosure that is made by reporting and
3 registering companies.

4 So, we are talking here not just about a
5 regulation, we are talking about the disclosure
6 regulation, everything that's not financial and
7 everything that relates to U.S. companies.

8 As Commissioner Stein mentioned, in December
9 2015 Congress passed a transportation bill, the FAST
10 Act. And of course, being about transportation, it's
11 got to include some bits and pieces about securities.
12 One of those requires the Commission to carry out a
13 study of the requirements of Regulation S-K to
14 determine how best to modernize and simplify
15 disclosure.

16 The statute says the Commission should
17 emphasize a company-by-company approach without
18 boilerplate or static requirements, things that just --
19 you put there and then you never change them, and
20 evaluate methods of information delivery and
21 presentation that discourage repetition and disclosure
22 of immaterial information.

23 The law requires the Commission to consult
24 with this committee, as well as with our sister
25 committee, the Investor Advisory Committee, and issue a

1 incredibly entertaining. It was about tyranny and
2 stuff.

3 So, I encourage you to go take a look at that.
4 But more importantly, there is an effort out there by
5 the Commission to try and make this stuff make sense
6 for the companies and for the investors, and we do have
7 an obligation to help them with this.

8 In September 2015 the prior iteration of this
9 committee provided the Commission with recommendations
10 about expanding simplified disclosure for smaller
11 issuers. And Julie, did we hand that out? So we've
12 got that. We think that much of what's in there is
13 still very relevant. But I think we can have a broader
14 conversation about how to improve disclosure in
15 general. And that's what we would like to do.

16 So, who would like to start with what's at the
17 top of the Eliminate This Requirement list? I know
18 you've all got one.

19 MR. GRAHAM: You know, we've been used to
20 looking at this from the standpoint, as Commissioner
21 Stein mentioned, you know, thinking in terms of the
22 scale of disclosure as what we can eliminate. I'm not
23 sure how good we've been at looking at it from the
24 standpoint of what disclosure is really necessary to
25 help enable a smaller company to succeed, and -- or

1 report of findings and recommendations to Congress.

2 As Commissioner Stein and I think others have
3 mentioned, this isn't the first time that the
4 Commission has focused on disclosure effectiveness,
5 however. There were provisions in the Jobs Act that
6 required a staff study on disclosure effectiveness
7 which was produced in 2015. There has been a concept
8 release, and there is a current set of proposals for
9 eliminating unnecessary disclosure.

10 People should go to the disclosure
11 effectiveness initiative page on the SEC's home page,
12 and you will find all of these various approaches being
13 there -- set out there. It seems like there haven't
14 been very many comments about the proposals for
15 eliminating unnecessary disclosure, and I would have
16 thought that this community especially would love to
17 add things to the proposals for elimination of
18 disclosure on its red meat to this committee.

19 And then also there is the more generalist
20 concept release, which has received a number of
21 comments, about 80 percent of which I think are off
22 topic and relate to the forthcoming disclosure,
23 potentially, on political contributions. I waded
24 through a lot of them, there is a lot of form stuff
25 there. But there was a poem which I thought was

1 looking at it more from the standpoint of how the
2 disclosure is made in order to reduce the burden.

3 Transparency is important. And so, I think,
4 you know, anything that works to eliminate transparency
5 in the context of material information is not helpful
6 in the long term. So I think it's important to think
7 in those terms.

8 I mean, obviously, you know, I think all of us
9 are used to, for example, reading in risk factors where
10 you take three pages to say one thing. You know,
11 that's -- I mean those old habits are kind of hard to
12 break. And I think there is a lack of courage on the
13 part of practitioners to kind of break with the mold,
14 if you will.

15 But understanding notwithstanding that we
16 have, you know, Regulation S-K and all the dictates, I
17 think the underlying principle continues to be what's
18 material, and ensuring that whatever is material is, in
19 fact, disclosed.

20 MR. YADLEY: There is obviously a lot there,
21 so I'll just mention a couple of things now, in
22 addition to endorsing our prior recommendations.

23 Materiality definitely is the starting point.
24 Principles-based disclosure can be more helpful for
25 smaller reporting companies, I think, than other

1 companies. And the idea of a company profile may go
2 hand in hand with that.

3 A lot of the disclosure, if you look at
4 numbers of pages contained in particularly proxy
5 statements, but throughout filings, has to do with the
6 infrastructure of the company. How does it work,
7 internally? And smaller reporting companies definitely
8 have a corporate governance structure, they have
9 committees, they're supposed to have committees. The
10 committees have charters, they have ways that they
11 nominate. And most of the time those are reflective of
12 what larger companies do, because that's the model.

13 But in many cases, smaller company boards have
14 half of the directors on each committee. The
15 committees are really not as important. So I think a
16 lot of things that are important to investors in a
17 general way don't need to be as specific for a smaller
18 company. So I believe guidance in a principles-based
19 fashion will help that.

20 I also think that we talked at a prior meeting
21 about whether we should have quarterly reports or -- as
22 opposed to less-frequent reports. I think quarterly
23 reports are a great idea, the market is accustomed to
24 them. Things change so quickly that I don't think we
25 should retreat from that.

1 But one of two things happens with smaller
2 companies outside of the financial area: they either
3 spend too much time on matters that are really not that
4 material, or they don't spend any time at all. They
5 just update what they did before and they often don't
6 use outside counsel for quarterly reviews. So I think
7 some focus on what is material would be important. I
8 think that's enough for now.

9 In other words, more principles-based, less
10 structured, and taking the disclosure package as a
11 whole, rather than report by report.

12 MR. GRAHAM: Thanks, Greg.

13 MR. NELSON: I started to wade through the
14 350-page proposal for the expansion of the
15 simplification of reporting requirements.

16 (Laughter.)

17 MR. NELSON: And it occurred to me that -- I
18 think I'm a fairly smart guy, but it was taking me a
19 long time to wade through, page by page. Is there a
20 way -- and I was looking for -- I think the Obama
21 Administration in 2010 actually asked for a requirement
22 that these things be in plain English, or that
23 documents that we're actually requiring people to comply
24 with were in plain English.

25 And I think -- and I immediately thought about

1 what Ryan said last session was that they fairly have
2 -- have fairly limited reporting on their company, but
3 it still costs them about \$3 million a year, roughly.
4 And he said, like, our documentation doesn't really
5 change from year to year or from quarter to quarter.

6 I am wondering if there is a way -- and my
7 guess is that a lot of those costs are in accounting,
8 but also in legal fees. So I would argue that, if
9 these requirements could be in plain English, perhaps
10 CEOs or officers or directors of the companies could
11 actually do some of this reporting without having to
12 hire -- nothing against lawyers; I love them. But
13 sometimes costs, when you get -- pay them an hourly
14 basis, it's not necessarily in a law firm's best interest
15 to work on simplifying and making things easy and
16 simple to understand. It actually kind of benefits, a
17 more prolonged and more thorough evaluation and
18 discussion and reporting.

19 MR. GRAHAM: Forgive me if I take your love
20 for lawyers as insincere.

21 (Laughter.)

22 MR. NELSON: I really do. I have a number of
23 friends who are lawyers.

24 MR. GRAHAM: Patrick?

25 MR. REARDON: Thank you. I have a few

1 thoughts. I filed a comment letter, so that's on file,
2 and I will vary from what I've done in the past and I
3 will repeat some of what is there, just for the sake of
4 the group.

5 I think the first question you have to ask
6 yourself is, who is the consumer of the information? I
7 think, for a long time, we have assumed that there is
8 fundamental analysis going on, and that we have to have
9 levels of disclosure, that are what we've done in the
10 past. And while we've supplemented and increased the
11 burden, I don't think we've taken a look at that.

12 I think Commissioner Stein has hinted that
13 maybe that's something we need to think about, is that
14 the trader on Wall Street who needs all of this
15 information? Or if your company trades -- and most of
16 the investors are small investors that are non-
17 institutional -- maybe they do need that information.
18 But I think an assumption that one size fits all is
19 perhaps wrong. Maybe I'm over-complicating things.
20 But I would like to know.

21 And I had a conversation with the CEO and the
22 chief legal counsel last week of a public company, and
23 it's bigger than one of the companies -- than any of
24 the companies we deal with, but it hasn't been there
25 that long. And there is this difference between what

1 they get asked about by the analysts and what we have
2 in the disclosures. I mean I will just tell you that
3 one of the things that they complain about is the
4 restrictions on disclosure of non-GAAP measures, that
5 -- they say that the analysts are the ones pushing for
6 that, that they are not pushing it out there to the
7 analysts, it's the analysts who are asking for it.

8 So, I mean, I think somebody -- and certainly,
9 you know, I have no answer to the question, and it's
10 easy to ask a question if you don't purport to have the
11 answer -- but who is the consumer, and who are we
12 writing to? And is all of this stuff needed?

13 On principles-based disclosure, I embrace the
14 concept of principles-based disclosure. I think it's
15 one of the reasons that private placements are
16 attractive, is that you don't have to -- you don't have
17 a checklist kind of disclosure. You can sit down with
18 a client and say at the end of the day, "Okay, what did
19 I miss?" And you can ask questions that lead to this.

20 But if it's not material, then you can
21 conclude that you don't need to put it in there. Or
22 you can abbreviate it. Compensation, for example, and
23 the pages and pages of compensation disclosure, is an
24 example of where -- that I think, you know, you could
25 use principles-based disclosure.

1 Now, I will tell you that, having represented
2 little companies, that principles-based disclosure will
3 lead you to unscrupulous executives who will argue that
4 the fact that the company has two weeks of cash in the
5 bank and they're going to go broke after that, that
6 disclosure is not material. Okay? So you have that
7 problem. I'm not sure that it's -- they wouldn't argue
8 the same if you had a checklist. But, you know, you
9 will run into that, and I think it's inevitable that
10 you do. But I favor principles-based disclosure.

11 Also, I think that the -- and what Keith was
12 saying about, you know, that we don't really think
13 about what we are doing, one of the things I have seen
14 on reports is, well, let's mark up last year's 10-K and
15 we'll get that over to you. And nobody takes a fresh
16 look at it. And I've actually taken over for another
17 company that just marked it up for years and years, and
18 more or less threw it away and started with a blank
19 sheet of paper. And that gets some resistance. But
20 there is a point at which it's more than just the mark-
21 up, and you have to ask what is material.

22 And I think the MD&A and the guidance on MD&A
23 is good in that regard. It's just pushing people to
24 look at that and say, okay, what's important now? And
25 you can start by asking the CEO and CFO, "What keeps

1 you up at night?" and "What are you proud of?" or,
2 "What are you least proud of?" but those kinds of
3 things. But not last year's mark-up.

4 I think the use of the summary -- I asked
5 another executive about all this, and it was the point
6 at which we were talking about summaries and 10-Ks. And
7 his comment was, "That's all I'm going to read." And
8 if you take that in this context -- well, I think,
9 first of all, there ought to be some sort of mechanism
10 where you put things in the summary and expand the
11 summary, and things that are said in the summary don't
12 have to be said again in the full exposition on the
13 various topics covered in the summary. It's easy, as
14 lawyers, to just simply repeat everything you said in
15 the summary. And that's a common client criticism is
16 you say it two and three times.

17 I think the summary, if there is a way to just
18 have it in the summary, knowing that some readers are
19 only going to read the summary, then not to make the
20 summary 40 pages long, but to make the summary a
21 summary, and then to the extent you can -- and
22 sometimes you need to lay the predicate back in the
23 back with a lengthier disclosure -- you repeat some of
24 it. But if you could do that so that things are only
25 said once, such as in the back, saying, "Hey, go read

1 the summary under so-and-so first, before you read
2 this," it would help. It would cut down on the length.

3 I think compensation is -- beat that horse too
4 much, and that needs to be condensed. I mean people
5 are entitled to know what the CEO is getting, but I
6 think we've taken that too far.

7 Political contributions, I think the people in
8 the front office of the investment firms are interested
9 in that. I'm not so sure that the analysts are
10 interested in that. I don't know if you care, one way
11 or the other, as long as somebody at the investor is
12 asking for it. Then maybe you have to put it in. But
13 you know, if we want to regulate political
14 contributions, there are other methods of doing that.
15 But to me, that's the purpose of political
16 contributions, is regulating that.

17 And finally, in the -- in my comment letter, I
18 think that the Commission, for its own purposes, should
19 require each reporting company to include in its 10-K
20 its annual routine '34 Act compliance costs. It
21 doesn't have to be with great precision, because
22 they're allocations, but plus or minus five percent.
23 And have it certified. And the reason for that is
24 that's going to give you an instant benchmark on what
25 it costs to be a public company. And you may not like

1 the number. Keep scowling over there, like I said the
 2 most horrible thing in the world.
 3 But, you know, how much does it cost? And the
 4 way I'd present it, because you're going to get some
 5 pushback for one more thing, is this is so we can see
 6 what we're doing to you, and what your costs are,
 7 because we need to be able to compare. But I think
 8 that would be useful information, and it might be
 9 surprising. And then you wouldn't just have anecdotal
 10 comments of, "It cost my company this to do it." And I
 11 don't think there is any disclosure like that at
 12 present.

13 Those are my comments.

14 MR. GRAHAM: Okay --

15 MS. HANKS: Steve?

16 MR. GRAHAM: Yeah, please.

17 MS. HANKS: Could I just mention? One thing I
 18 just wanted to bring up, because I'm not sure that the
 19 watching audience understands this in general.

20 A few people have talked about principles-
 21 based disclosure. And I sometimes come across young
 22 lawyers or foreign lawyers who say, "Well, in the
 23 United States there is this requirement that you
 24 disclose all material things about your company." And
 25 that's not actually the way that the securities laws

1 work.

2 It might be a distinction without a
 3 difference, but what we have is a required disclosure
 4 that you, A, you don't -- you must make these
 5 disclosures, all the stuff in the Reg S-K that I
 6 mentioned; you must not make any misleading statement;
 7 and you must not omit anything necessary to make what
 8 you've already said not misleading. That is not the
 9 same as requiring all material information to be
 10 disclosed.

11 And that makes us different than some other
 12 jurisdictions. And I think that we have to keep that
 13 in mind when we're talking about principles-based
 14 disclosure, because principles-based disclosure would,
 15 in fact, be, "Tell us everything material, and leave
 16 out the stuff that's not material."

17 Just checking to make sure that nobody is
 18 disagreeing with me at that end of the table.

19 MR. YADLEY: Yeah, I don't disagree with you,
 20 but -- and I do agree with you on what the standard is
 21 for disclosure. But I think when many people are using
 22 it, it's in contrast to very prescriptive, structured
 23 disclosure. So we should always be precise.

24 I did some audit committee minutes and used
 25 the word "exponential," and one of the committee

1 members who is the former dean of the engineering
 2 school at a major university chided me for not knowing
 3 the definition, and pointed me to it. And when I read
 4 it, all I knew is that I had gotten it wrong, that I
 5 didn't know what it meant.

6 So, I think principles-based, Sara is
 7 absolutely right. But I think, when we've been talking
 8 about it colloquially, it's been more issues-based with
 9 the materiality standard attached.

10 MR. GRAHAM: Laura?

11 MS. YAMANAKA: I'm just going to make a couple
 12 of comments on my observations on the types and the
 13 size of clients that I deal with, and actually how
 14 people in my world look at these kinds of reports.

15 So, I agree with the comments of reducing all
 16 the boilerplate or redundancy, because I think if
 17 you're a sophisticated investor -- and I hate to say
 18 what people do when they really review it. Nowadays
 19 it's great, it's out there so you can eliminate
 20 everything that's the same as last year and just pull
 21 up what's different for this year, which then makes it
 22 quite manageable if you are knowledgeable about the
 23 company and you're routinely looking at that.

24 But then I question how much does it cost to
 25 actually keep all the boilerplate that people aren't

1 looking at routinely. And I say that, routine, as a
 2 qualifier. Because if you're -- if this is the first
 3 time you're looking at it, then you need all that
 4 information.

5 So I think there's been some comments out
 6 there about having a repository of information that
 7 doesn't change for -- my words, not technical terms,
 8 right? That you can go to so that you can understand
 9 the basic structure for organization reporting
 10 committees that smaller companies may or may not really
 11 comply with as completely as, you know, sophisticated,
 12 publicly-traded companies. But at least it's there,
 13 and you can focus on the things that are changing.

14 And then I talk about the -- for small
 15 companies and the investors that they track typically,
 16 it's not somebody off the street, right, "Give me your
 17 prospectus and let me take a look at it." It's
 18 probably somebody that they know about, they've known
 19 about the company, they know other information that's
 20 not commonly known by the public.

21 And so, that reporting formalizes the
 22 information that they actually really know of the
 23 company: the people who are running it, maybe the
 24 product, maybe they've been tracking the trend of the
 25 development. I see Brian shaking his head, but I think

1 that, in reality, is how it works.
 2 So, if -- to the comments of knowing the
 3 consumer of the information, I -- although it is making
 4 it more complicated, I think, to segment this out, in
 5 reality that's what I think people are looking at.
 6 Materiality, I'm going to make a very
 7 controversial statement here, and I'm going to lump it
 8 in with non-GAAP disclosures. That's where I think you
 9 get the meat. All -- you know, when you really look at
 10 reports, and you compare them, if they all look the
 11 same the material things are going to be okay,
 12 whatever. You really -- the gotchas that I think that
 13 everybody has ever, in my experience, been generated in
 14 my world, is the non-material.
 15 I am going to give you an example. There is a
 16 company that -- they were looking at, you know, who
 17 ever looks at deposits, right, unless you're into that
 18 business. Deposits -- always small, it's always like,
 19 you know, rent deposits or something. It always kind
 20 of stays the same. And I remember looking at some
 21 financials. It's been very consistent. And all the
 22 sudden it spiked up. Wasn't material, you know, but it
 23 was just kind of wow, maybe they got a new building,
 24 maybe they're -- you know, whatever.
 25 Well, it turns out that they had changed --

1 they were thinking about changing the course of their
 2 business. They were going out and committing to buy
 3 all these properties. They really hadn't committed to
 4 change the approach or to expand the approach of the
 5 business. Maybe it should have been disclosed
 6 elsewhere. But since it was in pilot stage, and they
 7 really weren't sure if they were going to do it yet,
 8 they didn't feel it was -- that they had to disclose
 9 it.
 10 On the other hand, if you looked at the
 11 agreements, it's like, wow, they're on the hook for all
 12 of this stuff, and that next quarter it could
 13 significantly change if they pull the trigger.
 14 So, sometimes it's the small things that pick
 15 -- that I think reveal things. Also non-GAAP, I
 16 totally understand why the investors or the analysts
 17 want that information, because we found that when we
 18 deal with CEOs, presidents, business owners, if they
 19 are really good at what they're doing, they don't wait
 20 until the financials to get the information and know
 21 where they're at. They've got early warning
 22 indicators. They have certain metrics that identify
 23 are we okay, are we on track, how are we doing, and
 24 that's what they use to run their business and monitor
 25 their business, and the analysts want to know that,

1 because they know the financials are rearview driving.
 2 So it's a very sticky wicket, it's different
 3 from -- for each company. It is very unauditably many
 4 times. But that's the kind of underground information
 5 that I think that the people who are really good at
 6 investing are looking at.
 7 MR. GRAHAM: And, you know, I think it's clear
 8 that one size doesn't fit all. And I think one way to
 9 address this is to kind of head into the principles-
 10 based system, if you will. But I -- and I think that
 11 your example kind of underscores that, because maybe
 12 what you are looking at, what you have identified, is
 13 something "small." But maybe in the context of that
 14 particular business, it was material.
 15 Oh, Annemarie?
 16 MS. TIERNEY: So before I express my views, I
 17 will give my own disclaimer, which was my first job out
 18 of law school was with corpin, so I love disclosure.
 19 I'm a big fan of disclosure, and I think disclosure is
 20 necessary.
 21 But I've had two other jobs, I think, that
 22 give me a slightly different perspective on disclosure.
 23 One was the general counsel of a small, publicly-traded
 24 company. It was a broker-dealer, and it was NASDAQ
 25 listed, and we made, I don't know, maybe 125 million to

1 150 million a year, and we spent 2 to 3 million a year
 2 on disclosure. That was very disproportionate for our
 3 company.
 4 But there are a few things to keep in mind.
 5 The disclosure requirements, you don't want to be
 6 outside the box because that leads to litigation risk
 7 and your board is terrified of doing something
 8 different because they don't want to get sued. So we
 9 had a lot of, you know, staying in a typical disclosure
 10 structure with typical disclosure, good disclosure. We
 11 had excellent outside counsel, we had excellent
 12 accountants. But my team spent half of our year on
 13 disclosure, and that's four or five people plus our CFO
 14 and our controllers. So there is a lot of focus in a
 15 very small company on mandated disclosure and meeting
 16 the disclosure requirements.
 17 I agree with Patrick. I was at the New York
 18 Stock Exchange when the CD&A requirements were adopted.
 19 That's just as we were going public. And that is a
 20 increasing creeping disclosure requirement that I think
 21 is oversized to the actual benefits that it gives to
 22 investors. And I think, Commissioner Stein, you asked
 23 the question, like, "Who is reading the disclosure?"
 24 So, when I was -- NYFIX was the name of the
 25 public company I was the general counsel of. We did a

1 big revamp of our proxy statement. We tried to make it
2 really user-friendly. We upgraded everything. I was
3 really proud of the result. We were really proud of
4 the result. We sent it out into the, you know, ethos,
5 and I feel like nobody read it.

6 And so, you do the effort, right, and we
7 didn't have big institutional investors watching us, we
8 had a lot of little investors through human beings.
9 Maybe they read the proxy, maybe they didn't. But you
10 felt like you put your heart and soul into something,
11 and then there wasn't the interest in reading it.

12 And another thing that you said that I think
13 is very important is how are people reading
14 information? If you look at the demise of, you know,
15 hard newspapers and hard -- you know, any publications
16 and hard copy, people today -- investors today, they
17 want sound bytes, they want short and sweet. They want
18 to be able to look at a summary; they're not going to
19 read a 200-page 10-K. They're not going to read a 150-
20 page proxy statement. They're not going to read more
21 than summary.

22 So, you are mandating a disclosure -- and I
23 understand so much of it is congressionally required,
24 so the SEC does not have as much bandwidth to actually
25 change or decrease disclosure potentially than maybe

1 you probably want to, but I just think that we've gone
2 to a point where disclosure requirements are outsized
3 for most companies. Not even just small reporting
4 companies, but I think most companies.

5 The next job that I had was the general
6 counsel of a private company, and it was, like, Nirvana
7 and fantasy La-La Land, and I'm, like, wait, what? I
8 don't have to do any of these things? Now, we were
9 very focused on disclosure to our investors, who spent
10 a lot of time on presentations, investment
11 presentations and things like that. Disclosure was
12 sensible, it was suitable for our company, it was risk,
13 you know, thoughtful.

14 But it really was, I think, an extremely good
15 example of why you see so many companies staying
16 private these days. You can be a very successful
17 company, large -- we see, you know, hundred-something-
18 plus unicorns, a growing number of decacorns. You
19 could be a really successful company without stepping
20 into this disclosure structure, which is, again,
21 constrictive, not necessarily helpful to your
22 investors, and extraordinarily costly. So, I'm really
23 glad that the SEC and our committee is able to give
24 thoughtful feedback.

25 I think a lot of the disclosure is outsized

1 for small companies, a lot of the disclosure is too
2 much for even mid-sized companies. But at least it's a
3 place to start. Thank you.

4 MR. GRAHAM: Thank you. Xavier?

5 MR. GUTIERREZ: So, I wanted to make a couple
6 of comments. First, I did also want to reiterate
7 support for the previous recommendation. In
8 particular, the increasing of the size of the companies
9 that we're talking about. I thought that was very
10 important.

11 I also wanted to make another comment that I
12 left last meeting really shocked at Brian's comment of
13 how much they were spending, and it really got to me in
14 terms of, you know, the burden on these smaller
15 companies. And, you know, echoing a little bit of what
16 Annemarie said, I run a privately-held investment firm.
17 And we look at investments all day long. And we get to
18 the materials that are important to us very quickly,
19 without the reams of information that are compared to
20 when we look at a publicly-traded company.

21 So, the information can be distributed in a
22 way that's accessible without being burdened. And the
23 private to public sort of analysis shows that. So to
24 me, when I thought about, okay, if I was going to
25 invest in Brian's company that was privately held, the

1 amount of information I would get is much more concise,
2 and much more accessible than, quite frankly, if -- it
3 being a publicly-traded company. And so, that is
4 something that I think we need to take into
5 consideration when we're looking at what is important.

6 As the -- skipping topics, as the chair of an
7 executive -- of a compensation committee of a public
8 company, I wanted to reiterate something that Patrick
9 said, which is I think I was really, really shocked at
10 the amount of information that we were having to
11 provide on the compensation plan. And I felt that it
12 could have been easily distributed in a much more
13 concise manner and getting to the point of exactly what
14 we were paying people and why we were paying them. And
15 I didn't need 20 or 30 pages from a very highly-paid
16 executive compensation consultant to compare to a peer
17 group that, quite frankly, was ever changing. And to
18 me, for a small company that was a \$250 million market
19 cap company, that executive compensation plan could
20 have been explained in a much faster, more discernable
21 fashion.

22 So, those are my comments.

23 MR. GRAHAM: Okay, thank you. Brian?

24 MR. HAHN: I would like to just follow up on a
25 few of these points.

1 So, just two areas, you know, talking about
2 marking up a 10-K versus starting new each year. You
3 have way too many cooks in the kitchen to start new
4 every year. You've got to get through management,
5 audit committee, board input, lawyers, accountants.
6 So, you know, when preparing for the IPO with the S-1,
7 it took weeks of drafting sessions just to get through
8 all the input. So even with a markup each year, it
9 still takes weeks to get through that.

10 The other point I wanted to bring up, too, was
11 on risk factors. So when we were going public, there
12 was kind of a running joke between company counsel and
13 underwriter's counsel on who could have longer risk
14 factors. So I just pulled up our last 10-K. We had
15 close to 30 pages of risk factors. And being in an
16 industry -- you know, drug development is risky enough,
17 you know, I don't think it takes an investor 30 pages
18 worth of materials to understand that there's a lot of
19 risk involved.

20 So, I think that, you know, areas like that we
21 could definitely shrink down.

22 MR. GRAHAM: Okay. Patrick?

23 MR. REARDON: Obviously, I was not clear. I
24 don't mean you start with a clean sheet every year.
25 But I do think that if you put the document aside from

1 the prior year and you sit down with the CEO and the
2 CFO and say, "All right, what's important from the
3 period we're reporting on, and what's important right
4 now," that that's a good start, and then go back to the
5 document that you filed before.

6 I hear often as an excuse -- which I don't
7 spend much time listening to -- is, "We've never done
8 it before." And, you know, so we're going to break the
9 mold. But anyway, I understand, and you're right. I
10 mean you can't afford the cost of drafting de novo
11 every year something like that, it's prohibitive. I
12 just -- I don't want to get down -- I don't want to
13 look at the trees before I've looked at the forest.

14 MR. GRAHAM: Okay. We have not heard from
15 everyone. Does anyone else want to comment?
16 Annemarie?

17 MS. TIERNEY: I have one more thought. I
18 think, you know, what's going to be really interesting
19 is the Reg A-plus disclosure scheme and get a sense of,
20 you know, how investors are reacting to that. Are they
21 comfortable with that type of disclosure? Are they
22 comfortable with that level of disclosure? I think
23 that that was pretty thoughtful and forward-thinking in
24 the way it was structured, so I'd love to know, you
25 know, sort of as -- maybe Sara has some experience

1 there, because you're so involved in Reg A-plus.

2 But, you know, what we're hearing is our
3 investors are very happy and comfortable with that
4 level of disclosure, and they're happy and comfortable
5 with the format. So I think we could probably learn
6 some good lessons over time about potential alternative
7 purchase disclosure from that structure.

8 MS. HANKS: Yeah, I can throw in a story from
9 the coalface, as it were, and then I think we've got
10 Jonathan also with a comment there.

11 With respect to Reg A-plus, I mean, one of the
12 things that we've been trying to do is just focus on
13 the things that investors really, really need to know,
14 not that a meteor might strike the earth, and you do
15 not need three risk factors explaining the impact of
16 the meteor striking the earth, and -- you know.

17 And we've actually had a couple of debates in
18 the last couple of weeks where we have had traditional
19 counsel, company counsel that we're interacting with,
20 where the traditional company counsel have taken the
21 drafting that we've done in our standard Reg A way and
22 said, "Hmm, I think we need another five or six risk
23 factors on this. And, by the way, if we were doing
24 this under an S-1, we would also have this disclosure."

25 And we go, "This isn't an S-1, it's different.

1 It's focused on a completely different thing."

2 And so I think there is a mindset here in the
3 established law firm market, where they go, "We're not
4 going to -- it's ridiculous to have something that's
5 only 20 pages long. You need something longer there,
6 you need more words. More words are going to help
7 you." And that's not true. What is going to help you
8 is disclosure that is read and understood.

9 And we keep going back to the informed
10 investment decision. Are you giving the material
11 information necessary in order to make an informed
12 investment decision? And that really should be the
13 starting point, as a couple of people have pointed out.
14 Look at who is reading this, and make sure that they do
15 actually read it. Because I can guarantee you young
16 investors do not read 20 pages of risk factors.

17 Jonathan?

18 MR. GRAHAM: Greg, are we going to stand for
19 that?

20 (Laughter.)

21 MS. HANKS: And I speak as a former
22 established law firm partner.

23 (Laughter.)

24 MR. GRAHAM: Okay. Someone else had a comment
25 over here? Jonathan?

1 MR. NELSON: Anyone but me.
 2 MR. GRAHAM: Okay.
 3 MR. NELSON: One of the things that I had --
 4 we just had a liquidity conference in Silicon Valley a
 5 couple of weeks ago, and we had one of the general
 6 partners of Saints Capital, which is one of the primary
 7 providers of secondary liquidity in Silicon Valley, and
 8 he was talking about a -- how many fewer public
 9 companies there are now, as opposed to 30 years ago.
 10 It's about 50 percent. And it's not just in the United
 11 States, it's also across other markets, like Japan and
 12 Brazil, Mexico.
 13 And he also talked about the number of very
 14 large \$1 billion, \$10 billion companies, you know,
 15 unicorns, decacorns, that are actually public. And he
 16 said, "It's, frankly, a very competitive advantage to
 17 these companies not to actually have to file and not to
 18 disclose." And he said, "Frankly, I'm making a ton of
 19 money on this because, you know, I know all of these
 20 people and I can get into these deals. But private
 21 investors, the smaller investor, doesn't have access to
 22 these kinds of deals. And so they're actually not able
 23 to make the money that investors on the private side
 24 have been able to make."
 25 And, you know, I am also doing research. The

1 Yale Endowment, you know, they're -- 30 to 40 percent
 2 of their capital goes into private placements,
 3 alternatives, private equities. And they usually
 4 estimate that they're going to do about 20 percent,
 5 year over year, which is another 10 percent on top of
 6 what an index would do on the public markets.
 7 And so, I think that there is a lot more money
 8 to be made for investors on the private side, where
 9 disclosures are much smaller. The standard for one of
 10 our portfolio companies you go for a Series A is a 10-
 11 page deck and then due diligence, like, you know, a
 12 page of web analytics and a page -- you know, access to
 13 the QuickBooks account.
 14 And a lot of million-dollar investments are
 15 actually made on those terms. And a lot of it is
 16 relationship-based. And I understand that public
 17 markets are much different. But it just seems like --
 18 one of the things that Ken mentioned was could we
 19 actually start asking, and he said, "People are going
 20 to hate me for saying this: Could we actually start
 21 asking non-public companies, if they reach a market cap
 22 of over \$10 million, maybe they should start filing
 23 too, just to kind of level the playing field?"
 24 I am not going to agree or disagree with that.
 25 I thought it was very interesting, though.

1 MR. GRAHAM: Thank you.
 2 Laura?
 3 MS. YAMANAKA: I just wanted to comment on
 4 what Sara just said, and the significance of what she
 5 just said. Right?
 6 So here is Sara. She's got some chops, right?
 7 She's got some credibility. And it takes you to go up
 8 against counsel and attorneys to add that in. So my
 9 clients, the people that I know, they're just doing
 10 whatever they're told. If somebody wants an additional
 11 disclosure in there, it's not fighting not to get the
 12 disclosure, it is, "Does anybody object to the
 13 wording," you know?
 14 And so, that's how it just layers on and
 15 layers on. It's like one time I ask them, "What is all
 16 this stuff," right?
 17 And they go, "Oh, the attorneys said that we
 18 needed to do it." I go, "Do you understand it?
 19 Because I will just tell you I don't." Right?
 20 And they go, "No, but the attorneys said we
 21 needed it. And if we go back around, it's going to
 22 cost us, you know, \$750 for somebody to explain it to
 23 us, and they do it all the time, so let's just leave it
 24 in. We'll deal with it later."
 25 So, next time comes around, and I'm like,

1 "It's still in here. Does anybody know what this
 2 means?"
 3 And they go, "No. But if -- they just put it
 4 in. If we ask to change any of the pre-existing
 5 wordage, verbiage, it's going to cost us \$950," you
 6 know, price went up.
 7 (Laughter.)
 8 MS. YAMANAKA: And so they just do that. So I
 9 just want to make the comment that, again, if Sara is
 10 having to do that, then, you know, all these small
 11 little companies have no chance.
 12 Brian is laughing. Did that happen to you?
 13 MR. GRAHAM: That -- those kinds of examples
 14 are out there.
 15 MS. KASSAN: I just have a question for
 16 Annemarie.
 17 You mentioned the multi-million-dollar
 18 disclosure costs, and it is a -- it was a broker-
 19 dealer. So I was just wondering how much of those
 20 costs were related to being a broker-dealer versus
 21 being a public company.
 22 MS. TIERNEY: None of them.
 23 MS. KASSAN: Okay.
 24 MS. TIERNEY: Those were just public company
 25 costs. Yeah. Broker-dealer costs were a separate

1 bucket of delightful money.

2 MR. GRAHAM: Sara?

3 MS. HANKS: You know, I was just going to sort
4 of build on what Laura said here. I mean, to a certain
5 extent, what we're dealing with is not a problem with
6 the regulations themselves, it is the interpretation of
7 those regulations. My people, who are incentivized,
8 who spend a lot of time interpreting them. And
9 so, fixing the regulations is not necessarily going to
10 completely fix the cost of regulation.

11 MR. GRAHAM: Fair comment.

12 Greg?

13 MR. YADLEY: Yeah, I almost don't want to
14 enter the debate, but -- because I agree with what
15 everybody said. But it is a little more complicated
16 than that.

17 The comment was made that the public markets
18 are different. They sure are. Anybody who is invested
19 in a private equity deal doesn't get anywhere near the
20 type of information that a public company presents.
21 Compensation, that's been mentioned.

22 Investors in private equity deals, they don't
23 know what people make. They rely on the sponsor, and
24 the sponsor has a reputation, and that's what they care
25 about, because they want to make the kind of returns

1 that Jonathan mentioned for their investors because
2 they get paid a lot, and they're going to have the next
3 fund. And it doesn't always work, because some of
4 those people aren't as smart as they think they are,
5 and some of them are not as honest as we hope they
6 would be. But that's a different system.

7 So one of the things that people take for
8 granted today that didn't occur 20 years ago was
9 independent boards. So we do now have mostly
10 independent boards, and that is a protection and a new
11 regime. But I don't think that, in real life, an
12 independent board is quite the same as a private equity
13 sponsor that's watching things.

14 There is that tension with all companies, and
15 particularly smaller companies, when it comes time to
16 make disclosure about how much time are we going to
17 spend, how -- can we sit down and give things a fresh
18 look. And I think, sure, there are lawyers who like
19 hourly rates. Otherwise, we wouldn't still have them
20 as much as we do. But, by and large, I think
21 securities lawyers, as a group, have other work they
22 could be doing, and it would be much more interesting
23 work and lucrative work, like raising money, helping
24 companies raise capital. So that's a great mandate of
25 this committee.

1 But it is hard, and it will take time to sit
2 down and go through what the disclosure has been, why
3 is it there, what should we be talking about, and that
4 will involve the CEO and the CFO and a lot of
5 management people.

6 And I think Laura is right. A lot of times
7 they just punt and say, you know, "We don't really have
8 time for that." And if they trust their lawyers, and
9 their lawyers are being practical -- I don't think the
10 lawyers are trying to make it more burdensome. But
11 there will, as a result, be a lot of things that are in
12 the disclosure package that haven't changed because
13 nobody has pointed them out as obsolete, they haven't
14 been a problem, the client doesn't really want the
15 lawyer to be taking up their time, talking about
16 immaterial things.

17 It doesn't mean we shouldn't address these.
18 And some of the thoughts that have been expressed today
19 I think would at least lead companies and their
20 advisors to sit down and take a fresh look, and we
21 should encourage that.

22 MR. GRAHAM: Thank you, Greg. Anyone else?
23 Patrick?

24 MR. REARDON: I'm old enough to remember when
25 Form S-3 was adopted. Keith, you may not remember

1 that. Do you remember it?

2 (Laughter.)

3 MR. REARDON: No? Okay. Well, I may be the
4 only one here. But I remember then that there was a
5 cry that the sky is falling, and it took a while for
6 everybody to get on board.

7 But if you shorten this stuff and one company
8 in the sector gets the size right, then next year --
9 well, XYZ had a third of what we've got here, why do we
10 have to do that? And the competitive forces of what
11 other people are doing will drive, ultimately, the
12 issuers to shorten their disclosures, because they do
13 not want to increase their compliance costs.

14 I mean SEC filing costs don't make you any
15 money directly. I mean they do, in that people have
16 confidence in your financials and things like that.
17 But they're indirect, and -- rather than direct. So
18 they'd rather put the money into making widgets, or
19 doing whatever they do.

20 MR. GRAHAM: Okay. Good thoughts. I
21 appreciate everyone's comments. We will give it some
22 thought and -- as to what a recommendation might look
23 like, and get back to the committee on that.

24 Okay. Next topic, board diversity. We would
25 like to discuss, one, the premise that there is a

1 correlation between a corporation's level of success
2 and board diversity; and, two, assuming that to be the
3 case, how might the SEC encourage rate of diversity
4 through its disclosure requirements.

5 We are pleased to have joining us today an
6 expert who has done a lot of research in this area.
7 But before we turn to her, Betsy Murphy of the division
8 of corporation finance is going to give us a brief
9 background.

10 As on many corporate governance issues, the
11 SEC's role here is focused on disclosure. In 2009 the
12 Commission adopted a rule requiring companies to
13 disclose whether and, if so, how the director and
14 nominating committees consider diversity. And, if they
15 have a policy on diversity, how its effectiveness is
16 assessed.

17 The disclosure requirement, as I think you all
18 know is soft. Diversity is not defined, which means
19 that the regulation hasn't been as helpful in
20 generating useful information. So what does diversity
21 mean? It means diversity of thought, experience, et
22 cetera. It also means gender and ethnic diversity.

23 We can argue about the inability to define
24 diversity with precision, but that may be just
25 something of a head fake, and a means to shift focus

1 Unfortunately, few companies have disclosed a
2 formal diversity policy. And, as a result, there is
3 very little disclosure on how companies are assessing
4 the effectiveness of their policies. A recent GAO
5 study indicated that only 8 of the S&P 100 companies
6 disclosed the existence of a diversity policy during
7 the period from 2010 to 2013.

8 So, while some companies voluntarily provide
9 more useful disclosure, most companies' disclosures on
10 board diversity under the current requirements haven't
11 changed too much since the 2009 adoption.

12 I will talk a little bit about some of the
13 statistics we've seen. We've reviewed some information
14 indicating that minority directors on the boards of the
15 top 200 companies in the S&P 500 have remained at about
16 a 15 percent level for the last several years. And the
17 percentage of these companies with at least 1 minority
18 director actually declined from 90 percent in 2005 to
19 86 percent in 2015.

20 In addition, the GAO has estimated that it
21 could take more than 40 years for women's
22 representation on boards to be on par with men's. And
23 we also have reviewed a 2016 article that indicates the
24 lack of gender diversity as especially severe in
25 smaller firms. The article indicated that 37 percent

1 away from the absence of gender and ethnic diversity.
2 It's -- that then makes it convenient for some to
3 suggest that this whole area is something that
4 represents an incursion in a social policy and beyond
5 the SEC's mission.

6 The definition doesn't have to be exclusive.
7 And moreover, it's disclosure, and it's not a mandate.

8 So, with that, we will turn it over to Betsy
9 to explain more.

10 MS. MURPHY: Thanks, Steve. In 2009 the
11 Commission adopted a rule requiring companies to
12 disclosure in their proxy statements whether diversity
13 is considered in identifying nominees. And, if so,
14 how. And if the company has a policy on diversity, how
15 the policy is implemented and assessed.

16 The rule does not define diversity, as Steve
17 mentioned, and left it to companies to say what they
18 mean by diversity in their policies and disclosures.
19 Therefore, companies' definitions of diversity differ
20 greatly, and they cover such attributes as business,
21 financial, accounting experience, risk management,
22 legal, government, and other relevant expertise. And
23 sometimes we'll see disclosure about the age of the
24 directors, nominees, the length of board tenure, and
25 also race, gender, and ethnicity.

1 of the firms in the S&P 600 small cap index have no
2 women directors, and that compared with 21 percent for
3 the S&P 400 mid cap index, and 7 percent for the S&P
4 500.

5 Not surprisingly, some investors have been
6 pushing for more robust disclosure. To respond to
7 these issues, Chair White directed the staff to review
8 the current diversity disclosure rule and the extent
9 and quality of disclosure that have followed, with an
10 eye toward revising the rule if we thought that was
11 warranted.

12 So, Corpfin staff informally sampled diversity
13 disclosure in companies' 2015 and 2016 proxy
14 statements, and so they were looking at 120 companies
15 of varying size and industry focus. In general, we
16 observed that disclosures are clear about whether a
17 company considers diversity in the selection of board
18 nominees, but less clear about how they go about doing
19 that.

20 For most companies in the sample, their
21 disclosures didn't change much from 2015 to 2016. But
22 if you expanded the 2016 disclosure to explain what
23 they meant by diversity -- and they also -- many
24 included depictions in the form of pie charts,
25 spirographs, and matrices to show their situation.

1 In September, Chair White directed the --
2 announced that the staff is preparing a recommendation
3 to the Commission to amend the rule to require more
4 specificity, including information on the race, gender,
5 and ethnicity of board members and nominees. Like you,
6 we are very interested to hear more on this topic.

7 So, I will turn it back to the co-chairs to
8 introduce our guest speaker.

9 MR. GRAHAM: Thank you, Betsy. And now we're
10 pleased to have the Honorable Cari M. Dominguez from
11 the National Association of Corporate Directors join
12 us. You may have seen in the original agenda that
13 experts from McKenzie and Company were also going to
14 present on their research, but now they're unable to be
15 here. Fortunately, Cari is quite experienced and
16 knowledgeable on the topic.

17 Cari joins us in her capacity as the director of
18 the National Association of Corporate Directors, a non-
19 profit dedicated to advancing boardroom leadership.
20 She was the twelfth chair of the U.S. Equal Employment
21 Opportunity Commission, serving in that role from 2001
22 to 2006. She currently serves as a corporate director
23 of Manpower Group and SSS Management Corp, both NYSE-
24 listed public companies, and as a trustee of the
25 Calvert SAGE Fund.

1 Cari also served in several leadership roles
2 at the Department of Labor, including as assistant
3 secretary for employment standards. Her corporate
4 experience includes various senior human resource
5 positions at Bank of America, including director of
6 executive programs. She was also partner at two
7 international executive search firms. Cari also has
8 served on numerous non-profit boards.

9 So thank you, Cari, for joining us.

10 MS. DOMINGUEZ: Thank you. Thank you very
11 much. Good morning, everyone. Thank you so much, Co-
12 Chairs Graham and Hanks, for inviting us to be part of
13 this very important committee meeting. It's a great
14 pleasure for me, on behalf of NACD, to talk about a
15 subject that's very dear and near to our heart, and
16 that's board diversity and corporate diversity. And
17 so, this is a wonderful opportunity to share those
18 thoughts, to talk about some of the programs. And I,
19 again, thank you for making this an important item on
20 your agenda.

21 I also would like to express our appreciation
22 to Chair White, who has really put this subject once
23 again, as Betsy indicated, on the front burner. Talk
24 about the importance, you know? When you've got 30
25 percent of the population increasingly diverse, where

1 do we get -- forget about capital markets if we don't
2 have the right human capital, and that human capital is
3 coming from very diverse sources.

4 So it's important that, in terms of
5 disclosure, as individuals make voting decisions and
6 informed decisions, that there is a growing interest in
7 the quality of the talent, not just in terms of the
8 skill sets, but also in terms of the consumers, the
9 shareholders that are reflected at that level of
10 leadership.

11 So this morning I'd like to share with you the
12 findings and recommendations that are contained in our
13 blue ribbon commission report that's entitled, "The
14 Diverse Board: Moving From Interest to Action." And
15 the thing is we've talked a lot about diversity over
16 the last several decades, but not that long ago I read
17 an article that came out in -- I believe it was USA
18 Today, it was a survey that asked employees, "Do your
19 companies practice diversity as much as they say they
20 do?"

21 Well, a whopping 22 percent said yes. And an
22 even more whopping 78 percent said no. So I think we
23 still have a ways to go, and I really think it's a
24 critical component, not only of board leadership, but
25 of governance. And those trends haven't really

1 improved that much.

2 So, we'd like to talk about the findings.
3 Also going to talk a little bit about some of the
4 statistics about the state of global diversity so that
5 we can put things in perspective. And I'm also going
6 to conclude with specific findings and recommendations
7 that came out of that report.

8 You know, I think that talent diversity is not
9 just the right thing to do any more, it's really the
10 smart thing to do, from a competitive business
11 strategy. And companies that see it that way will
12 simply win the war on talent, and profit from it, over
13 companies that don't.

14 At NACD we spend quite a bit of time talking
15 about diversity, not just at a specific session, but
16 throughout all of our programs. And I will share some
17 of that with you.

18 Before that, let me give you a little bit of a
19 quick overview about the National Association of
20 Corporate Directors. I'm sure you're all familiar with
21 it, but the mission of NACD is really board education.
22 How do we educate and make sure that our board members
23 are well informed, and they have all the tools that
24 they need to represent shareholders at the highest
25 level of strategic decision-making in corporate

1 America?

2 So we do that -- we have 17,000 members. And

3 if you look at the composition, we have full board

4 membership and we also have individual membership. The

5 full board membership: 73 percent are publicly-traded

6 companies, they come from publicly-traded companies, 16

7 percent from privately-owned companies, and about 10

8 percent for non-profits. And, as you can see, the top

9 represented industries really come from a highly-

10 regulated environment: banking, financial services,

11 insurance, energy, utilities.

12 We -- in addition to the 17,000 members, we

13 have 22 chapters all over the United States. So we

14 hold all kinds of director professionalism classes for

15 these individuals.

16 Some of the publications that have been very

17 well received -- cyber risk, as we know, is a hot, hot

18 topic in corporate America. Director compensation, I

19 heard a lot of comments about that this morning. We

20 have an annual survey on public company governance,

21 what are the issues that they are concerned about, as

22 well as, obviously, Dodd-Frank is a big issue for our

23 members.

24 These are some of the examples of the blue

25 ribbon commission report. Every year we put together a

1 commission, and we talk about what -- some of the

2 timely issues that are affecting board governance:

3 talent development, compensation is always the hot

4 topic, long-term value creation. How do you manage

5 short-term results with long-term value creation?

6 Strategy, and, of course, what I will talk about is the

7 diverse board. I had the privilege of co-chairing that

8 board, that commission.

9 These are four councils that NACD has. They

10 convene 400 to 500 committee chairs. And, of course,

11 it follows the structure of governance: audit,

12 nominations, compensation, and risk oversight.

13 And, of course, just like SEC, we are multi-

14 vested with all the stakeholders that really weigh in

15 on the issues of corporate governance, including

16 institutional investors, media outlets, and government

17 officials. And we're very proud of our relationship

18 with the SEC and the work that we have done together.

19 Okay. Boardroom diversity. This is a

20 statement that -- the result of a one-year-long study

21 that came out of our blue ribbon commission. Board's

22 performance really relies on its understanding of the

23 company and its operating environment. In today's

24 business landscape, the board cannot properly fulfill

25 this responsibility without having directors who

1 reflect the composition of its stakeholders,

2 particularly the employees and the customer. So what

3 we're trying to do is make sure that board governance

4 reflects the diversity that exists in the marketplace.

5 Betsy mentioned some statistics. These are

6 some of the statistics that just came out of the 2015

7 Spencer Stuart board index. We have an 8.6 percent

8 directors that are -- come from the African-American

9 descent, which is down slightly from 9.6 percent in

10 2010. These are S&P 500 companies. So, African-

11 American directors make up 8.6 percent. Hispanic-

12 Latino directors, 4.8 percent, a slight increase from

13 4.2 percent. And Asian descent, 1.8 percent, a slight

14 increase again from 1.3 percent.

15 So, as you can tell, the ethnic and the racial

16 diversity of board members has really kind of stayed

17 static, kind of stagnant, it really hasn't progressed

18 to the extent that we had hoped.

19 If you look at women, women make up about 20

20 percent of all directors. About 75 percent of all S&P

21 boards have 2 -- at least 2 women directors. And,

22 interestingly, from all independent directors that come

23 internationally, that has come down. I think it

24 probably has to do with the logistics of travel these

25 days. It's very difficult. But it's gone from 12

1 percent back in 2014 to 9 percent in 2015.

2 The median age of board members has gone up

3 from 61 to 63. I think that has to do with the fact

4 that a lot of companies now have extended the age, term

5 limits, to 72, to 75. Some don't have age limits,

6 which really has -- and we'll talk about this in a

7 little bit, but has an impact on the ability of new

8 board members to come in to the board.

9 If we look at the state of board diversity in

10 the U.S. compared to other countries around the world,

11 I think we're at -- in terms of European countries,

12 we're number 11. Norway, Sweden, France, Italy have

13 approached the gender inclusion issue through targets

14 and quotas. So they are pretty firm about, you know,

15 the representation of women, and looking for ways to

16 accelerate that representation.

17 Australia and the UK, in particular, have used

18 other kinds of things that have nothing to do with

19 quotas, and we'll get into that in a second. But it's

20 been equally as effective, and continues to be quite

21 effective. And, of course, in the United States, we --

22 as has been indicated, the disclosure statement doesn't

23 really give us much of a window to make some

24 comparisons, in terms of the growth that we have and

25 companies have diversity and which ones don't, in terms

1 of ethnic and racial diversity.
 2 So, the findings from the blue ribbon
 3 commission: directors and stakeholders agree on the
 4 importance of increasing boardroom diversity, but the
 5 progress has been quite, quite slow. And it's been a
 6 very sluggish transition. It really hasn't kept up
 7 with the technology, it hasn't kept up with the pace of
 8 business, as well as the human progress, in general.
 9 This is the most recent survey that we have,
 10 2016-2017 new findings. Boards are largely relying on
 11 expanding their search criteria for new candidates and
 12 diversifying the composition. So boards have
 13 traditionally looked at certain search firms. Now
 14 they're saying, okay, let's expand the criteria.
 15 There's a bias towards CEOs, or presidents of operating
 16 divisions. They say, "What about somebody with an IT
 17 background? What about somebody with international
 18 experience?" So the criteria has been broadening in an
 19 effort to increase the representation of prospective
 20 board members.
 21 And, please, if you have any questions at any
 22 point, feel free to ask. Any questions so far? No?
 23 MR. GRAHAM: Yes.
 24 MR. AGUILAR: I have a question.
 25 MS. DOMINGUEZ: Yes.

1 MR. AGUILAR: You mentioned that Norway,
 2 France, and Sweden have quotas that they fill to
 3 include women on boards. Where do those quotas come
 4 from? Do they come from regulation? Do they come from
 5 legislation? Internal policies? Can you talk a little
 6 bit more about that?
 7 MS. DOMINGUEZ: Sure. Most of them are
 8 legislative, mandated. And some are regulatory
 9 executive mandates. For example, Germany, they just
 10 imposed a quota that -- through -- directly through
 11 Angela Merkel.
 12 So, it comes in different iterations, but it's
 13 either through rulemaking or its legislatively imposed.
 14 Norway was legislatively imposed, and they actually are
 15 at the top of ranking at 40 percent representation. So
 16 it varies, and I will talk about the UK and Australia
 17 in a second, but they are actually using other non-
 18 quota tools to really achieve more of a gender equity.
 19 Unfortunately, the ethnic and racial
 20 components don't apply outside of the United States, so
 21 our comparisons are mostly on the gender side and on
 22 the ethnic or racial side outside of the United
 23 States.
 24 I mentioned this before. A few boards are
 25 adjusting tenure limiting mechanisms or adopting formal

1 quota to promote diversity. They don't really talk
 2 about quotas for those companies within the United
 3 States, they talk about the 30 percent coalition. They
 4 try to set targets to try to encourage chairs and
 5 nominating committee and CEOs to reach those targets
 6 through peer pressure, through public CEO sort of -- a
 7 little bit of cajoling, if you will. But we don't
 8 really have -- as we know, we don't really have --
 9 impose quotas. We do have that peer pressure that
 10 we'll talk about in a second in more detail.
 11 Let's see, expanded director search criteria,
 12 diversify composition of the nominating and governance
 13 committee. This has been a pretty helpful tool to try
 14 to get more consideration of diversity, to try to get
 15 the nominating committees to reflect some diversity.
 16 Historically, we haven't had that much diversity, but
 17 this has been a helpful tool. One of the boards that I
 18 sit on, which has changed the chair of one of the
 19 committees, and, you know, it's -- really has expanded
 20 the conversation as it relates to diversity.
 21 One other option is to increase the size of
 22 the board. When the board is actually shrinking or
 23 down to an average of 9, 11, increasing the size of the
 24 board to allow for new board members has been a
 25 positive way of increasing diversity at the board

1 level.
 2 Let's see, institute or change tenure limiting
 3 mechanism. Again, with board members getting older and
 4 not -- there is a little bit of reluctance to leave a
 5 board, because there is a perception that if you're
 6 asked to leave a board, that there is -- you know, it's
 7 kind of a stigma attached to it. And so we're trying
 8 to think about what -- if you have term limits, or
 9 something like that, where board members can be -- can
 10 move around and participate in other boards, I think
 11 that would be a positive way.
 12 You know, we talk about the representation of
 13 African-Americans and Hispanics, but essentially a lot
 14 of those individuals are being recycled. They are
 15 going from one board to the other, so we're not really
 16 growing the base, we're just having that -- and if you
 17 have women of color, that too, you know, changes the
 18 discourse.
 19 So, how do we change that, you know? What
 20 types of criteria do we look at? And I think some of
 21 the things we've talked about, looking at -- you know,
 22 you don't have to be a CEO, you don't have to run a
 23 major division exclusively, although there is a bias
 24 toward those types of credentials. But we have the
 25 talent pool, we have the pipeline, and I think it's

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1 more of building the awareness and some of the
 2 accountability that goes with it.
 3 And some have adopted the racial or gender
 4 diversity targets, but that's few and far between. I'm
 5 not -- this is summary data, so I'm not really aware of
 6 which companies have adopted that.
 7 In terms of public -- the boards of larger
 8 companies are far more likely than those of smaller
 9 companies to discuss diversity of their members. Some
 10 of the informal surveys that we have conducted, we have
 11 found that it's very little discussion at the board
 12 level about diversity. A lot of the discussion takes
 13 place at the committee levels, but not really at the
 14 board level, the full board.
 15 And half of the small cap respondents said
 16 that their boards did not discuss gender diversity, and
 17 most didn't discuss racial or ethnic diversity. As you
 18 can see in the chart, it really depends on -- we talk a
 19 lot about professional industries, skill sets. We talk
 20 a lot about gender diversity, a little less about
 21 ethnic and racial and age diversity and other kinds --
 22 international experience is another one.
 23 Now, if we look at Australia, for example, I
 24 think it's a good example, as this Commission, SEC,
 25 considers expanding or amending their S-K regulation.

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1 They have actually brought change in a non-quota market
 2 by calling on boards to establish measure and report
 3 their diversity outcome. What proportion of their
 4 boards are women? What proportion of their senior
 5 managers are women? And if they don't wish to report
 6 it, why not? You know, what's the reason why they
 7 don't want to report it?
 8 So, I think they've made some significant
 9 progress by calling on these requirements in order to
 10 be listed as part of their Australia stock exchange.
 11 And they do have champions of change. They have a
 12 coalition of very high-profile businessmen, primarily,
 13 that are -- have coalesced to talk about diversity, and
 14 to talk about gender inclusion as a competitive
 15 business asset, not as a nice-to-do or, you know, we're
 16 falling behind, but as a competitive business asset.
 17 If you look at the United Kingdom with Lord
 18 Davis, it was a government-backed commission that
 19 examined the under-representation of women, and they
 20 have had tremendous success. They had set a goal of 25
 21 percent by 2015 and, in fact, have exceeded that goal
 22 last year. So now they're trying to increase it.
 23 They have an approach called name and shame,
 24 which is if -- they use the press, they use whatever
 25 public bully pulpit is available to talk about the

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1 companies that have increased their representation
 2 versus those that have not increased their
 3 representation. So, last I heard, there was one or two
 4 that hadn't quite gotten there. And, you know, a
 5 couple of phone calls, a little nudging, and -- just
 6 really helped. So let's not under-estimate peer
 7 pressure as it relates to opening up inclusion and
 8 diversity.
 9 It's a voluntary framework led by business.
 10 The Coalition of British Enterprises is a very, very
 11 powerful -- led by business leaders, and they have been
 12 pushing for change.
 13 Institutional investors pressure big business.
 14 There is also this assumption that if you served on a
 15 board longer than nine years, you're not really
 16 considered independent. They're considered more --
 17 less independent than those who have served for less
 18 time.
 19 This is the -- what the trends has been for
 20 non-quota markets. And I think it's relevant because
 21 we're not thinking -- you know, United States doesn't
 22 recognize quotas as an acceptable tool in the
 23 marketplace. So I think the fact that we have some
 24 examples of opportunities to reach gender inclusion,
 25 gender diversity, and racial and ethnic diversity

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1 without that component, you can look at the trend line.
 2 This is only to 2014. The numbers have gone up
 3 significantly last year.
 4 These are the basic findings that our
 5 commission found. First of all, we said we had some
 6 serious structural factors that are keeping -- that are
 7 slowing down the pace of inclusion at the board level.
 8 The absence of tenure limiting, as well as limited
 9 mechanisms such as term limits, that has been a
 10 structural issue.
 11 The recommended solution has been to preserve,
 12 enhance, or consider adding mechanisms to increase
 13 director turnover. One of those tools is board
 14 evaluations, you know. We don't really evaluate
 15 boards, the full level, on a general basis. So that's
 16 an opportunity to do it.
 17 We also have, structurally speaking, small
 18 board sizes. Again, a lot of the boards are going down
 19 to 9 or 11 as sort of the average range. So if you're
 20 thinking of diversifying, one option would be to
 21 include -- to expand the board seat until there is some
 22 turnover, and allow that person to serve as sort of an
 23 understudy for that period of time.
 24 As I mentioned, we have inadequate use of
 25 evaluations, inadequate use of executive talent

1 management to develop directors from within.
 2 Succession planning and the tools that exist have not
 3 been as effective. The pipelines haven't reached the
 4 point that would allow a critical mass of women and
 5 ethnic and racial diverse perspective board members to
 6 reach and be considered and be visible for those
 7 levels. So talent management, it's a key factor, I
 8 think, not just for board participation, but certainly
 9 for overall enhancement of representation at all levels
 10 and areas of employment. That's -- that was one of our
 11 recommendations from a structural perspective.

12 From a social factors perspective, little
 13 knowledge of where to find candidates -- it's hard to
 14 believe, but we find -- our experience has shown that,
 15 a lot of times just go to the same network. And if the
 16 network is so -- you're not going to get a whole lot of
 17 diversity.

18 Also, overboarding of certain stars. Rock
 19 star board members. And I talked about that before.
 20 We have the same representatives going from one board
 21 to another. It's not unusual to find an ethnic or
 22 racially diverse individual to serve on three or four
 23 boards, sometimes to the detriment of others that are
 24 coming up, because typically it's only one or there is
 25 maybe two. So the number of seats are quite limited.

1 There is also great reluctance of sitting
 2 directors to leave a board. And so maybe adhering to
 3 term limits to build turnover acceptance might be
 4 another option, another solution. Not one that is
 5 highly popular, but a possibility.

6 And the other thing that we have found is
 7 often times the term "minority" captures all of the
 8 ethnic groups, or consolidating -- you know, we have 10
 9 percent representation of women and minorities, as
 10 opposed to dividing it and saying, okay, let's -- you
 11 know, what exactly is the representation of women and
 12 ethnic and racial minorities?

13 And like I said, sometimes you have a woman of
 14 color that meets -- you know, so they check both boxes,
 15 but it really is one person serving on the board. You
 16 can relate to that, using that?

17 (Laughter.)

18 MS. YAMANAKA: Totally. I'd like that not to
 19 be the case.

20 MS. DOMINGUEZ: Yeah, me too. Then we have
 21 the habitual factors: failure to put diversity on the
 22 board's agenda as a discussion topic. So we strongly
 23 -- NACD strongly recommends that we do that, that we
 24 put it on the agenda. Often times it stays with the
 25 compensation and human resources committee, as opposed

1 to full board discussion. But elevating the topic as a
 2 competitive business strategy, I think, is one of the
 3 recommendations that we have been advocating for a
 4 number of years.

5 Again, tendency to seek only CEOs, public
 6 company directors for board seats, and the lack of
 7 diversity in the nominating governance committee.
 8 These were the structural, the social, the habitual
 9 factors that we believe are keeping the gender balance,
 10 ethnic, and racial representation, not moving at the
 11 pace with which we would have expected by now.

12 So, the goals are a comprehensive definition
 13 that should include -- must include gender, race,
 14 ethnicity, and skills, and we not only talk about that
 15 in the diverse board commission report, we talk about
 16 that in all the commission reports we've had since.
 17 This is a diverse board. We talked about strategy
 18 development. So it's very important that we integrate
 19 diversity, not just for -- talk about diversity, but to
 20 integrate it into all aspects of the company practices.

21 Again, finally, discussing in depth board
 22 discussions about critical topics like diversity.
 23 Select and implement solutions. Expand our horizons
 24 for recruiting candidates and improve director
 25 evaluation.

1 And disclosure. We think disclosure is a
 2 critical component, and we really support the
 3 liberations that are taking place right now here, with
 4 respect to how to enhance, how to enrich the disclosure
 5 requirements to allow shareholders to make informed
 6 decisions, investment decisions, and voting decisions.
 7 But we think the disclosure could really help the
 8 process significantly.

9 Other things that have -- and you're very
 10 familiar with that, that's mentioned, the GAO report
 11 that said that they will take another 40 years to reach
 12 gender parity. I believe Catalyst, which is a research
 13 organization in New York, came out with a study not
 14 that long ago that said that if we're looking at
 15 pipeline in terms of entry level all the way to board,
 16 it could take 100 years to have a critical mass of
 17 women moving up the pipeline in significant numbers to
 18 reach parity at the board level. So, that's -- 100
 19 years, 40 years, that's quite a challenge. I don't
 20 know. I know I'm not going to be here to see that.

21 But obviously, public pension funds have
 22 petitioned you to require disclosure. It's very
 23 simple, just put a little chart, a matrix. I had
 24 gender identity and ethnic and racial, and it's not
 25 going to be very burdensome, in general, but it would

1 help the disclosure, knowing how the appointment
 2 process is proceeding.
 3 And we've got a number of state initiatives
 4 that have passed resolutions urging for more women on
 5 boards. And, by extension, ethnic and racial diverse
 6 board members.
 7 This is a coalition I talked about, the Thirty
 8 Percent Coalition, organization of executives that
 9 really press, use peer pressure, use publicity. I know
 10 they've pushed for increased SEC diversity disclosure.
 11 I attended their meeting last November, and it really
 12 has taken a lot of momentum in the private sector.
 13 And, of course, we have impact investment
 14 funds that are being created to generate social change,
 15 as well as financial returns: State Street Global
 16 Advisors, we've received \$250 million investment from
 17 CalPERS to take a look at gender diversity.
 18 In conclusion, you know, I think we have all
 19 of these pieces converging. But all together, I think
 20 at the end of the day it's really about how do we
 21 influence change. I -- it's going to take a village.
 22 It's going to take everyone from different angles, but
 23 it's also going to take strong leadership, and a change
 24 in the corporate culture. If we don't change the
 25 corporate culture, you're going to have a CEO who is

1 very passionate and really works well with a board.
 2 And once that CEO leaves, the change -- you know, there
 3 might be some regression in that advancement. So it
 4 does take leadership, it does take a change in the
 5 corporate culture.
 6 And we think, by having all the stakeholders
 7 involved, whether they're regulators, whether they're
 8 legislators, the private sector, the social groups, the
 9 associations like the Chamber of Commerce, all of those
 10 groups working together to recognize that this is no
 11 longer a social matter, it's really a business
 12 imperative. That's what's going to, I think, drive
 13 change.
 14 And I love this quote from Thurgood Marshall.
 15 And he says, you know, "The law can only push open
 16 doors and tear down walls, but it cannot build bridges.
 17 And that job belongs to you and me." I think the key
 18 here is how do we keep the burdensome -- the burdens of
 19 data reporting to a minimum, and at the same time allow
 20 for sufficient information with which to make informed
 21 decisions. So, SEC really has a critical role to play
 22 along those lines.
 23 MR. GRAHAM: Well, thank you very much, Cari.
 24 I think we can agree that diversity is what you make
 25 it. If something that doesn't work -- if we're trying

1 to generate information for shareholders and to assist
 2 with governance, an adequate definition is needed. And
 3 certainly diversity of thought and experience and the
 4 right skill sets, all those things are important and
 5 are part of the conversation.
 6 It sometimes becomes a more difficult
 7 conversation when we talk in terms of gender and ratio
 8 and ethnic diversity and sexual orientation and, you
 9 know, those kinds of things. You know, but those --
 10 but that should be part of a definition, as well.
 11 The SEC, as we know, cannot mandate diversity.
 12 And I know that some quotas have imposed quotas and
 13 that sort of thing. And even if we were in a position
 14 to impose quotas, I wouldn't be in favor of that. But
 15 I think the SEC clearly does have a role, in terms of
 16 disclosure, of course, and related to education
 17 regarding things that are important to investors in the
 18 context of company performance.
 19 The -- you know, I'm convinced that there are
 20 those corporations out there whose boards are lacking
 21 in diversity because their thinking is similar to that
 22 of the mid-20th century Red Sox. You know, even if
 23 it's only through the magic of implicit bias. Maybe
 24 they don't even know it.
 25 I'm equally convinced that there are those

1 corporations out there lacking in board diversity
 2 because they really are not paying attention, and not
 3 really aware of -- you know, in terms of percentages --
 4 the under-representation of minorities and women.
 5 And I think that there are those corporations
 6 out there that are not really aware of their own
 7 boards, because they look around at their boards and
 8 their subconscious tells them that what they see is
 9 normal. They do not depreciate the implicit bias or,
 10 as I've said before, don't -- do not acknowledge an
 11 unwillingness to get out of their comfort zone when
 12 thinking about what their colleagues look like.
 13 So, with that, let me open it up. Comments?
 14 Kyle?
 15 MR. HAUPTMAN: That was a great presentation.
 16 And the materials provided for this provided a lot of
 17 great information, including an editorial by Chair
 18 White.
 19 I think your organization, as a private-sector
 20 organization, is in a terrific position to do this.
 21 The one thing that set off alarm bells when I read
 22 about the UK, government-backed commission. I guess it
 23 wasn't a government mandate, but it was a government-
 24 backed commission was doing naming and shaming. I
 25 would think if you went out to most of America and said

1 there is the free enterprise system, people working,
2 and then there is the public servants in D.C. whom they
3 hire, that if there is any naming and shaming to be
4 going on, I'm not sure they would think it should be
5 going from D.C. out to them. Right?

6 That Jackie Robinson example, which I use all
7 the time -- I am actually a fellow UCLA alum -- they
8 didn't just do it, hire Jackie Robinson, because it was
9 fair to him, which it was. The Dodgers did it because
10 it benefited the Dodgers. Now, imagine the teams that
11 did not go after the right talent. Imagine they ceased
12 to exist. Well, that's what the business world is.

13 So, the free enterprise system -- that's why I
14 think our main goal is to make sure we have robust
15 markets and easy -- lower barriers to entry in every
16 industry, because the good practices, by definition,
17 win out. So we won't have practices that are harmful
18 because they lose, right?

19 And let me just throw this anecdote out. I
20 went from high school to college from -- my high school
21 had virtually no -- it was out in the country, up in
22 Maine -- almost no diversity the way college
23 administrators think of it. Those brochures they send
24 you that says, "Look, we have upper middle class people
25 of all races, or at least people who can afford our \$60

1 dad this weekend and my brother," they were never
2 talking about going to a penitentiary to do so, despite
3 the massive amount of incarceration in this county.
4 How on earth do you not know anyone like that?

5 When I said that starting at 13, when I worked
6 at a restaurant, you know, for \$3.65 an hour, washing
7 dishes, it was amazing how many people you met in
8 college who had only worked, like, in internships and
9 at law firms, you know, that never wore a uniform, you
10 know.

11 And my point here is not that all these folks
12 ought to endeavor to know felons and know people who
13 get pregnant as teenagers or work crappy jobs like I
14 did. My point is they ought to stop saying that they
15 know about diversity that well.

16 And it is an irony to me that the discussion
17 of diversity often falls victim to the same group-think
18 with which we are talking about. If there was a
19 company started by some folks in a part of this country
20 that either geographically or because of recent
21 immigrant groups culturally has a lot of stay-at-home
22 moms, for example, that area might have a harder time
23 finding qualified professional women to serve on their
24 board. But in Volvoland, if we went to Palo Alto or
25 Westchester County or to McLean, Virginia, where people

1 sweatshirt."

2 And then I went to college, and my graduating
3 class at college was 27 percent white students, right?
4 So, obviously, 73 non-white. And I noticed that the
5 people who used the word "diversity" the most,
6 including people on payroll at the university, they
7 were the most blown away when I talked about my high
8 school, that we had day care at my high school for the
9 girls that were pregnant -- it was a room off the
10 cafeteria -- that getting your diploma, you know, a
11 woman who is visibly pregnant with the gown, was not a
12 strange thing.

13 And these people, fellow students, were
14 astonished by this, despite -- especially back then --
15 a massive teenage pregnancy epidemic in this country.
16 I was like, "How do you not know anyone like this,"
17 right?

18 The fact that -- I remember I bought a ticket
19 for \$250 to go on spring break. It's the first time in
20 my life I'd ever been on a plane for leisure travel,
21 and people were astounded by that. How on earth did
22 these folks who talk about diversity not know anyone
23 like that?

24 As they used to say somewhat disparagingly
25 back then, when they talk about, "I'm going to see my

1 use the word "summer" as a verb, and there is -- they
2 can afford nannies, and there is no shortage of
3 professional women, are we really trying to handicap
4 the recent immigrants in favor of the haves, and call
5 that a win that we're doing for our country?

6 If I was outside the United States, competing
7 with an American company, I would be envious of the
8 diversity that we can provide in this country. These
9 statistics, I believe in them wholeheartedly, about the
10 benefits of them, both the psychological studies and
11 the financial benefits. But if I was competing, and we
12 decided to use that, which is easily measured, which
13 race and gender are, and put it into a quota, or naming
14 and shaming from government, I would then be pleased as
15 an outsider, and say, "Look at Americans, they're
16 handicapping themselves, they're doing my work for me."
17 How weird for the American Government to hard American
18 investors and workers.

19 And I say that -- again, back to my original
20 point. A private-sector organization like yours
21 spreading information and best practices is a
22 phenomenal way to do it, and the market does it even
23 better. Right? Again, the teams that didn't embrace
24 the talent disappear. That's what the business world
25 is like.

1 But I just caution. I think sometimes when we
2 provide guidance, and then we say, oh, you know, this
3 is soft and it's not mandated, I -- guidance from
4 government and suggestions is sometimes like Bamm-Bamm
5 from the Flintstones, like have no idea how strong they
6 are.

7 And I'm reminded when the 401(k) plans came
8 in, small business got a little pamphlet to explain
9 what a 401(k) was and how it worked. And it said on
10 it, you know, as an example, so if the worker got three
11 percent out of paycheck pre-tax, and then the employer
12 kicked in three, it all goes in. To this day, three
13 percent is the most common employer match because of
14 that pamphlet, because people were like, oh, the
15 government said to me I bet if I do this, I'm going to
16 be all right.

17 So, when we do easily-measurable things -- and
18 remember what I was talking about when I went from high
19 school to college, from the supposedly less-diverse
20 place to the very diverse place, and how stunned they
21 were at very common life experiences, all I'm trying to
22 say here is that we just need to be very careful, the
23 power of government that often can be counterproductive
24 and fall victim to the same group thing that we're
25 trying to avoid with this discussion of diversity.

1 MR. GRAHAM: Thank you, Kyle. You know, I
2 think you're exactly right. I mean you don't want to
3 fall victim to the easy. You know, unfortunately, I
4 think that those are -- that there are those out there
5 who say we should do nothing because it's hard. So I
6 -- pardon me?

7 MR. HAUPTMAN: Who is we? Or those that say
8 we should do nothing? Who is we?

9 MR. GRAHAM: Commentators. There are people
10 of the opinion that this whole -- this -- that there is
11 this inability to define what is diverse. And, as a
12 result, this is something that we should be very, very
13 careful about getting into.

14 I don't -- so, in other words, coming up with
15 a definition is hard. And, you know, personally I'm of
16 the view that that shouldn't -- the fact that it's hard
17 shouldn't be a determining factor.

18 And we should also understand the limits. I
19 think that you've very well pointed out some of the
20 limits. The idea -- and in terms of mandate, we're not
21 going to tell anybody to do anything, other than
22 disclosure what you are doing. And if -- and from
23 there, the choice is yours.

24 And I think we can all probably agree, in
25 terms of coming up with a definition that might be more

1 useful, that there are certain things that definitely
2 should be a part of that definition. At the same time,
3 we have to understand and respect that we cannot come
4 up with a definition that's going to include everything
5 that should be included. I think it's a mindset that
6 we encourage doing what you need to do to get away from
7 group-think and that sort of thing.

8 And, you know, the examples that you
9 mentioned, that's -- those are examples of real
10 diversity, something, I think, that most of us can
11 appreciate in terms of background. It doesn't just --
12 it doesn't have to be race, ethnicity, gender. But I
13 think that race, ethnicity, and gender have to be part
14 of the conversation.

15 MS. KASSAN: I think Kyle made some
16 interesting points that brought up for me the question
17 of class diversity, because that is not really part of
18 the conversation. People who serve on corporate boards
19 are generally a, you know, very privileged class. So,
20 I'm not sure what the answer to that is, but I'd love
21 to keep that in mind, as well.

22 MR. HAUPTMAN: Yeah, it's the Golden Rule: He
23 who makes the rules usually gets the gold.

24 MR. GRAHAM: Xavier?

25 MR. GUTIERREZ: So I have a number of

1 comments. But first I want to start by thanking you,
2 Stephen, and you, Sara. When I gave you a call and
3 asked you to put this on the agenda, you were very
4 enthusiastic about it, and we had a wonderful
5 conversation prior to that. And you also informed me
6 that this was an issue that had been previously
7 discussed by this committee. And so I was very, very
8 happy to hear that it had been a topic and that we
9 would continue to engage in this.

10 I also wanted to applaud the commissioners for
11 engaging in this conversation, and particularly the
12 chair, who have seen the importance of this discussion
13 and have really taken a leadership of that. And in
14 absentia I really want to thank a former SEC
15 commissioner, Luis Aguilar, who is a dear friend of
16 mine, who -- this topic was a very, very important part
17 of his tenure on the Commission, and who clearly still
18 sees the importance of it in private life.

19 A couple of comments. I think that we don't
20 need to belabor the point, but clearly diversity is a
21 business imperative. And if you look at the consumer
22 base, if you look at the shareholder base, if you look
23 at who is creating businesses in this country, it looks
24 very different than it has in the past. And I believe
25 that corporate America and others -- and the data

1 supports this -- needs to adapt. It needs to adjust.
 2 Now, how to do it? And I echo the comments --
 3 Kyle, that we have to be very careful of what it is to
 4 be diverse. You brought up socio-economic diversity,
 5 which I think is really, really non-existent in the
 6 conversation of diversity discussions. And so I would
 7 agree with you.
 8 But to Stephen's point, just because something
 9 is hard to define, doesn't mean that we shouldn't
 10 undertake exploring it. The role of the SEC, I
 11 believe, is to be more clear in its disclosure
 12 requirements. I believe that several of the
 13 recommendations brought forth by The NACD and other
 14 organizations should be things that the SEC should
 15 undertake because, again, you can't improve what you
 16 can't measure. Those in Silicon Valley love data, in
 17 particular, and clearly we are having a data problem to
 18 start.
 19 And so, I would very strongly urge the
 20 Commission to think of ways to improve its disclosure
 21 in order to address this matter.
 22 I was particularly, I guess, disturbed by the
 23 fact that small companies, in particular, don't
 24 entertain or engage in this conversation. One, because
 25 there is more of them. Two, because they tend to, in

1 essence, be the bench for the directors for larger
 2 companies. So, when we're talking about some of the
 3 structural issues, directors on smaller company boards,
 4 whether public or private, tend to be the candidates
 5 for larger-company boards.
 6 And so, if we are having a particular lack of
 7 engagement at that level and size of company, then
 8 clearly we're going to have an issue at the larger
 9 companies. And so, given our purview in terms of
 10 smaller companies, public and privately held, I think
 11 it's especially important that the SEC Commission and
 12 staff look at the small companies and the micro-cap
 13 companies, and what they're doing in terms of
 14 disclosure, not only of the results, but also of their
 15 policies. So thank you.
 16 MR. GRAHAM: Thank you. Sara?
 17 MS. HANKS: Yeah. I just want to respond to
 18 something that Xavier said there, which is -- I mean
 19 coming to this as the small and emerging companies
 20 committee, people might think, well, you know, this is
 21 a thing for big companies. But as we have seen, there
 22 is a tendency for smaller companies to stay private
 23 longer, and then they suddenly emerge on the public
 24 company space, where they become regulated by the SEC.
 25 And at that point they're like, oh, yeah, we

1 have a board. It's 12 guys. And we've seen that
 2 recently in one of the very, very big companies who
 3 suddenly emerged and started to file, and everyone
 4 goes, "Ha, you've just got guys on your board. Do you
 5 not know any women? Are there no women in California?"
 6 And it was -- to build on something that Kyle said,
 7 there was the -- nobody needed to name and shame them
 8 from the government point of view, because Twitter did
 9 it for them. And they said, "It's so sad you don't
 10 know any women." And, goodness, they went and found
 11 one or two and appointed them. And how easy that was.
 12 And so, it is -- this is an area that is very
 13 much within the remit of this committee, because if you
 14 don't do it when you are small and emerging, you're not
 15 going to have fixed it by the time you go and do your
 16 IPO.
 17 MR. GRAHAM: Thank you. Greg?
 18 MR. YADLEY: I also would like to thank you,
 19 Cari. And I think the dissemination of information on
 20 why this is good shouldn't be necessary. But
 21 particularly the studies that show that companies
 22 perform better, including their financial results, that
 23 is very powerful, and it gets the discussion going.
 24 I have some reason to be optimistic that we
 25 will get there. To come back to my earlier comment

1 about exponential, I'm not that old, but when I was in
 2 law school I went to a national law school, and I think
 3 there were 11 women in my section, and there were 3
 4 sections, not very much. Our law firm, new hires are
 5 at least 50 percent women, which reflects the
 6 diversity, gender diversity, in the law schools. Not
 7 doing nearly as well, racially.
 8 My daughter-in-law is a physician. She's
 9 finished her residency. Majority of women. And I was
 10 proud to send an article from my alma mater, Dartmouth,
 11 where the engineering school this year graduated more
 12 women engineers than any -- than men. And that was the
 13 first time for a major engineering school. So,
 14 hopefully, exponentially, women are taking place. And
 15 it's not a situation where Sara just mentioned, where
 16 we don't know any women, because they're sitting right
 17 there. But it may take 40 years.
 18 I think that once the discussion gets started
 19 -- some of the earlier comments that were made about
 20 we're in business, you know. Who is investing? Who is
 21 buying our products? What are the social forces? So I
 22 think it can happen, and I think the disclosure ability
 23 of the SEC is extremely powerful, as Kyle said, with
 24 the three percent example. You know, I think if you do
 25 that, maybe it will encourage us all to build more

1 bridges.

2 MR. GRAHAM: Thanks, Greg.
3 Patrick?

4 MR. REARDON: I said I wasn't going to
5 comment, but -- I said that to myself -- but lest I be
6 considered the redneck from Texas. But let me start --
7 I don't expect any kudos for this; I did it because it
8 was the right thing to do -- but the only lawyers or
9 law students I have employed during my legal career
10 when I've been on my own have either been women or
11 African-American. And the African-American was a -- I
12 hired him when he was a freshman at University of Texas
13 at Arlington. He is now a graduate of Washington and
14 Lee Law School. I'm glad that I could help with that.

15 So I don't think I'm really a redneck or
16 anything like that, but I do have a slightly different
17 approach. And I think the first thing is to say that
18 your presentation needs to answer -- and maybe I didn't
19 watch as carefully as I should -- but if you go into a
20 president or CEO and you talk to him, I guess the
21 question he or her -- and my daughter is in management
22 at a company that's run by a woman, a public company,
23 Silicon Valley -- is, "How is this going to make more
24 money for me?" Okay?

25 And I think there are some very good answers.

1 I mean one of the subjects I've given a great deal of
2 study in my life is women. And including reading some
3 of people like Deborah Tannen, and the different ways
4 that women see the world. I'm sure African-Americans,
5 male or female, there is research on that, too.

6 So, I mean, you -- if you can package this and
7 go to somebody with, "This is good for business," not
8 that you're going to get embarrassed or you're going to
9 get shamed into this -- and that makes somebody just
10 push back -- but if you can do that and put it in a
11 context of, "You're going to make more money doing
12 this," I think -- I would think first in retail or
13 manufacturing, that different tastes and different
14 perspectives -- that's an easy one to sell.

15 The industries that have traditionally fewer
16 African-Americans or Hispanics or women in them -- and
17 there are a number of them -- that's a harder sell.
18 But I think you're going to have to -- that would be
19 how I would sell this. And I'm not as rabid as Justice
20 Clarence Thomas, but I do think there is an element
21 that if you force people to do this, either by shaming
22 or quotas, then you become -- you run the risk that,
23 oh, that's our quota director, you know? And I don't
24 want to do that, because I don't think it's necessary.
25 I mean I don't think -- you know, I wouldn't say it,

1 but I know there are people who would say that.

2 But -- so I'm more of the persuasion, rather
3 than the -- the quiet persuasion than I am either the
4 shaming or formal requirements. I mean I think if you
5 can fashion an argument, like I said, that this is good
6 business, that you'll get more cooperation, rather than
7 SEC disclosures or anything like that. So -- or
8 policies.

9 So I hope I don't offend you by that
10 perspective, it's not my intent. Anyway --

11 MR. GRAHAM: You know, I think that you and I
12 are pretty much on the same page. I too am not a Texas
13 redneck.

14 (Laughter.)

15 MR. GRAHAM: But I do agree with you, that --
16 and it's a point that I've tried to make, and perhaps
17 not very clear, and that is that things like naming and
18 shaming, or however you want to put it, don't have any
19 relevance in this context. This operates at two
20 levels: disclosure and what's right, if you will. I
21 think we are concerned with disclosure, even if they
22 end up doing something that's right as a result.

23 But I think the important thing here is -- and
24 why this should be of interest to shareholders is the
25 economic argument, that, you know, we're talking about

1 things that are important in the eyes of, certainly,
2 many shareholders, if not most, something important
3 that goes to the heart of the performance of the
4 enterprise.

5 Yes, Cari?

6 MS. DOMINGUEZ: Yeah. Well, thank you. Thank
7 you for that comment. And I just want to clarify the
8 naming and shaming is a tool that's used in the UK.
9 NACD is not advocating naming and shaming. We are just
10 saying this is an approach that has been effective in
11 that particular forum.

12 I do believe that we treasure what we measure,
13 and I think people pay attention to what is reported
14 and what's disclosed, as a tool. So what we're saying
15 is there is unconscious bias, and we spend a lot of
16 time looking at unconscious bias, even when you have
17 things like the Rooney Rule, for example, that says you
18 must have an African-American to be considered for a
19 coaching job. Well, sometimes you just -- it's
20 prescriptive, you go through that process, but it
21 doesn't really yield the results intended.

22 So I think -- and I believe -- I reflect the
23 views of NACD when I say that we don't want a
24 prescription, we just want disclosure. I wore the hat
25 of director of the office of federal contract

1 compliance programs when I launched a glass ceiling
2 initiative. And there was all kinds of regulations,
3 and The CEOs would say, "Well, Cari, we did everything
4 we're supposed to do," but there were no results,
5 because it wasn't given to their creativity, to their
6 culture.

7 So you have to be flexible, but I do think
8 that disclosure is an important tool for people to make
9 informed decisions.

10 MR. GRAHAM: Kyle? Robert?

11 MR. AGUILAR: So I think that talking about
12 race is or can be uncomfortable, right? And it seems
13 to be a little uncomfortable in the room right now
14 because we are talking about it. So I applaud the SEC
15 for, you know, putting the disclosure requirement out
16 there, so that, you know, Stephen, to your point, you
17 said that it's hard to have a dialogue. Well, if it's
18 out there, it's going to be easier to put that on the
19 table and have that dialogue, and to speak about it.

20 So, I think that, you know, somebody else made
21 a point of having a quota and, you know, just grabbing
22 any person that fits that quota to fill those
23 positions. And I don't think -- I think that would
24 harm that, you know, the diversity cause, more than
25 help it. You know, the first thing that you want to do

1 is you want to identify board members that are
2 qualified and can do the position.

3 So if the discussion is out there in the board
4 -- I mean, one of the things that you commonly hear is,
5 "Well, we can't identify, you know, African-Americans
6 and Hispanics that can fulfill these roles," and it's
7 because they're not in the mix. But if there is a
8 dialogue about it, and you're making a conscious effort
9 to identify those individuals, then it makes that, you
10 know, fulfilling the -- I don't want to say the quotas,
11 but being a more diverse company and, therefore, you
12 know, as the studies show, a more profitable company,
13 it makes it, I think, a little easier.

14 MR. GRAHAM: Thanks.
15 Michael?

16 MR. PIECIAK: Thanks, Stephen. And thank you,
17 Cari. That was an excellent presentation. And thank
18 you for the SEC, again, as -- echoing some of the other
19 comments from folks on the committee -- for taking up
20 this issue. Very important.

21 NASAA dedicated its entire spring -- or fall
22 conference, sorry, to the issue of diversity in
23 financial markets, looking through a number of
24 spectrums, including corporate board diversity.

25 And one of the things that was interesting I

1 wonder if you can speak on, because I think it talks a
2 little bit to Patrick's point and some of the other
3 points. But in Norway they mandate, you know, board
4 gender diversity of 40 percent female. So I think it's
5 important to mention that for a couple of points,
6 because I think the quota isn't effective. I think you
7 have to have a critical mass of diversity before
8 diversity is actually -- you know, makes an impact on a
9 group or board.

10 And then, two, I mean, they -- the studies
11 that looked into the Norwegian companies actually found
12 that the board, from a corporate governance
13 perspective, was more effective, and I think that's
14 where the potential for, you know, better -- you know,
15 for doing better as a company. It's not necessarily
16 bringing perspectives on a certain idea or brand, but
17 the way in which the corporation itself is governed is
18 actually improved.

19 So I don't know if you know anything about
20 that, those particular studies, and can expand on that.

21 MS. DOMINGUEZ: Well, yes, there has been a
22 lot of information about -- it's not just the
23 creativity and the innovation that diverse perspectives
24 and experiences bring, but it's also, you know, women
25 and ethnic and racial minorities are often times more

1 independent. They act more as an independent board
2 member than the board members who have been in place
3 for quite a while.

4 So, as a result of that, the corporate
5 governance process has improved. I don't have quotes
6 on the studies, but it has proven that corporate
7 governance has improved when you have more gender
8 diversity. And, by extension, I would say race and
9 ethnic. Because of the lack of -- you know, the
10 greater independence of the individuals. So that's a
11 positive.

12 Now, there has been some negative comments in
13 terms of a quota, and I know we've had that discourse
14 here in the United States for years. If, you know, if
15 you promote somebody just because that person is -- and
16 I think you referenced that, the Clarence Thomas
17 approach -- I don't want to have the stigma of thinking
18 that I'm here because I'm a woman or because I'm a
19 person of racially or ethnically diverse.

20 So, I think there is always that level. But
21 the point being is you don't take to that level the
22 unqualified, the unneeded, the people who aren't going
23 to step up and going to do their homework and be
24 prepared. I think that's the first and foremost thing
25 that one has to consider when that comes across.

1 But the record does show that it is an
2 improvement, not only from the process, but also from
3 the profitability. Thank you.

4 MR. GRAHAM: Jonathan?

5 MR. NELSON: I would be really, really happy
6 if there was an optional filing as companies were
7 actually filing for compliance, just so that if
8 companies actually did want to highlight that that's
9 The kind of work that they're doing, they can. And if
10 they don't, it's not there, it's not mandatory.

11 I'm not a Texas redneck, either, but I was
12 raised the only white child at the end of six hours of
13 dirt road in rural Honduras. My parents worked for an
14 NGO. I worked as a nurse for about 20 years, got
15 propositioned by my bosses. She didn't even buy me a
16 drink; that was kind of offensive. And it's just being
17 the odd-gendered, The odd-colored person in a room is
18 uncomfortable. I'm not saying that I know what it's
19 like to be a woman in business in the United States.

20 We, for our program in Silicon Valley in
21 training new CEOs, we have a name-blind, gender-blind,
22 school-blind process. We will actively scrub that part
23 of an application out when people actually apply to
24 join our formation program. Forty percent of our
25 companies have women on the founding teams. About 35

1 percent have Hispanics. I speak Spanish. And so that
2 explains it. Eight percent are African-American. And
3 I'm just sick and tired of trying to help these people
4 raise money from -- I'm sorry, but there is just a lot
5 of old white guys on Sandhill Road in Silicon Valley.

6 And I'm tired of hearing stories from these
7 women CEOs saying things like, "He asked if my husband
8 was the one doing the work and I was just at home
9 starting a company," or, "He said, you know, it was a
10 women's-marketed watch, GPS exercise watch, by two
11 amazingly powerful businesswomen, and they got turned
12 down for venture financing from a fairly well-known
13 firm, because one of the old GPs said, 'Well, why would
14 a woman need a fancy exercise watch? Won't a Garmin
15 GPS watch just work?'"

16 We've been working on the back side in Silicon
17 Valley on gender diversity a lot. And a lot of the
18 feedback that we get from -- and that I've heard from
19 the White House staff who are doing that work on
20 diversity in Silicon Valley was that there is just a
21 lot of pushback from The VCs saying, "It's not a
22 problem. It's a pipeline problem. It's a talent
23 problem. It's" -- you know, it's anything else, aside
24 from people having biases. And I'm just kind of tired
25 of it.

1 And it would be nice to be able to have some
2 place where, if you're doing well on diversity, you can
3 at least say, "Check, check, check, check, check, yeah,
4 we're kicking ass, and we think it's a competitive
5 advantage, and it's a business advantage." And people
6 that don't have diverse boards, they're leaving money
7 on the table. That's kind of our approach to it.

8 But at the same time, being so nervous about
9 having one form that we can check and saying, oh, we
10 might actually, you know, cause -- I mean I totally
11 hear what you're saying, Kyle, in terms of unintended
12 consequences of regulation, or that sort of stuff, the
13 three percent. That's awful. But at the same time, I
14 would like to have something so at least board
15 executives, when they're filing forms, at least just
16 have to say, "This is a form. Do we want to fill this
17 form out or not?"

18 You know, I think having that option will at
19 least bring the topic of conversation up in more
20 enlightened companies.

21 MR. GRAHAM: Thanks.

22 Kyle?

23 MR. HAUPTMAN: I just wanted to ask Cari for a
24 second. I believe the data we had on board diversity,
25 if you will, was primarily Western Europe. You had the

1 Scandinavian countries. I think you had France in
2 there, right? Was it just a lack of data that it's
3 well-off white countries, the only ones we're talking
4 about? That very well may be the case.

5 But my point is, obviously, our global
6 competition that we're facing every day is frequently
7 from places other than that. You know, Brazil, India,
8 China, Korea, that's what I think about when I think
9 about folks competing with the United States. And
10 obviously, the United States measuring itself against
11 Norway, Sweden, this is -- you know, it's like Palm
12 Beach measuring itself against Beverly Hills, you know.

13 MS. DOMINGUEZ: Right. No, there is data in
14 terms of global data. In fact, I just got back from
15 Mexico. I was there -- we rang -- a number of women
16 rang the stock exchange bell for the first time in the
17 history of Mexico, but they only have five percent
18 women representation in Mexico. So we still have a
19 long ways to go.

20 The United States is comparing itself against
21 the countries that have actually shown significant
22 progress in this. But when you talk about Asia, the
23 Pacific, we're just not quite at that critical mass
24 yet, as some of the European countries. Colombia,
25 actually, is doing quite well in Latin America.

1 Surprising.

2 MR. GRAHAM: Annemarie?

3 MS. TIERNEY: So one of my questions, when I

4 looked at the statistics on the racial diversity is the

5 percentages on boards, how they translate to a

6 percentage of what you would deem qualified applicants

7 in the marketplace. Because I think part of the

8 problem, at least for women in my experience, is there

9 is -- I think there is still not a clear path to

10 becoming a board director for a lot of women in

11 different categories of professional experience and/or

12 potentially for people of different ethnicity or race.

13 So, do you have to kind of self-select that

14 you want to become a board member? I think that's the

15 first step for everybody, make a decision on their own.

16 And how do we encourage more people to self-select, to

17 want to be board members, to increase the pool of

18 diversified candidates, to be considered? And so I

19 think that's a challenge, and I don't know how you

20 solve for that.

21 How do you get people of different race and

22 ethnicity wanting to be on boards, like a Laura or a

23 Sara or a -- you know, or a me. Like, how do you

24 create a pipeline for education and opportunity,

25 networking? So many board memberships are based on

1 personal relationships with CEOs and other people at

2 the management level. That's a time-worn problem for

3 anybody trying to become an executive in a public

4 company in the United States of America. We need to

5 have a different pathway to self-select. You want to

6 become a board member? Different educational processes

7 and a better, more diverse pool.

8 You made the comment that, you know, there was

9 some diversity candidates who are recycled from one

10 company to another. Is that because there weren't any

11 other options for the companies who were doing the

12 board recruiting at the time? Were they looking for

13 diversity and the candidates just weren't presented to

14 them? That would be some information I would love to

15 understand. Like, how do we create a more diverse pool

16 of appropriately-educated and experienced candidates to

17 meet expanded search criteria? That would be one thing

18 I think should be a goal of anybody looking to

19 diversity their board.

20 The second thing was just kind of a basic

21 thing on disclosure. A really easy way to disclose the

22 diversity of your board is to add pictures in your

23 proxy statement. That's what we did. We included

24 photographs. Because some people don't want to self-

25 select. I have biracial nieces and nephews who might

1 not want to self-select. Am I white? Am I Asian? I

2 have other nieces and nephews, cousins' children, who

3 are biracial, you know, Caucasian/African-American.

4 They may not want to self-select a race. But if you

5 put a picture of somebody in a proxy statement, then

6 their ethnicity is more clear.

7 But that's -- you know, I wouldn't like to see

8 a chart that sort of says, you know, "I consider myself

9 white and Asian," or, you know, confusion, right? So I

10 don't know the best way to disclose diversity, but

11 photographs might be a easy way to kind of get that

12 conversation started.

13 MR. GRAHAM: You know, I don't know the best

14 way, either. But -- and this -- I mean there are a lot

15 of things to think about. The more you think about it,

16 the more complex it gets.

17 But, you know, I don't think people should be

18 required to self-select. I think that if someone wants

19 to identify themselves as this or that, they should be

20 allowed or encouraged to do so. But I don't think it

21 should be a requirement. That's just my view.

22 Laura?

23 MS. YAMANAKA: So I totally agree with that,

24 because I prefer to think of myself as a strong,

25 intelligent businesswoman first, who happens to have an

1 ethnic identity, and who happens to be a woman, right?

2 So I totally agree with that.

3 I have so much to say here, right? So much to

4 say here.

5 So, first off, I want to say I really do

6 applaud everybody who had a part -- Xavier, the SEC,

7 Stephen, you know, Sara -- of bringing this

8 conversation to the forefront. Thank you, Cari, so

9 much for providing some context and background. And to

10 echo Robert's point, it's a difficult conversation,

11 right?

12 I mean I don't play in this world all the

13 time, so it's just, hey, you know, you just -- heads

14 down, and you're working, for the most part. And when

15 you have the opportunity to sit and listen to this

16 conversation and think and dwell, it is -- I think it's

17 really important to understand how critical everybody

18 is in this room to actually changing something. Right?

19 So the fact that we can have a conversation

20 about this, and have difficult conversations, and have

21 varied positions on this, is a good thing. And we need

22 to take this back and do more of this at home, wherever

23 home is, and not just in a confined -- "Okay, now we're

24 going to do diversity" kind of meeting today.

25 That said, I do think this committee and our

1 purview is in a very select area. We do not have the
2 authority, nor are we mandated, nor I think people are
3 interested in talking about quotas, et cetera. It's
4 talking about disclosure. So, within that context,
5 however, I think it's really important to understand
6 that people make changes in behavior, one, because they
7 -- morally, and they feel it's right. But more often
8 because of money or information. Right?

9 So we've talked about the money. It's better
10 that you are going to be more profitable, you're going
11 to do better in your industry if you have diversity in
12 place.

13 Information. I would prefer not to go with
14 the shame and whatever that phrase is -- it's out of my
15 head -- because, as Sara said, nowadays, with social
16 media and the Internet, you know, pop that out there.
17 And the comment about Silicon Valley, have you guys all
18 been reading about the Silicon Valley?

19 Yeah, thank you, Jonathan. It's interesting
20 to note, because that's been the last -- in the last 30
21 years they're talking about, that is the big producer.
22 That's the big economic gain, as far as industry goes,
23 in the United States. And they're back in the
24 eighties, as far as things go. So I don't think that
25 strictly economic drive parity.

1 Let's talk about pipeline. Pipeline, I
2 totally get that, because I too -- you know, when I
3 first started out, I was 3 in my accounting class,
4 right, which -- and now, you know, it's over 50 percent
5 that are women. The interesting thing is, if you look
6 at the people who run companies, partners in law firms,
7 in accounting firms, whatever, that pipeline appears
8 not to be linear.

9 Like there is something that happens, and we
10 still have the representation and leadership of people
11 not getting to those top positions for I don't know
12 what reason. And there could be many, okay,
13 structurally, within how law firms and CPA firms are
14 structured, social constraints, all those things. I
15 don't know why, I don't think that has a place in
16 discussion here. I just want to say, factually, the
17 pipeline alone doesn't appear to be working.

18 I want to bring up another observation, title
19 nine. You guys all know title nine, right? It's what
20 allowed women's sports to blow out, you know, in -- as
21 far as, you know, entertainment goes, as far as
22 opportunities for women. And actually, as far as
23 assisting in the leadership of women in business roles,
24 government roles.

25 So, that was an allocation of funds issue, it

1 was money. Where are we going to put investment in?
2 And maybe it was to equal opportunity and all that
3 stuff, but to me, the factual impact of that was to see
4 how seeding money into a broad section of just out
5 there education would allow women to achieve so much
6 more in other areas. So again, money and information.

7 So, when I look back at our role in what we
8 do, since we can't hand out money, either, we have
9 information as our tool. And how can information -- if
10 we put it out there, how are other people going to use
11 it to make the best economic decisions for the -- for
12 our economy?

13 When we look back at global, the United States
14 is a mature economy, right? We can't afford to leave
15 half of our bench or -- how much, you know, 70 percent,
16 90 percent of our bench, 50 percent of our bench -- on
17 the table. When you constantly read how well we do, it
18 is because of our diversity. And we've only been
19 playing part of the team.

20 As companies such as China, Russia, everybody
21 else, whatever you say, the globe catches up with us in
22 the easy things, we're going to have to play more of
23 our bench. And economically, it's going to be our
24 decision on how we do it, which leads me to, like, my
25 last point: It's a matter of time.

1 Do I think, eventually, we're going to get
2 there, no matter what we do, in spite of what we do?
3 Absolutely, because economics are going to eventually
4 -- to your point, you know, if you're the only one not
5 doing this, it makes sense you're going to be out of
6 business.

7 But do we want it to take 86 years? Okay, so
8 that's the point. And do we have 86 years or 100 years
9 or 40 years, or whatever it is? Title IX, within the
10 space of one generation, boom, got us into the playing
11 field. Is it completely fair yet? No, but nothing
12 ever is. But it became significant, it became
13 material. And I think that's what we're looking for
14 right now.

15 I was very disturbed about the stats when we
16 talk about -- we have better compliance, publicly-
17 traded companies, because it makes sense, they
18 understand the PR, they understand the pressure. That
19 pipeline of people coming up on the under -- under your
20 public -- it's dismal. And when you look at Silicon
21 Valley, which is heavily weighted to non-public, and is
22 the high-growth entity, again we see the same things
23 being replicated.

24 So, as far as if we could use anything that we
25 could do from an informational basis to level the

1 playing field -- I'm not talking about giving anybody a
2 free ticket, because, frankly, I think, if you asked
3 anybody who's been on the outside, looking in, they
4 don't want to get a free ticket, they just want to get
5 an opportunity to play and strike out. Right? Not
6 everybody is going to make it. Not everybody should.
7 The best, we want the best. We just want to take off
8 the blinders, as far as what defines the best.

9 And again, if we could just figure out a place
10 so that the free market evaluates what the best is, and
11 we can quantify it, based on the financial results,
12 then I think it just makes good economic sense. Thank
13 you.

14 MR. GRAHAM: Thank you.

15 Yes, Brian?

16 MR. HAHN: Just a kind of a story from the
17 trenches here, and I'd like to -- I think Annemarie hit
18 on a great point.

19 So our CEO is a female. She's a co-founder.
20 She's also been a board member for the last 13 years.
21 For the last two years, at the board-level discussions,
22 there has been discussion about trying to identify and
23 find another female board member as an independent. In
24 the past year-and-a-half the board has identified and
25 approached three women for a board position, but

1 they've already had their plates full, or they're in
2 very high demand.

3 Now, there was a 2014 survey done on small and
4 medium businesses in my industry, and it showed that 46
5 percent of the women have an interest in becoming board
6 members. So it's not a lack of ambition. I think it's
7 just how to identify that pull. And I think, you know,
8 industry-specific, I think there is something, you
9 know, industries need to do to be able to come up with
10 identifying who -- you know, these potential board
11 members.

12 MS. HANKS: Stephen?

13 MR. GRAHAM: Sara?

14 MS. HANKS: Yeah. In response to that, I
15 mean, one of the things I've remarked over the last few
16 years, there are some search firms who are specifically
17 targeted with the, okay, we need a fill-in-the-blank.
18 You are the guys who know fill-in-the-blank, go fetch
19 us one of those for the board. And there seem to be
20 quite a few of them, and I end up, you know, talking to
21 some of them.

22 And I'm not sure what's happening there,
23 because there seem to be a qualified pool of people, a
24 qualified pipeline of intermediaries who have taps into
25 those people. And then the final piece, the conversion

1 of interest and availability onto the board, isn't
2 happening. And I find that baffling. I mean what's
3 going on there? I just don't know.

4 MS. DOMINGUEZ: I was actually a partner with
5 two international search firms, and I can tell you some
6 stories about that. I did a search for a biotech
7 company in the Los Angeles area that had no women. And
8 they had been trying for three years. The board
9 members had been trying for three years to find a
10 woman, until finally they called a search firm and I
11 was the person. I found them 16, and then they had a
12 problem trying to select.

13 I think part of the challenge -- and that also
14 speaks to Annemarie's point -- part of the challenge is
15 if it's the first board that a woman gets on, or a
16 person of diverse background, there is a certain
17 reluctance. And so the reason why these diverse board
18 members are over-boarded is because they call each
19 other. The CEO calls the CEO of the other company and
20 say, "Does he fit? Is this a cultural fit? Is she
21 okay? Does she" -- it's a -- you know, the dynamics of
22 corporate governance, no one wants to have those
23 disrupted.

24 And so, I think, from that perspective, it's a
25 challenge. Even if you find them, you know, 10

1 candidates, if some of these candidates haven't been
2 tested in terms of being -- serving on other boards --
3 so that's -- to your point, that's the big leap to
4 have.

5 The other point I wanted to make to
6 Annemarie's, we just had the big National Association
7 of Corporate Directors annual summit. We had one whole
8 session on how to get on a corporate board. It was
9 standing room only. And these individuals were all
10 extremely qualified and highly frustrated, because of
11 what I just talked about, the fact that, you know, to
12 get to a board requires more than just skills. You
13 have to have a sponsor, you have to be approved. There
14 is a lot of sort of the intrinsic issues or values that
15 people convey that aren't written down.

16 And when I was doing searches, if I wanted to
17 replace a CFO, which I did many times, there was -- the
18 perception was somebody who looks like me. You know?
19 That was the first reaction. And so, six feet one, and
20 I bring a five-three candidate, and there is this bit
21 of -- you can tell the reaction.

22 So, I think, from a cultural perspective, and
23 from the dynamics of unconscious bias, which you
24 referred to, I think those are some of the barriers
25 that really are affecting the parity. And I hope it

1 doesn't take 40 years, but that -- you know, we have a
2 number of CEOs with daughters and professional wives,
3 and they're actually leading the charge to make sure
4 that --

5 MR. HAHN: Just to follow up on that, just to
6 be honest, you know, being an emerging growth company
7 and watching all of our costs, you know, we will go to
8 the recruiter model next. But it was if we can save
9 money and try to find it through our networks first,
10 that's what we'll try. And obviously, it's just not
11 happening yet. So we will move to the paid recruiter.

12 MS. YAMANAKA: You know, Brian, that's -- I am
13 going to tell a story that I told Annemarie earlier.
14 At my career point I feel I've had the opportunity and
15 the luxury of being surrounded -- environments like
16 this, where your credentials are taken at face value.
17 You know, yes, you have to prove you're not an idiot,
18 but it's like being a female, being an Asian, okay,
19 whatever, it's nice, you know? But it's not a
20 significant factor.

21 So I have the opportunity to be honored by my
22 college, who shall remain nameless -- actually, this is
23 not nameless, right, it's public -- hopefully they
24 don't see this. So I was at a special reception for
25 The honorees, and I took my husband. And it was very

1 interesting, because I didn't know this group of people
2 because I did not keep in touch with my college alumni.
3 So there's all these muckety-mucks, people, their
4 sponsors, et cetera, and they kept coming up to my
5 husband and congratulating him on being honored.

6 I was shocked. That hasn't happened to me in
7 years, because -- which is my point, because the
8 networks that I go in, I'm proven, they know who I am,
9 I'm pre-vetted, I'm validated. This was -- I rarely go
10 into a completely brand-new network where I have to go
11 based on visuals, and the visuals was the guy in the
12 suit who is taller than me has got to be the honoree,
13 right? And then he kept going, "Well, no, no, no."

14 And so, it is -- these are good people. These
15 are good people. They -- highly successful, clearly,
16 doing really good things. I really do think that
17 implicit bias, whether we acknowledge it -- all of us,
18 all of us, they said, right, we all have our implicit
19 biases. Not necessarily for gender, not necessarily
20 for race. It could be geography, it could be class, it
21 could be food-based, it could be style, and how you
22 dress. Whatever, we all come from a frame. And I
23 think once we understand that we all do come from a
24 frame and get comfortable with making decisions that
25 are in conflict with that frame, that's probably the

1 greater social decision.

2 But it's out there, whether we acknowledge it
3 or not. And I think, again, that's why we have to do
4 things that are uncomfortable, and perhaps push things
5 along a little bit more because, again, it's going to
6 happen because economics, I think, are in play. It's
7 just can we afford the time that it's going to take.
8 How can we accelerate that, if we know this is a good
9 thing?

10 MR. GRAHAM: Yeah. It's important, as you
11 note, to note that, you know, implicit bias is out
12 there, it's in every aspect, I think, of our society.
13 And I challenge anyone to say that they are not biased
14 in some way about some thing. The issue is getting
15 people to admit it, to acknowledge it, and to begin to
16 think of ways to counter it.

17 And I think that, as we work on what might be
18 appropriate disclosure, I think an unintended but good
19 consequence might be that we encourage people to think
20 about it and perhaps acknowledge, you know, maybe the
21 pool is a little bit deeper than we thought, and maybe
22 there is some bias that has entered into the equation.
23 I think that's important.

24 Anyone else? Xavier?

25 MR. GUTIERREZ: I just -- I guess I'll close

1 it in asking the question that I ask myself all the
2 time, which is what is the role of an SEC in this?
3 What is the role of a public pension fund in this?
4 What is the role of quasi-public enterprises in terms
5 of this matter?

6 You know, and I don't think there is an easy
7 answer. I think you heard this discomfort with quotas.
8 As a person who gets approached to sit on boards, it
9 would bother me if it was to meet a quota, because I
10 see it as a business imperative. I see this as I'm
11 adding value, and this is important for the business
12 enterprise. So, I wouldn't want to see that.

13 On the other hand, there needs to be something
14 that does have an impact. I think your example is
15 excellent, right? No one ever thought the impact of
16 that could possibly overlap into the business world.
17 They thought -- they wanted to equalize, you know,
18 athletic programs around the country.

19 So clearly, something needs to be a catalyst.
20 And I love to hear these initiatives on state-by-state
21 bases where they're saying this is important. When you
22 look at public pension funds, who are The pensioners,
23 right? And so that's an important connection to make,
24 as an investment pool, and how it should impact their
25 investment philosophy, which thus impacts this issue.

1 So, I think we -- you heard it in this
2 discussion. There is no one size fits all. But we
3 can't let that be the impediment to finding solutions
4 that have results. So thanks.

5 MR. GRAHAM: Thank you. Does anyone else want
6 to add a comment before we break for lunch?

7 (No response.)

8 MR. GRAHAM: All right. Good discussion.
9 Thank you. Let's break for lunch and reconvene at
10 2:00. All right, thank you.

11 (Whereupon, at 12:15 p.m., a luncheon recess
12 was taken.)

13 AFTERNOON SESSION

14 MR. GRAHAM: Okay, might as well get started.
15 Do we have a quorum? We still have the quorum, so
16 we're just reconvening, so I guess we still have a
17 quorum.

18 Well, the first thing that I want to do is to
19 spend a couple minutes kind of recapping this morning,
20 as we begin to formulate recommendations -- we've got
21 the right framework. And starting with S-K, I think
22 the first thing we want to do is reaffirm our prior
23 recommendations. I think there is one in February of
24 2015. I think we had a recommendation regarding the
25 definition of smaller reporting companies, as well.

1 The sense that I got is that, though kind of
2 as we've gone down this path for a couple of years,
3 there has been kind of an emphasis on less disclosure
4 when we talk about this. And what is appropriate in
5 terms of less, as we try to define what scaling means?
6 But there seems to be kind of a more refined approach
7 from the standpoint of thinking in terms of better
8 disclosure, not more and not less, but better, and kind
9 of away from the notion of compliance, and more towards
10 what's of interest to shareholders' investment
11 decision.

12 This includes being more principles-based, it
13 includes, of course, being -- at all times being
14 transparent with respect to, you know, what's material.
15 It is finding ways to be less redundant, less
16 repetitive. And, you know, and in that regard I think
17 we feel that the ability to do more than cross-
18 referencing might end up being -- end up being useful.

19 So, I think, instead of trying to come up with
20 a laundry list of what we think it might be a good idea
21 to do, I think we should stick with kind of concepts
22 and kind of our own approach to principles, if you
23 will.

24 Does anyone have anything to add to that?
25 Greg?

1 MR. YADLEY: I agree. And starting with who
2 is a smaller reporting company for purposes of the
3 rationalized disclosures -- and I think we can give
4 some examples of areas where we think things can be
5 enhanced, but should avoid a laundry list of particular
6 provisions that apply or don't apply. The staff has
7 more expertise in that area, and there may not be
8 unanimity of opinion, anyway.

9 And then, in terms of the delivery of the
10 information, again, there is such a wide range of how
11 people use the information -- and certainly it's
12 generational -- as well as who is interested, analyst
13 versus regular investors. But while we want to make
14 the electronic information more accessible to the
15 extent it would impose burdens on issuers, you know,
16 XBRL times three expanded to non-financial disclosure
17 and things like that, we should probably discourage
18 that.

19 MR. GRAHAM: Okay. Anything else?
20 Patrick?

21 MR. REARDON: I'm sorry, I didn't quite
22 understand what you said. Could you repeat what you're
23 planning on writing as a recommendation?

24 MR. GRAHAM: We aren't that far yet. We're
25 talking about framework.

1 MR. REARDON: Framework, okay, thank you.

2 MR. GRAHAM: Okay. Okay, the next thing we
3 talked about was board diversity. And if I can kind of
4 summarize where I think we came out was that board
5 diversity is certainly within the purview of the SEC,
6 and it kind of goes to the economics of enterprises,
7 that disclosure is important to shareholders, to
8 employees, to customers. And if it's important to that
9 group, then it comes right back around to it's
10 important to shareholders.

11 The issue that we have is the absence of an
12 adequate definition, and so that information that is
13 useful to investors will be generated. I think that's
14 kind of the gist of where we came out. I think we had
15 a good discussion this morning. There is -- but in
16 terms of formulating a recommendation, I think that's
17 the direction that we're heading in.

18 Anyone want to add to that?
19 (No response.)

20 MR. GRAHAM: Okay. Well, so let's go to this
21 afternoon's agenda.

22 First of all, as we mentioned this morning,
23 Chair White was offsite at a meeting. She was meeting
24 with the IMF. And so we missed her this morning. But
25 we're pleased to have her join us now. And Chair White

1 would like to make a few remarks.
 2 CHAIR WHITE: Thank you, Steve, very much.
 3 And good afternoon, everybody. I won't hold up your
 4 agenda, but I did want to stop by to express my
 5 appreciation for your being here again, you know,
 6 sharing your experience, hearing your perspectives with
 7 this. I mean I -- frankly, you can't say it enough. I
 8 mean your efforts really do help us, and really do, you
 9 know, inform what we need to be thinking about doing
 10 for, you know, small companies.

11 So I will say also that I find your agenda
 12 always of interest to me. Today I think you're four
 13 for four on four of my priority areas. And I
 14 appreciate the recap. I did get a little bit of a
 15 mini-briefing when I came back into the building and
 16 before I leave the building again, and I'll get caught
 17 up on the full discussion. But I really do -- you
 18 know, I'm really glad to see you discussing these
 19 particular subjects.

20 I mean, obviously, you know, the disclosure
 21 requirements in Regulation S-K, the Commission, the
 22 staff, as you know, are very closely focused, you know,
 23 on those, both in terms of small reporting company
 24 issues, but also more broadly than that, as well. And
 25 the objective is better disclosure, but we also

1 understand, you know, the issues that issuers have,
 2 particularly smaller companies have with disclosure
 3 requirements.

4 The diversity topic that Steve just alluded to
 5 -- and I understand you had a very good discussion on
 6 that. As I think you know, this issue is very
 7 important to me, in terms of -- in particular, not
 8 limited to, but diversity in the board room. I think
 9 it's -- well, I was a member of a public company board
 10 and audit committee when I was the only woman on the
 11 board.

12 And, you know, I think, you know, look, I've
 13 said it before, but I -- you know, I'll say it again.
 14 I really saw firsthand what I think the research is
 15 telling us, which is that it's just a much richer,
 16 dynamic, better decision-making when you have diverse
 17 boards and you also have, you know, the studies
 18 indicating, you know, certainly correlation with better
 19 performance by the companies, as well.

20 I've spoken before about what the staff -- you
 21 may have spoken about this morning, in terms of -- you
 22 did? Okay, so you know where that stands, in terms of
 23 our looking at our own rule and recommendation for
 24 amending that to make it really more meaningful to
 25 investors. And then investors are interested in this

1 information. They should be interested in it. And so
 2 that's why we're, you know, prioritizing that, as well.

3 Steve, our distinguished director of trading
 4 markets, is about to update you on some of our equity
 5 market structure work, and specifically we'll be
 6 discussing the staff's perspective on the issue of
 7 finders and other intermediaries in small business
 8 capital formation transactions, which, obviously, we
 9 know is of great interest to you.

10 I think, Steve, you're also going to give a
 11 brief update on the tick-size pilot, which started just
 12 this week to help us assess the impact of tick-sizes on
 13 market quality for smaller companies. I really do look
 14 forward to what that data will -- you know, will show
 15 us. And, you know, lots of hard and painstaking work
 16 certainly, you know, went into that. And, frankly,
 17 whatever the data ultimately yields, you know, the
 18 pilot really is reflective of, you know, our
 19 appreciation that, you know, market structure should
 20 promote capital formation for smaller companies, and
 21 one size, you know, doesn't, you know, necessarily or
 22 even often sometimes fit all. So, I really do look
 23 forward to that data.

24 And then, finally, the last item on the agenda
 25 this afternoon is I really want to thank you for what I

1 believe to be sort of The proactivity of this
 2 committee, in terms of continuing ideas and suggestions
 3 on ways to help more small companies become familiar
 4 with the different avenues available for raising
 5 capital in the securities markets.

6 You know, all of us, including staff --
 7 really, across the agency, but in corporation finance
 8 -- the commissioners are very focused on this area kind
 9 of across the boards, including, you know, how
 10 Regulation A-plus is working, how crowdfunding is
 11 working and being used by small businesses. And, you
 12 know, it really is the case that, you know, we all
 13 know, I mean, small businesses play such a vital role
 14 in our economy.

15 So it's really very important that, you know,
 16 not only that the various avenues be understood, in
 17 terms of, you know, what's out there, but also how they
 18 might work, how others have used them to good
 19 advantage. You know, it could be really invaluable
 20 information for other, you know, smaller companies. So
 21 very much appreciate your work in that area.

22 So I promised I wouldn't interfere with your
 23 agenda, so, you know, again, I just end by thanking you
 24 for your service.

25 MR. GRAHAM: Well, thank you, and you're not

1 interfering. And if you would like to give more
 2 remarks, you're welcome to do so.
 3 (Laughter.)
 4 MR. GRAHAM: Okay. Sara?
 5 MS. HANKS: Okay, thanks. Well, I was very
 6 pleased to hear the chair say four for four on
 7 priorities, because there is a few of the items that
 8 we're going to discuss with Steve Luparello today which
 9 are very much things that we care about, too.
 10 Much of our committee's focus is on matters
 11 that are handled by the division of corporation
 12 finance. This is, of course, disclosure rules,
 13 exemptions from registration, but we've also got a lot
 14 of interest in topics within the wheelhouse of the
 15 division of trading and markets.
 16 Like Corpin, trading and markets has a very
 17 broad mission. It regulates the major securities
 18 market participants, including broker-dealers, stock
 19 exchanges, clearing agencies, and FINRA.
 20 We've previously talked about the finders
 21 issue several times, and urging the Commission to take
 22 steps to clarify the current ambiguity in broker-dealer
 23 regulation for people who act as intermediaries in
 24 private placements to identify or find potential
 25 investors.

1 We made a recommendation to the Commission
 2 along these lines in September 2015. We have further
 3 pointed out several times the need for some certainty
 4 in this area, both for established business models and
 5 the new online investment platforms popularized by the
 6 Jobs Act.
 7 I also want to note the continuing work by the
 8 private broker task force of the ABA, which has been
 9 nagging T&M for some 16 years now, also looking for
 10 some certainty.
 11 Going back to 2013, several times this
 12 committee has taken up issues surrounding the fact that
 13 the current U.S. equity markets don't always offer a
 14 satisfactory trading venue for the securities and small
 15 and emerging companies, because they don't provide
 16 sufficient liquidity for those securities, and because
 17 the listing requirements are too onerous for many of
 18 them.
 19 In 2013 we recommended the Commission adopt
 20 rules that would allow smaller exchange-listed
 21 companies to voluntarily choose trading increments or
 22 tick-sizes greater than the current increment of one
 23 penny. The SEC, happy to note now, has now put in
 24 place a pilot to help assess The tick-size, The
 25 effective tick-sizes, on market quality for smaller

1 companies. We look forward to hearing the results of
 2 that.
 3 And, of course, today we have with us the
 4 director of the division of trading and markets,
 5 Stephen Luparello. Steve returned to the SEC as
 6 division director in February 2014 from the law firm of
 7 Wilmer Hale, where he had been a partner specializing
 8 in broker-dealer compliance and regulation, securities
 9 litigation, and enforcement. He joined Wilmer Hale
 10 after 16 years at FINRA and its predecessor, the NASD,
 11 where he most recently served as vice chairman of
 12 FINRA. Prior to his time at the NASD, he served as
 13 chief of staff as the CFTC, and a branch chief at the
 14 SEC.
 15 Steve, thank you for being here.
 16 MR. LUPARELLO: I think always in the interest
 17 of time you should waive the reading of my resume,
 18 which only makes me feel old. And the chair is
 19 leaving, which is unfortunate, because I was going to
 20 yield my time back to her, but --
 21 (Laughter.)
 22 CHAIR WHITE: But I figured he would just step
 23 on your line, right?
 24 (Laughter.)
 25 MR. LUPARELLO: So I'm -- thank you, Sara, for

1 the introduction. And I'm happy to sort of talk on a
 2 variety of topics, but I know there are certain topics
 3 that are of specific interest to you, and I'll do my
 4 best to hit them along the way.
 5 I think Mary Jo started with a discussion of
 6 the tick pilot, which did, after a very, very long
 7 wind-up, go effective on Monday. It's a -- as we
 8 usually do things in the secondary markets, it's an
 9 extended roll-out, where it won't be fully in place
 10 until the end of the month. It's a two-year pilot.
 11 But unlike, I think, other pilots we've done in the
 12 past, I think we've gotten a little smarter on this,
 13 where we are actually evaluating data as we go.
 14 So, historically, what we've done is we've put
 15 pilots in place that come to an end, and then we've
 16 started to study what the implications were. And that
 17 tends to drag things on. And you're generally faced
 18 with reaching a conclusion of either shutting it down
 19 and incurring the cost of starting it back up, or just
 20 keeping it going, irrespective of whether you've
 21 decided it's a good idea because you need the time to
 22 study.
 23 So we've built in milestones during the two-
 24 year period, which will allow us to evaluate The
 25 efficacy of The pilot.

1 One other thing about that. I think when a
2 number of folks were advocating the idea of different
3 tick-sizes, they made those points for a couple of
4 different reasons. Ones that always appealed to sort
5 of the traditional market reg types were that it would
6 enhance the quality of the markets, right? You'd have
7 deeper quotes, you'd have less price dislocation, you'd
8 have a greater ability to transact in size.

9 Others want to step farther than that, and
10 said encouraging market makers back in the space by
11 allowing them to quote in wider ticks allows them
12 perhaps to make more money in the provision of that
13 liquidity, and they could redirect that money to
14 reviving their long-abandoned efforts to provide
15 research for issues in that space. That may happen,
16 that may not happen. I don't think that's -- my
17 personal view is that's not the litmus test for whether
18 The tick-size pilot would succeed.

19 I think if we just see improvements in the
20 quality of the secondary markets and none of those
21 profits get redistributed to other places in the firm,
22 or the market makers that do that never had research
23 arms, are never going to get research arms, that we
24 would still probably consider the tick pilot to be a
25 success.

1 Obviously, I think we would hope for a variety
2 of good things to happen that would enhance the quality
3 of the market, but also the coverage of the market and
4 -- by research and by, you know, by broader
5 participation. But again, I think our goal of what is
6 success that would allow us to keep this as a permanent
7 change to the market is probably a little bit more
8 modest than some of the advocates for it in the first
9 instance.

10 You know, we've tried to do other things in
11 the small cap space, and to pick up on the chair's
12 words about an appreciation that market structure is
13 not a situation where one size fits all. That said, I
14 think we have found very little traction from the
15 participants in the markets. And I remember testifying
16 a couple of years ago on venture exchanges, because
17 that was an idea that was getting a fair amount of
18 conversation at The time. And I think our position at
19 the time was that we always have to balance the need
20 for efficiency in the market with the possibility of
21 investor confusion. Our assumption is that investor
22 confusion can probably be solved.

23 And so, we went out -- you know, basically our
24 outward-facing position was come into us with ideas,
25 and talk to us about how we can solve the investor

1 confusion problems. And if there are rules we have in
2 place that seem to interfere with the ability to launch
3 a venture exchange, let's talk about that, let's see
4 what we can do to remove them.

5 What I found in both those conversations and
6 even in my testimony on the Hill is that, while I'm
7 fairly ambivalent on the notion of venture exchanges, I
8 was the biggest fan of venture exchanges that was
9 testifying in front of Congress.

10 (Laughter.)

11 MR. LUPARELLO: I don't think the industry has
12 figured out how to make money in that space. And so,
13 to a certain extent, all we can do is continue to
14 demonstrate that we are open to ideas and innovations.
15 We can't sort of create the innovations for them.

16 So, we will continue to find ways to make sure
17 we're being as open and flexible to these types of
18 conversations. But at the end of the day, if people
19 can't figure out how to make money in the space, then
20 the space is going to stay the way the space is.

21 You know, Mary Jo alluded to the fact that
22 we've got a broad market structure agenda. It's moving
23 across a variety of fronts. Honestly, most of them
24 have to do with the more liquid end of the market, this
25 larger cap end of the market. But I can hit on that in

1 a very, very short period of time.

2 We've got a number of proposals that are out
3 for comment, and the comments have come in, and we're
4 working diligently on them. One is around greater
5 transparency for alternative trading systems. One is
6 about greater transparency for institutional-sized
7 order flow. There is a couple that are -- involve just
8 -- not entirely on point for the next topic, but
9 somewhat similar -- on registration of broker-dealer
10 issues.

11 And then the very important one that we're
12 continuing to work on is -- and it's directed
13 specifically at some of the high-speed trading that is
14 so dominant in the marketplace at this point -- is an
15 anti-disruptive trading rule, which would define a
16 certain subset of trading by a certain subset of market
17 participants that, as a general matter, wouldn't
18 violate any fraud principles, and would, on most
19 occasions, be considered legal trading, but at certain
20 times of market stress would be viewed as too
21 destabilizing to be permitted.

22 So, there are a variety of other things,
23 including a pilot on access on maker-taker access fees
24 that are also in the works. And one very big thing
25 that we're moving along on that is more of a market

1 infrastructure initiative, not a market structure
2 initiative, is the consolidated audit trail, where we
3 have a 180-day deadline that is in the month of
4 November, which is -- so I'll leave here and go back to
5 working on that.

6 But there is plenty in the market structure
7 space. But like I said, I think a substantial amount
8 of that is -- tends to be where people's focus tends to
9 be in the market structure, which is at the more liquid
10 end.

11 So, mostly for the purposes of taking a deep
12 breath and a sip of Diet Coke, I will ask if there are
13 any questions, and then I'll move on to your other
14 favorite topic.

15 (No response.)

16 MR. LUPARELLO: That's usually the look I get.

17 (Laughter.)

18 MR. LUPARELLO: So I understand there are some
19 -- that my staff has appeared before this committee and
20 had helpful dialogue in the past on some issues of
21 broker-dealer registration, but I'm not entirely sure
22 I'm specifically up to speed, and I want to make sure
23 I'm responding to the right questions.

24 So the extent to which these are conversations
25 around the -- clarifying the status of participants in

1 market as broker-dealers or not as broker-dealers,
2 based on certain types of conduct, when this committee
3 has had these conversations in The past, what type of
4 conduct is generally the focus? Or is it a number of
5 different areas?

6 MR. GRAHAM: Great?

7 MR. YADLEY: I'll start. I wear a white shirt
8 and a green tie. So Steve and I will have an identity
9 of interest here.

10 (Laughter.)

11 MR. YADLEY: It is a whole bunch of issues,
12 but I think, most succinctly, it's building on to the
13 ABA task force report, which I'm a former co-chair of,
14 and the idea that there is limited participation by a
15 number of intermediaries that help foster capital
16 formation, and yet the regulation that goes along with
17 being a finder in the most narrow sense, or being a
18 limited intermediary who engages in activities that are
19 activities that broker-dealers engage in, except that
20 these are people who don't hold customer funds or
21 securities and don't operate on exchanges and really
22 act as advisors to smaller businesses, those are the
23 kind of issues that we think have been impediments for
24 companies raising capital.

25 And, in fact, some of the early experience

1 with Reg A-plus and crowdfunding and 506(c) may
2 indicate that there is still a need for honest people
3 who are willing to comply with reasonable regulation to
4 be able to help companies raise money.

5 MR. LUPARELLO: And so, in -- I'll pick on
6 you, Greg, just white shirts and green ties to one
7 another -- so the recent FINRA rules on capital
8 acquisition brokers, in terms of attempting to get at a
9 definition of reasonable regulation, where a
10 substantial portion of the rule book would not apply to
11 entities that, obviously, have -- do a very finite
12 business, but it sounds like the business that I think
13 you are talking about -- does that miss the mark? Does
14 that help? What's the general view on that?

15 MR. YADLEY: That is a regulation that I think
16 has merit for other parts of the capital-raising
17 community. But, for example, as you know, part of the
18 rule talks about transactions involving qualified
19 purchasers. If that were accredited investors, that
20 would really have helped. And, in fact, that point was
21 made and FINRA determined that that was not the right
22 way to go.

23 But we don't have a lot of qualified
24 investors, qualified purchasers investing in a \$1
25 million transaction or a \$2 million transaction for a

1 start-up.

2 MR. LUPARELLO: So it's more around the scope
3 of the business and who they can interact with than it
4 is around the rules they get relief from and don't get
5 relief from? Or is it you wouldn't entirely concede on
6 the latter?

7 MR. YADLEY: Yeah, I think it's more than
8 that. But again, in it's most simplified form, it's
9 someone who -- and the finder issue, hopefully, is one
10 that can be addressed more easily. But even someone
11 who does more than make an introduction for a fee on a
12 contingent basis still shouldn't be subject to -- I was
13 happy to be quoted by one of the commissioners this
14 morning -- the panoply of broker-dealer regulation.

15 MR. LUPARELLO: So, look, I think there is a
16 reason why the finders have been a conversation for 16
17 years, because there are two sides to the transaction,
18 and they don't seem to be moving expeditiously or,
19 frankly, at all towards each other. Right?

20 And I think one of the ways in which that
21 conversation tends to get discussed is in the context
22 of old no-action letters, including Paul Anka, right?
23 And I think, historically, the division has taken a
24 very narrow view as to what Anka permits and what Anka
25 does not, you know, give coverage on. And I think our

1 general understanding is that maybe the industry has
 2 moved it a little farther than the division would have
 3 wanted to move it, and has locked that in as basically
 4 tacit no-action relief.
 5 I think we are generally appreciative of that.
 6 And, you know, I think if we take it away, we would
 7 take it away in a more formalistic way. But I suspect
 8 that in these conversations, which have always been
 9 very polite and nice, but seemingly not moving in any
 10 expeditious direction, it's because the gap continues
 11 to be pretty wide. That especially when you're talking
 12 about the prospect of reaching out to the full breadth
 13 of customers, including retail customers -- and if you
 14 have retail customers and you have transactions and you
 15 have transaction-based compensation, that strikes at
 16 our core and we have a very difficult time, just based
 17 on The nature of The instrument getting comfortable on
 18 it.
 19 So I think there hasn't been a whole lot of
 20 movement over The years because both sides haven't
 21 moved very much.
 22 MS. HANKS: But if I could just respectfully
 23 make the point that if we don't have any movement,
 24 especially with the way the online markets are moving
 25 -- and these are online markets which are dealing not

1 just with accredited, but with non-accredited, we are
 2 either going to end up somewhere that you really don't
 3 like but haven't said that you really don't like it, or
 4 we'll have regulation by enforcement, or nobody knows
 5 what they're doing.
 6 And a point that I've made in the past is, for
 7 the companies -- for the intermediaries who are
 8 absolutely trying to do the right thing, it is so
 9 unfair to them --
 10 MR. LUPARELLO: Absolutely.
 11 MS. HANKS: -- to be complying, when everybody
 12 else is, hey, we can do whatever we like. We can
 13 solicit, we can send out emails, we can advertise on
 14 the TV. And this is not helping anybody, and it's just
 15 going to get worse.
 16 MR. LUPARELLO: So the reaction to us
 17 rescinding Anka would be what? And I'm not -- I'm just
 18 asking that as a --
 19 MS. HANKS: Hypothetically, if you were to do
 20 that --
 21 MR. LUPARELLO: Thank you for asking the
 22 question better. I appreciate that.
 23 (Laughter.)
 24 MS. HANKS: It would only be a very small part
 25 of the overall uncertainty. I mean that is one

1 specific area of uncertainty, but we've got a whole
 2 area which is now increasing. You know, the cone of
 3 uncertainty, like a hurricane, is getting bigger every
 4 day.
 5 MR. LUPARELLO: And those other areas -- so we
 6 have provided, obviously, some narrow guidance in the
 7 private issuer space, which was considerably narrower
 8 than the initial request. So I think we both signaled
 9 what we -- where we were and where we weren't at that
 10 point.
 11 So, in terms of other areas where -- and
 12 likewise, to the same in M&A, right before I arrived --
 13 so in other areas where you think we haven't spoken at
 14 all, what are those areas of focus?
 15 MS. HANKS: Being in the business, you know,
 16 what is the nature of being in the business. And I
 17 would circle back again to some of the questions that
 18 were raised by the task force. I mean there is a lot
 19 of unanswered questions there. And if we could add
 20 online platforms to that, and get answers, that would
 21 help a lot.
 22 MR. LUPARELLO: And the online platforms are
 23 doing what that is different from both what finders
 24 have to -- what finders and other have traditionally
 25 done in the space, as well as what the platforms are

1 doing in the context of crowdfunding? What are they
 2 doing that is in that gray area?
 3 MS. HANKS: It depends on the platform, to be
 4 honest. I mean it's a complete variety. But there is
 5 -- I know that -- you know, I represent some clients
 6 who look at things and say, "How can they do that? How
 7 can they put out that video? How can they put out that
 8 social media?" You know, there is a very wide range
 9 there.
 10 MR. LUPARELLO: No, I think that's --
 11 MS. HANKS: And a lot of it technology-driven.
 12 MR. LUPARELLO: And their compensation
 13 structures are likewise all over the map?
 14 MS. HANKS: Yeah.
 15 MR. REARDON: I'm Patrick Reardon. My
 16 comments are -- well, this has been going on for 16, 19
 17 years. If there ever has been a bureaucratic Waiting
 18 for Godot, this is it. Okay?
 19 I mean I don't care about -- we're asking
 20 questions after 16, 19 years? You should know all the
 21 answers to the questions by now. There are people out
 22 here stealing in my home state of Texas who are
 23 unlicensed broker-dealers. I have spoken to -- who was
 24 the lady who was -- had a corporation finance under
 25 Mary Shapiro?

1 PARTICIPANT: Meredith Cross.
 2 MR. REARDON: Yeah, I spoke to her, I talked
 3 to somebody in the office in Fort Worth. I mean
 4 nothing happens.
 5 MR. LUPARELLO: You should become a
 6 whistleblower, Patrick.
 7 MR. REARDON: I became a whistleblower. I'm a
 8 badass.
 9 (Laughter.)
 10 COMMISSIONER STEIN: You'll become a rich
 11 badass, too, if you're --
 12 MR. REARDON: Well, I don't care about that.
 13 I mean there are people who are stealing from our
 14 clients. I call the SEC, I said, "I've got an
 15 unlicensed broker, somebody in your division."
 16 "Well, yeah, they're unlicensed. Don't you
 17 get in bed with them and do a deal with them, because
 18 you'll be aiding and abetting, a violation." But you
 19 won't pass a rule that says, you know, what is a
 20 limited exemption.
 21 I'm not going to go to the trees and tell you,
 22 because I don't think, after 16, 19 years, you're going
 23 to pay any attention to me.
 24 MR. LUPARELLO: So --
 25 MR. REARDON: What I think is Congress is

1 going to have to step in here and do this, because you
 2 all have had plenty of time to do all this. I am
 3 frustrated, as a lawyer, and I am even more frustrated,
 4 as a taxpayer, because there are people out there who
 5 are being stolen from, and you all just sit on your
 6 hands and ask questions.
 7 MR. LUPARELLO: So we -- I am a big supporter
 8 of bringing stand-alone 15(a) cases, and I have worked
 9 very closely with the director of enforcement to bring
 10 stand-alone 15(a) cases. They aren't the sexiest cases
 11 in the world, right, because a lot of times there isn't
 12 actually customer blood on the floor in the instance
 13 where you find it, but you are preventing blood on the
 14 floor later on in the process.
 15 So, can't actually speak for 14 to 17 of those
 16 16 to 19 years, but I can say with Andrew at -- in --
 17 as the head of enforcement, and in conversations and
 18 interactions on what's important to our collective
 19 programs, unregistered broker-dealer cases, despite the
 20 fact that they're not terribly exciting, have become a
 21 much greater priority. And there are a lot more cases
 22 in the last couple of years than there have been,
 23 historically.
 24 MR. REARDON: Well, it would help separate the
 25 crooks from the honest -- the people who are pure of

1 heart, but just can't afford to comply, if we had a
 2 simplified registration. And you can ask all the
 3 questions you want to ask. I don't care what you do.
 4 Just do something.
 5 MR. LUPARELLO: Yeah, no, I agree. And I also
 6 think that there are probably a lot of people out there
 7 who would rather -- if broker-dealer regulation wasn't
 8 burdensome, and that's why I think we encouraged FINRA
 9 to go down the road of capital acquisition brokers.
 10 And I don't think we're married that they've got the
 11 four corners of that entirely right.
 12 If there are ways in which it can be made a
 13 little bit more flexible, both in terms of the business
 14 you're allowed to do and the rules you need relief
 15 from, I think those are things we're willing to
 16 explore, because I agree. I think the much better
 17 answer is to get the good people inside the tent and
 18 create -- eliminate the distance -- sort of them being
 19 outside the tent.
 20 But I also agree that the -- that always needs
 21 to be married with a reverse enforcement program, where
 22 you sue people for acting as --
 23 MR. REARDON: Oh, absolutely. I am all in
 24 favor of enforcement, and I've made that clear.
 25 And when will you have a rule out proposed on

1 this?
 2 MR. LUPARELLO: A rule proposed on what?
 3 MR. REARDON: On a limited financial broker
 4 whose --
 5 MR. LUPARELLO: So --
 6 MR. REARDON: To sell in private placements.
 7 MR. LUPARELLO: So --
 8 MR. REARDON: Okay. After 16, 19 years,
 9 what's the schedule?
 10 MR. LUPARELLO: I believe the schedule is that
 11 The FINRA capital acquisition broker rules go into
 12 place six months after they put out a notice, which is
 13 at some point in the month of October. At that point I
 14 think broker-dealers who -- people who are acting as
 15 unregistered broker-dealers and who claim that, given
 16 the marginal nature of the business and the great
 17 burdens of being a regulator -- being regulated --
 18 don't have that argument any more. And so, one would
 19 hope we would see even more 15(a) stand-alone
 20 unregistered broker-dealer cases.
 21 We don't do rules -- occasionally we do rules
 22 -- that define broker-dealer. But I think our
 23 definition of broker-dealer probably stays the same.
 24 Our enforcement of unregistered broker-dealers, when
 25 there is an easier path to be a broker-dealer, is

1 something where you make the progress.
 2 MR. REARDON: So you would totally defer to
 3 FINRA's rule. So if I'm registered with FINRA, I'm
 4 good with you.
 5 MR. LUPARELLO: Well, if you're registered
 6 with FINRA, you're also registered with us.
 7 MR. REARDON: Okay. So that's a limited
 8 registration with you, is what you're saying.
 9 MR. LUPARELLO: I don't believe there is that
 10 notion of a limited registration with us.
 11 MR. REARDON: I mean is it a 15(b)
 12 registration or not?
 13 MR. LUPARELLO: I assume it is, yes.
 14 MR. REARDON: Okay. Thank you.
 15 MR. LUPARELLO: Sure.
 16 MR. GRAHAM: Greg?
 17 MR. YADLEY: Yeah. I think what a lot of
 18 people were hoping would be acknowledging that the SEC
 19 is, you know, a political -- there is a political
 20 dimension -- small P -- to it. But I think a lot of
 21 people were hoping for leadership. And we talked
 22 about, you know, name and shame this morning in another
 23 context, but if the Commission is going to punt to
 24 FINRA, why not have an exemption from federal broker-
 25 dealer registration for limited concept? This

1 committee has recommended the state registration would
 2 -- could be a condition of that.
 3 I think the North American Securities
 4 Administrators, there is a whole bunch of
 5 constituencies there, all the different states, and yet
 6 they've been effective on a number of fronts recently,
 7 working together.
 8 And somebody has got to be the leader here,
 9 and I think Patrick's frustration and others has been
 10 that, yeah, we have the states and we have FINRA and we
 11 have the SEC, and many of us hope -- because we have
 12 such high regard for the SEC, sincerely, or we wouldn't
 13 be here today -- that -- we hope you take a couple of
 14 lumps to the head and lead this. If you can't do it,
 15 or you feel it's not appropriate to do it -- but there
 16 is lots of investment advisor and other areas. This is
 17 federal, this is state. And if we have to -- if FINRA
 18 becomes the arena, then that's where we'll go. But --
 19 and, of course, Capitol Hill.
 20 But, you know, I think most of us believe
 21 that, if the -- something within the SEC's purview, the
 22 agency will do a better job because it has more
 23 expertise and it's not capital-P political, and
 24 therefore will get better regulation that protects
 25 investors and helps capital formation.

1 MR. LUPARELLO: Well, and those are policy
 2 calls that are, frankly, over my pay grade. But what
 3 you said at the last point is the counterweight to
 4 that, right, which is walking away from registration of
 5 broker-dealers, especially a subset of broker-dealers
 6 that interact with retail customers, is something that
 7 the Commission, I think, would do only with great
 8 hesitation.
 9 MR. YADLEY: Well, but also -- and, you know,
 10 we're not debating. As Patrick said, the information
 11 is out there. It hasn't been demonstrated that the
 12 kind of people we're talking about are committing
 13 fraud. It's just not where we've seen it. You know,
 14 these are -- we're trying to get people regulated in a
 15 reasonable fashion, not have them out there doing
 16 whatever they want to do.
 17 And it's a real problem -- Patrick alluded to
 18 that too -- because, as I'm sure you know, many states
 19 have regulations that, in the private placement area --
 20 and I am from one in Florida, where I don't have a
 21 private placement exemption. If somebody that fits
 22 within the definition is getting paid, and people, for
 23 small deals, just don't come into my office on day one
 24 and say, "Greg, start the meter, tell me how to run my
 25 life." They meet people, they get introduced to

1 people, they are happy when somebody says, "Look, I
 2 would love to help you. If it doesn't work out you
 3 don't have to pay me anything. But, you know, if I
 4 introduce you to my friends, and I help you raise
 5 \$100,000, yeah, you can pay me X."
 6 I mean we know that that is within broker-
 7 dealer land. But it shouldn't have to be regulated by
 8 a full FINRA registration.
 9 MR. LUPARELLO: And again, I think we will
 10 continue to look for ways in which very narrow stripes
 11 of the business can be relieved of those obligations,
 12 and then we will continue to look for ways in which we
 13 can relieve fully registered broker-dealers from a
 14 substantial portion, including all of the regulatory
 15 burden that doesn't particularly apply to that
 16 business.
 17 And I think, you know, I will come back again
 18 after the capital acquisition broker rules are in place
 19 and get your sense for whether you think those are a
 20 good start or not, but I think that's the approach.
 21 MS. KASSAN: I have a question. There is an
 22 intrastate exemption for broker-dealer registration, is
 23 there not?
 24 MR. LUPARELLO: There is.
 25 MS. KASSAN: Okay. But I guess we're -- it's

1 narrow, so people aren't --
2 MR. LUPARELLO: I don't know that there is a
3 single broker-dealer taking advantage, because,
4 obviously, any interaction with a customer outside of
5 the state is going to destroy the intrastate broker-
6 dealer exemption.

7 MR. GRAHAM: Anyone else?

8 MS. HANKS: What about tick-sizes and the
9 like?

10 MR. LUPARELLO: So, you know, I -- again,
11 we're looking forward to the data, and we're hoping
12 that we see real improvement in the quality of these
13 markets, because they are not as well served. They are
14 not -- one end of the market is extraordinarily
15 arguably over intermediated, and this one is
16 significantly under-intermediated. So we're hopeful it
17 does bring immediate improvements to the quality of the
18 markets, and then, with the ability to trade in size,
19 the -- you see greater participation by a greater
20 segment of investing public. So we're optimistic.

21 MR. GRAHAM: Other comments? Steve, do you
22 have any more?

23 MR. LUPARELLO: No, I think that's it.

24 MR. GRAHAM: That's enough? Okay. Then I
25 guess we will excuse you. And thank you for coming.

1 MS. HANKS: Thank you, Steve.

2 MR. GRAHAM: Okay. We're going to turn to
3 outreach to smaller companies regarding capital
4 raising.

5 And beginning with our initial planning
6 meeting in February of this year, most of us have noted
7 at one time or another that there are significant gaps
8 in awareness among small companies about the various
9 sources of capital, as well as the securities
10 regulatory framework. And even if they are aware, they
11 may not be sure how to figure out how all of this
12 applies to their business.

13 Education about options is important, and I
14 know that most of us take this on at a micro level in
15 our day jobs, one company and one founder at a time.
16 But we thought it would be helpful to focus on this in
17 a more targeted way, and spend some time brainstorming
18 ways to increase outreach in a more macro level. So,
19 you know, again, we have touched on this from time to
20 time in passing, and maybe spent a total of 60 seconds
21 on it, you know, waiting for the day when we would have
22 this conversation.

23 The premise, again, is that we have a
24 situation where we are trying to find ways to encourage
25 capital formation with respect to smaller companies.

1 And there are a lot of issues associated with that, but
2 there is a gap, in terms of having everyone kind of
3 have a better appreciation for where the capital
4 sources are.

5 In addition to that, there is a gap as to how
6 this all works. For example, at our last meeting we
7 spent a lot of time with Reg A-plus. I think -- I know
8 that I was enlightened in a significant way in kind of
9 forming a greater appreciation for how Reg A-plus could
10 actually be a good vehicle for capital formation. I
11 wonder how many smaller companies out there who could
12 benefit from this really appreciate what it's all
13 about. And I would guess the number is large.

14 I think that when we think about, you know,
15 sources of capital, there are traditional sources that
16 might meet some of the needs of this sector that are
17 kind of on the angel side. I think that there are
18 probably other things that -- you know, such as
19 foundations -- that are interested in, you know, for
20 example, certain -- the development of certain drugs to
21 treat certain diseases, where if companies kind of
22 understood those sources, they could tailor their
23 businesses to tap into those kinds of sources.

24 I think there are industry groups that would
25 get -- you know, perhaps join with in terms of, you

1 know, helping to get this kind of information out to
2 smaller companies.

3 Aside from identification of resources, there
4 are -- we could think in terms of events that could be
5 geared toward providing this kind of education. And I
6 know that the SEC does some of this now, and maybe it
7 can, you know, spend a couple minutes, you know,
8 talking, you know, speaking to that. But then -- and
9 let's open it up for a conversation about, you know,
10 how we might tackle this one. So --

11 MR. GOMEZ: And Steve, I hadn't prepared
12 anything, but I will -- happy to tell you what we are
13 doing. And Julie, chime in. Julie has been also very
14 active in the area of outreach.

15 So I viewed the work that we have done so far
16 to reach out to three major type of market
17 participants. We often participate in PLI seminars or
18 ABA panels, talking about what the Jobs Act has done,
19 what the new exemptions are. Those events are geared
20 towards those of you who are here in the room who are
21 lawyers, and you are interacting with the client, or
22 those who are attending those presentations and are the
23 ones that are interacting with their clients, to make
24 sure that those advisors understand what the different
25 exemptions are and how they may be helpful to their

1 respective clients when their clients comes to them.
2 Because the reality is a lot of you in the
3 trenches are going to be the ones that are going to be
4 approached by a company who comes to you and says, "I
5 need to raise capital." They may not know how to raise
6 the capital. But part of what your job as a lawyer
7 advising that company would be is what are the pros and
8 cons of raising capital.

9 I, as a government staffer, can't tell someone
10 that they should use one rule over another one. I can
11 tell you what the rules are, but I think it's probably
12 your role, as a lawyer, to provide that advice, itself.
13 What I found the most enlightening about that -- and
14 Steve, you alluded to it -- I think sometimes the bar
15 is a little hesitant to embrace new things.

16 And when you go to an ABA panel or a PLI
17 presentation and you are talking with people who are
18 very used to companies raising capital in the form of a
19 registered offering and form S-1, and you are telling
20 them about what the new features of Reg A are, in a way
21 you are trying to change what has been the practice,
22 what people really know. Is it the right approach for
23 every client? That is going to be your role. But my
24 role is to give you the tools to know what the
25 exemptions are, so that you can help your client. So

1 that's one point on outreach.

2 We have been doing outreach alongside the SBA
3 and the office of minority and women inclusion to
4 business owners themselves, and specifically minority,
5 women, and veteran-owned businesses. I find those
6 events to be extremely rewarding. They are very
7 different than an ABA panel. And don't take offense,
8 for all of you who go to the ABA presentations. But
9 they tend to be smaller events, we're talking about 25
10 to 50 people, who are not lawyers, for the most part.
11 They have broad ideas, lots of energy. They are
12 excited about what they're doing. They need capital,
13 and they want to know what their options are. It's
14 very refreshing to speak at those events, because you
15 can feel the passion from those business owners.

16 The third one that I also think it's important
17 that we've done, some of it, is also to reach out to
18 the investors. I went and spoke at the Angel Capital
19 Association event. Angel investors are very used to
20 506(b). Well, 506(b) is not the only way to raise
21 capital. There is other options out there. So I
22 wanted specifically to talk about Reg A and what Reg A
23 permits and what the difference are between a security
24 that you acquire pursuant to Reg A versus 506(b).

25 So, our approach has been trying to address

1 different constituencies, and trying to get The
2 information to those different constituencies. Pretty
3 much almost -- Julie has done several events. Others
4 in the office, we have teamed up with the division of
5 trading and markets, specifically when it comes to
6 crowdfunding outreach because of the fact that a lot of
7 that relates to intermediaries and the work that
8 funding portals do.

9 But that's a type of outreach we've done. I
10 would love to hear from the committee about creative
11 ideas to deploy what you know are very limited
12 resources, both from the standpoint of money and people
13 to be more effective.

14 MR. GRAHAM: Thank you, Sebastian. When you
15 talk about those meetings or conferences or whatever
16 they are where you've got a relatively small group of
17 passionate people on the woman, minorities, and
18 veterans side of the equation, and you've got people
19 there that are saying, you know, "Help me, tell me" --
20 you know, "Just tell me what the framework is, tell me
21 what, you know, where I might find the capital," it
22 really does sound like that's, you know, exactly the
23 kind of conversation that needs to be had. How do you
24 expand that?

25 MR. GOMEZ: So also, let me tell you what the

1 challenges are with those, and why I liked the fact
2 that we partnered with the SBA. Like --

3 MR. GRAHAM: Yeah, because I think -- excuse
4 me, but I think that this is important from The
5 standpoint of figuring out some mechanism so that we
6 understand their perception of what the issues are.

7 MR. GOMEZ: Yeah. So the challenge is always
8 the fact that we can tell people what the options are,
9 people always want to know, "Which one should I do?"
10 And I can't provide that assistance to them at those
11 events.

12 The SBA, on the other hand, does have regional
13 centers, when they can -- someone asked me at the first
14 event that we did in Baltimore, someone said -- they
15 raised their hand after the presentation, they
16 described their business, and they said that they
17 realized that the next thing they needed was to put
18 together a business plan, and they didn't know where to
19 start with the business plan. The -- our colleague
20 from the SBA pointed them to their regional center in
21 Baltimore, and invited them to stop by and try to get
22 help there.

23 Part of the challenge is what can I say and do
24 at those events. A different challenge to the events
25 is when we go to these events we are reaching out the

1 local population in that area. The U.S. is huge. And
2 trying to capture all of the U.S. is very difficult.
3 So how do we reach -- and I'm not sure I have the
4 answers. If I did, I think we would have put them in
5 place.

6 But how do we reach parts of the country where
7 people have ideas, they need the capital, but are not
8 the traditional areas where people expect that there is
9 going to have the infrastructure of a SBA regional
10 center, incubators, and other groups? How do we reach
11 those parts of the country where there is certainly a
12 need, but there isn't infrastructure to support them?

13 Is the idea to do a webinar? Part of the
14 question is if we just film one of these outreach
15 events, and we just put them on the website, would that
16 help? Part of the challenge is I think it would help
17 with some aspects of getting the outreach out there.
18 But at all of these events what we experience is that
19 people have questions, questions that may not be
20 answered by one canned presentation.

21 So, how do we create a situation in which we
22 actually encourage that? So we've done some outreach
23 in which people can actually type questions and the
24 questions are asked by a moderator live. We tend to
25 keep the presentation pretty short, 15 minutes, 20

1 minutes. And then most of it is Q&A, ask away, ask
2 your questions.

3 How do we provide those answers to people in
4 parts of the country that we don't know the question
5 exists?

6 MS. HANKS: But if I could ask something about
7 the -- I don't know how many regional centers the SBA
8 have, but I know the SBA has got deep, deep links into
9 so many incubators and accelerators, and I know this
10 because the last couple of years I've been one of the
11 judges in the SBA's accelerator contest. And I did not
12 know there were that many out there, seriously. There
13 is a huge number in places where you think -- and one
14 of The criteria I always use is is there a need here
15 that can't be served by somebody else because of, you
16 know, regionally, where you are?

17 So, there are some fantastic incubators,
18 accelerators out there that The SBA knows who they are.
19 Can we use them? Can we do ask-me-anythings, with
20 everybody who is there?

21 MR. GOMEZ: So two of our events with the SBA
22 actually were hosted at the facilities of incubators.
23 And the idea was not just those who are being helped by
24 the incubator, but also others in the community could
25 come. So I think they're a great resource to have a

1 facility and a point of contact for a group of people
2 that we know are interested in this subject matter. So
3 that has worked well.

4 MR. GRAHAM: Laura?

5 MS. KASSAN: Sorry -- thank you. This happens
6 to be a topic that I'm incredibly passionate about.
7 And I've been spending the last 10 years actually
8 trying to educate entrepreneurs on how to raise money.
9 And you know, within the law. And I'm just amazed --
10 (Laughter.)

11 MS. KASSAN: I'm just amazed how many lawyers
12 don't know -- I was just talking to someone recently
13 who -- she was raising about \$500,000, she wanted to be
14 able to have both accredited and unaccredited
15 investors. Her lawyer said, "Oh, well, you have to
16 have much more extensive disclosure with unaccredited
17 investors," because this lawyer doesn't know about rule
18 504. You know, it just drives me nuts.

19 So, lawyers need a lot of education. And, you
20 know, even those of us who really focus on this area, I
21 will admit I send Julie emails from time to time,
22 asking her questions, because I'm -- you know, it's not
23 always completely clear to me what the right answer is.
24 So, you know, having resources for lawyers who really
25 would like to be able to help their clients understand

1 all the options I think is so important.

2 I actually just got a book contract from
3 Berrett-Koehler. I'm going to be writing a book on
4 this exact topic, how to raise money if you're a small
5 business, you know, what are all the options. I host
6 two live events a year on this topic, I do webinars on
7 this topic. I have -- you know, I have really tried to
8 understand all the different options that are
9 available.

10 And it is amazing to me how many people don't
11 -- including lawyers, do not know. And it's very
12 confusing for people, for non-lawyers, especially. You
13 know, 504, 506(b), 506(c), what is all this? You know?
14 The intrastate exemption, it's so confusing. So, there
15 really is a need for more resources to -- for
16 everybody.

17 And a third issue I've noticed, a lot of my
18 clients who are using creative tools to raise money, I
19 tell everyone, you know, really, everyone can be an
20 investor. Yes, you can raise money from unaccredited
21 investors under rule 504, for example. But then my
22 clients go out and talk to potential investors, and the
23 investors say, "Oh, I'm not an investor." They don't
24 understand, either, that, yes, it's perfectly legal for
25 them to invest in a small business. And yes, you know,

1 it's an exciting opportunity.
 2 So there is a need to educate lawyers,
 3 entrepreneurs, regular folks who don't even understand
 4 what it means to be an investor in a small business.
 5 So I just want to help in any way I can, you know. I
 6 want to interview everyone for my book if you have
 7 things to contribute, because I really want this -- you
 8 know, I want this book to possibly be a tool that will
 9 be, you know, used by many all over the country.
 10 MR. GRAHAM: Okay. Thank you for that.
 11 Laura, you had something?
 12 MS. YAMANAKA: Yeah, I think that what I'm
 13 going to say is not going to be pleasing to anybody,
 14 because where have we ever thought there is one
 15 solution for everything, right?
 16 And, in reality, if -- because I get clients
 17 all the time who run the full scope for -- they come
 18 in, they come through my door, we haven't met or
 19 anything. They go, "I want to go public." Right?
 20 (Laughter.)
 21 MS. YAMANAKA: And I'm like, cool, this is
 22 going to be a big client, I'm going to make a lot of
 23 money, there are structures in place. And I go, "Okay,
 24 let's look at your financials first."
 25 "Well, I need to get some." Right?

1 (Laughter.)
 2 MS. YAMANAKA: And -- yes. And so -- and, of
 3 course, they're not making money. And they go, "Well,
 4 I've heard, I saw that you don't have to make money to
 5 go public." And technically, they're right, right? I
 6 mean there have been companies that do so.
 7 And on the other hand, you've got people that
 8 have finally shown up, and they said, "I've done all
 9 this research, but I don't know who to believe, because
 10 when I go out there I've spoken to 42 different
 11 accountants and attorneys, and they're all telling me
 12 conflictory things."
 13 So, even if you just go in and Google "how to
 14 raise capital," you know, there is all this -- there is
 15 quacks out there, and there is legitimacy. So I think
 16 -- and then you're talking about the human touch,
 17 because that's what people are craving.
 18 So, I've always thought it would be so great
 19 that we could get some kind of sanction, like an SEC
 20 site that says, like, simple YouTube, "How to Raise
 21 Capital, Part One," you know, "What Does Capital Mean,"
 22 and go all the way from, like, cradle to grave.
 23 Fifteen minutes, make it short, because, actually, more
 24 and more people go to YouTube to get their preliminary
 25 research, and particularly when you're younger.

1 So, I -- you know, I remember I was talking to
 2 one of my staff people, and I go, "I'm going to send
 3 you to this conference, we're going to sign you up for,
 4 like, these classes on this," and they're going, "Why
 5 don't I just look on YouTube first, before we spend all
 6 this money?" And then, "Could I take the money if we
 7 save, and do something else," right? And, sure enough,
 8 The YouTube was there. The issue was how do we
 9 validate what's good and what's quality versus not.
 10 And then, if we could then have, like, 101 on
 11 capital with a sanctioned source that is not, you know,
 12 Joe Bloe Fly By Night YouTube, The resources that they
 13 can go to get one-on-one help that are valid, and how
 14 do -- how -- and maybe even a session that says, "How
 15 do I evaluate who is good and who is not?" What is a
 16 good accountant? What is a good, you know, attorney?
 17 What are the things that I should be asking?
 18 And then have them be aware that some people
 19 are one-trick wonders, right? I mean it's the whole,
 20 hey, I know how to use a hammer, and I'm going to keep
 21 using the hammer, and this is the only kind of
 22 financing I do, and I'm going to tell you this is the
 23 only kind that you can get.
 24 So, again, I think a lot of the infrastructure
 25 is there with the SBA, with the incubator groups.

1 Well, I shouldn't say that. For large economic areas,
 2 The LAs, The coastal areas, certain parts of the
 3 Midwest. There is a vast majority, I think, if you
 4 don't have access to that locally, it's going to be
 5 strictly online. But if you could have a validated,
 6 secure, safe, sanctioned, legitimate source, and then a
 7 listing of resources to say, "Go here for blank, blank,
 8 blank," that's kind of, to me, the simple way to do it,
 9 because you're not going to get around.
 10 Sebastian, you don't have enough budget, time,
 11 and miles to, you know, go out and talk to groups of 25
 12 people.
 13 (Laughter.)
 14 MS. YAMANAKA: And, frankly, the people that
 15 are asking you about, you know, "I want to get capital,
 16 and first thing I have to do a business plan," you
 17 know, they should be disallowed immediately.
 18 So, I mean -- and 90 percent of the people who
 19 show up to those things are. So I kind of think it
 20 might be easier, in a way, to reach a broad, legitimate
 21 constituency, I should say.
 22 MR. GRAHAM: That's a good idea, Laura.
 23 Sebastian, can we do that? Have you already
 24 done it?
 25 MR. GOMEZ: So we get about 1,700 calls a year

1 in OSBP with questions about interpretive guidance on
 2 mostly exemptions. I can tell you that the vast
 3 majority of the answers to those questions, we answer
 4 them by pointing the people to something on our
 5 website, where the information is already there.
 6 So, the question is, how do you deploy that
 7 vast amount of information? So what I was -- in my
 8 head I was nodding as you were talking about it. I
 9 mean we have on our website a document that talks about
 10 what's a security. And perhaps the question is how do
 11 you present the information.
 12 But it's written to go through the process of
 13 what's a security, why do I have to deal with the SEC?
 14 What are my options if I want to register? Because a
 15 lot of people want to do the IPO, initially, until they
 16 find out more about it. What are my options if I don't
 17 want to register and I want to do an exempt offering?
 18 And then, what are The differences between a 504 and a
 19 505 and a 506(b) and a 506(c)? What's crowdfunding?
 20 What's Reg A?
 21 And then, part of what that document also
 22 includes is, well, what if you just want to reach out
 23 to others, like the SBA. The SBA -- I would love for
 24 Mark to have been here today. I mean the SBA has its
 25 own programs to facilitate that.

1 MS. YAMANAKA: You have the information, but
 2 you don't have it in the form -- in my opinion -- that
 3 people can easily digest. They've got attention spans
 4 of this, especially entrepreneurs, right? Like this.
 5 MS. KASSAN: Also, is it up to date? Because
 6 I remember seeing something about the from S-2 up there
 7 not too long ago for a small business --
 8 MS. YAMANAKA: And I wouldn't even go with the
 9 acronyms and the S-2s, whatever. They need intro, and
 10 then --
 11 MS. KASSAN: Well, my point is that I just
 12 remember there being some stuff up there that wasn't
 13 actually up to date. So --
 14 MS. DAVIS: I'm sure there is stuff that is
 15 not up to date. I mean I -- when callers call, and
 16 we're the ones on the front lines that get the calls, I
 17 mean I often have to say, "Our website is like my
 18 grandma's attic, in that everything is in there, but
 19 you just can't find anything."
 20 And so, I mean, I walk them to the spot that
 21 talks about the difference between 506(b) and 506(c),
 22 and then they're -- they get it. But that's one
 23 person, and we talk to 1,700 of them, and a few of
 24 those calls are, "How do I register my local hair
 25 salon?"

1 So, you know, they're not all securities-
 2 related calls, and that's fine. We try to point them
 3 when we can to the right place, but, you know, I'm just
 4 glad they called at all, because I'm sure the folks who
 5 want to comply are the ones calling. There's a lot who
 6 are not calling, right? But we're happy to talk to
 7 those who do call, and point them to the right place.
 8 But I definitely take your point, that no
 9 one --
 10 MS. YAMANAKA: YouTube.
 11 MS. DAVIS: Very few people can find the
 12 information, even though it's there.
 13 MS. YAMANAKA: Seriously. Seriously, YouTube
 14 and a camera like this I think would be a very low-cost
 15 pilot. How about piloting it?
 16 MS. DAVIS: And I think we could -- well, I
 17 say this. We would have to talk to our general counsel
 18 and see all this stuff, but I think it would be very
 19 hard to do a video that's 15 minutes that even begins
 20 to start to scratch the surface.
 21 So I think it would -- I'm not saying that we
 22 couldn't do it, it's just you have to talk about
 23 whether you -- look where -- these are securities.
 24 That's all we can cover. We're not going to do loans
 25 -- or, well, loans of security, but we're not going to

1 do SBA loans, we're not going to talk about other forms
 2 of capital-raising.
 3 MS. YAMANAKA: Do it in modules. So anyway,
 4 it's just an idea.
 5 MS. DAVIS: No, it's a good idea.
 6 MR. GRAHAM: Greg?
 7 MR. YADLEY: Yeah, and not trying to pile on
 8 here since Steve has left, but you have a green blouse
 9 on, so it goes with my green tie.
 10 For part -- for some deals, for some issuers,
 11 having private placement broker, as we've talked about,
 12 is an access point. It doesn't answer, you know, which
 13 exemption do I need to rely on here, and what's better,
 14 but the investor doesn't really care what the exemption
 15 is and what the acronym is. They want -- how do I -- I
 16 need this much money. How do I get it? And you get it
 17 from the people who have the money.
 18 So, that was really the fundamental thrust of
 19 your question, Sebastian, is how do we put the people
 20 that need the money together with those that have the
 21 money? And we know that, for large amounts of money,
 22 for companies that are going to really go places, there
 23 is plenty of people willing to advise them. And we are
 24 now -- we have the ability since May to see what will
 25 happen with crowdfunding, where people want a

1 relatively small amount of money, and it wasn't the
2 SEC's fault, but done a good job implementing rules
3 that now have them go through somebody other than a
4 full registered broker-dealer, and we'll be able to see
5 how that works.

6 And so, I mean, these are all good starts, but
7 a lot of these fundamental educational things -- I mean
8 I think one of the things Laura was chomping at the bit
9 to say when you said we've got the Q&A on the website
10 is, yeah, but you need a video with a telegenic person
11 like Stephen Graham to give the message, and then
12 people would listen, you know, because --

13 MR. GRAHAM: Great idea, Greg.

14 MR. NELSON: How do we, as a committee, get
15 you guys more resources to do that education? Because
16 I completely understand that you guys are tapped out,
17 and I don't know how in the world I would come to a
18 job, knowing that part of my job is to regulate \$14
19 trillion worth of securities every day.

20 MS. DAVIS: Every year since I've been here,
21 you know, the chair has put up a budget request to
22 Congress, and it includes lots of many things that she
23 would like more resources for. And sometimes that gets
24 granted, and sometimes it doesn't. So, you know, it's
25 really not just above -- certainly above my pay grade

1 and Sebastian's and Keith's, and even Chair White's,
2 but it's -- I mean, ultimately, you know, Congress --

3 MR. NELSON: It's a congressional
4 appropriation sort of thing?

5 MS. DAVIS: Congress appropriates our funds,
6 even though our funds come from securities
7 transactions, not from the taxpayers. Congress has to
8 appropriate the amount. And, you know, within that, we
9 -- the agency has some discretion on how it's spent.
10 But at the end of the day it's Congress that makes the
11 call on how much money the SEC gets.

12 MR. GRAHAM: Any other thoughts? Oh --

13 MR. GUTIERREZ: Just a quick comment. You
14 sort of alluded to the comment I was going to make,
15 which is, you know, working with other aspects of the,
16 you know, kind of government infrastructure, right, so
17 The SBAs, even The state authorities, in terms of their
18 department of business oversights, their departments of
19 finance, or what have you. And so, you know, using
20 your limited resources to piggy-back on what's already
21 there.

22 So that would be -- and I don't know what that
23 looks like, I don't know what you guys are allowed to
24 do. But clearly, your component, as the SEC, is very
25 different than perhaps The SBICs, or The SBIRs

1 underneath the SBA. But there is clearly a goal of
2 everyone in that, you know, field, which is to be there
3 as a potential resource for capital. So that's one
4 point.

5 The second point is to also accept something
6 that I think Laura was alluding to, which is there is a
7 continuity of capital for businesses, right? What's
8 needed as a start-up is not what you need for growth
9 capital, it's not what you need before a pre-IPO, or a,
10 you know, sort of established business, whether public
11 or private.

12 And I think that lesson is probably the
13 biggest lesson that sometimes businesses need to learn
14 and understand, that you are in this stage of your
15 formation, as a business. Here are the resources that
16 are more appropriate for you, rather than showing up
17 without, you know, financials, and saying you're going
18 to go public. Right? That's just -- that's a mismatch
19 that we see all the time, and we own a bank in Southern
20 California, and sometimes we get folks who show up and,
21 really, they don't need debt financing, they need
22 friends and family, you know, investing, to be quite
23 honest.

24 So, that's another part of this discussion
25 that I would suggest you all incorporate.

1 MR. GRAHAM: Okay --

2 MS. KASSAN: Can I say something about that
3 real quick? I agree with that, but I also think there
4 is -- I have noticed that in -- with the information
5 that is out there, there is kind of -- I would say the
6 Silicon Valley model of a high-growth company tends to
7 be the assumption when you, you know, kind of Google
8 around about how do you raise money, and that's such a
9 tiny percentage of the businesses in our country.

10 You know, so few -- the companies end up
11 having that high-growth model, so that whole idea of,
12 like, seed stage, series A, series B is completely
13 irrelevant to, like, 99.9 percent of businesses. So it
14 drives me crazy that that's sort of the main
15 information that's out there. And a lot of my clients
16 who maybe have, like, a restaurant or a girls camp are
17 saying, "Oh, I think I need to raise my series A now,"
18 you know, and they -- we need to really make sure that,
19 you know, that people understand that each situation is
20 different, and they need to really choose the path
21 that's right for them.

22 Maybe they only need to raise money once, and
23 then they will break even, or maybe they need to do it
24 multiple times, et cetera.

25 MR. GRAHAM: Any other ideas? Outreach?

1 Closing the gap?
2 Anemarie?
3 MS. TIERNEY: You know, I know that there is a
4 lot of educational programs across the country, you
5 know. Is there a way that there could be, like, some
6 kind of information aggregation so that you could point
7 people to different educational opportunities available
8 to them?

9 Because I know, like, again, kind of Silicon
10 Valley-based, but we opened an entrepreneurial center
11 in San Francisco a year ago, and what we do there is
12 educational opportunities for, like, any level of
13 start-up entrepreneur, and they come in and we have a
14 sponsoring law firm. Wilson Sonsini is our first-year
15 sponsoring law firm. We have a sponsoring accounting
16 firm, which, I think, is PwC. We have a venture
17 capital firm sponsoring. And they literally do
18 programs every single week to help people understand
19 here is how -- like, one of Sara's favorite things that
20 Sara ever said to me that -- you know, what's really
21 important is, like, you're starting a company. You're
22 telling me, like, some LC guys wanting to issue stock,
23 right?

24 Like, so people don't actually know what
25 they're talking about. So here are opportunities to

1 actually understand here is how to incorporate a
2 company, here is how you access all these different law
3 firms' model forms, and lots of firms have them. But,
4 like, is there a way for us to help you aggregate
5 educational opportunities for these people, incubators
6 and others that will offer that kind of basic
7 information in a kind of YouTube -- more format than
8 something long that they have to read?

9 MR. GOMEZ: In -- the challenge that comes to
10 mind is we can't be viewed as endorsing any one
11 specific aspect.

12 MS. TIERNEY: I'm talking about, like -- yeah.

13 MR. GOMEZ: And at the same time, if it is
14 completely a -- there is nothing that prevents the
15 incubators to come together, or an angel capital
16 association type group from coming together and
17 identifying different products. The question is, who
18 is the one that it's -- actually sanitizing what's in
19 there?

20 And Laura was the one that mentioned, I think,
21 it's -- if you raise capital, I mean, you see a lot of
22 stuff out there, and a lot of the stuff that I am not
23 sure I would send my worst enemy to. So part of the
24 thing is how do you keep tabs over it to make sure that
25 the content is actually correct when we, as the

1 government, are -- can be viewed as giving an advantage
2 to one over another one by endorsing one over another.

3 MR. GRAHAM: You know, it's -- this really is
4 a big -- I mean there is a pretty wide swath of ground
5 we're trying to cover with this idea, if you will. And
6 we're not going to come up with any one or two or three
7 ideas. And I think it might have been a point I think
8 Laura made to address this issue.

9 One thing we do know is that there is an
10 information deficit in this community. I think that we
11 should satisfy ourselves by taking the first couple of
12 steps in the direction of closing that gap, and not
13 think in terms of how do we completely solve this
14 problem.

15 I think we've heard some good ideas which
16 might lead us in that direction. If we can figure out
17 how to leverage the SBA, how to leverage the
18 incubators, and even what is currently on the SEC's
19 website, I think that that's kind of where we start.
20 But I think we're going to have to -- this is going to
21 be a long, I think, process, you know, to get to the
22 point where, you know, those communities that really
23 are lacking in these resources, you know, get to the
24 point of where they're actually being served.

25 MR. GOMEZ: And let me take it back as one

1 baby step, if I may, of revisiting our small business
2 web page, and see is there a way that we can be more
3 helpful on the information that's already there, as to
4 how to present that. So let us take that as homework
5 for us to think about and look at it.

6 We talked this morning about scrapping the old
7 10-K and starting from scratch. Let us take a look at
8 that and see if -- not to claim that I have any
9 technological ability to remodel our website, but let
10 us take a look at that and see what we can -- how we
11 could reframe that.

12 MR. GRAHAM: Okay.

13 MR. NELSON: If you guys actually need help
14 with that, I have friends who are actually in the U.S.
15 Digital Service, proactively helping departments of
16 government actually build better websites that actually
17 have better -- communicate in a better way.

18 We have writers on our staff, and we help our
19 start-ups pitch things all the time. I don't -- I mean
20 I don't want to break any rules, but I would happily
21 help volunteer some of our staff to help start writing
22 some of these things to try to translate them into
23 plain English.

24 MS. KASSAN: Me too.

25 MR. NELSON: Because, like, as an

1 entrepreneur, it took me three years to learn that to
2 raise money in Silicon Valley meant selling stock. I
3 thought that I was going to try and sell technology.
4 And then, the further I got into it, I realized that
5 securities were the words that I actually needed to be
6 searching for, not necessarily selling stock. And then
7 securities, wow, that's a big, scary word. And loans
8 are also securities. And it's really been kind of like
9 a 9 or 10-year journey for me as kind of a quest to
10 realize how do you raise money as an entrepreneur.

11 Now I know that there is five ways, you know?
12 There is theft, which I do not subscribe to.

13 (Laughter.)

14 MR. NELSON: There is borrowing, there is
15 government grants, there is loans -- well, that's
16 borrowing -- and selling stock. And selling stock
17 generally means an angel or a VC or -- I'm sure I'm
18 missing things, but it's taken me a long time to get to
19 simpler, and that's very difficult. But I'm happy to
20 throw some resources at this because, if we answer
21 this, I think we move the economy.

22 And entrepreneurship is at its lowest point in
23 the United States. Like, small business formation is
24 at one of its lowest points in decades. So I think
25 this is actually really needed.

1 MR. GRAHAM: Thank you, Jonathan. I'm sure
2 that you have --

3 MS. YAMANAKA: Can I just stick one more thing
4 in there, Stephen? I'm sorry.

5 There is a website -- you should look at our
6 own government, .gov, websites, because there is stuff
7 out there already that, I mean, I go to all the time.
8 And it says, like -- it says at the bottom it's a
9 website of the United States Government. Who knows if
10 it really is, because it looks pretty cool, actually, a
11 very, very --

12 (Laughter.)

13 MS. YAMANAKA: Well, you know, very modern.
14 I'm not saying -- you know what I meant, and not how I
15 sounded.

16 But it's kind of interesting, because it says,
17 "You need financing?" It doesn't educate as much as --
18 answer these five questions: your geography, what kind
19 of business you're in, and whatever. And it gives you,
20 like, 37 different options for financing. Doesn't link
21 to anything, and it's, like, things like Department of
22 Treasury, CDFI Bank Enterprise Award Program,
23 Department of Treasury Community Development Financial
24 Institutions Program, you know, and DOT bonding
25 education programs.

1 So, that's the kind of stuff that, when people
2 go out and, you know, Google, and, hey, I'm getting to
3 government websites, so it must be kind of legit, and
4 then it's sending them down rabbit holes, right, in
5 essence. So if you could just -- if someone could do
6 the pre-link, because if I were an entrepreneur, you
7 know, I would be gone before this.

8 So it's a good effort, try. There is stuff
9 that's out there that works, and there is stuff that
10 doesn't work. If somebody could put it together in the
11 right order, so somebody doesn't have to go search,
12 search, search, drill down, go back up -- actually,
13 that's probably a business that somebody could actually
14 do and make a ton of money.

15 MS. KASSAN: I just want to add another thing
16 that might be a little bit kind of out of the ballpark
17 of what we're talking about, but there are -- a lot of
18 people are getting creative about new types of
19 securities. What you were saying reminded me of that.
20 And, you know, because people aren't always on the
21 trajectory for a sale of the company as a way for the
22 investors to get paid.

23 So there is this thing called a SAFE, a
24 Standard Agreement for Future Equity. There is
25 revenue-based loans. And one thing that I've noticed

1 is that these instruments tend to be very unclear.
2 It's very unclear how they're treated from an
3 accounting and tax perspective.

4 So, to the extent that we could get some
5 support from the IRS to, you know, maybe weigh in on
6 some of these questions, that would also be incredibly
7 helpful.

8 PARTICIPANT: Good luck.
9 (Laughter.)

10 MR. GRAHAM: Okay. Well, I think we're
11 getting pretty close to the end. I think it's been a
12 good meeting. Thank everybody for coming, and I
13 certainly appreciated some of the lawyer comments.

14 (Laughter.)

15 MR. GRAHAM: What we will do is, you know,
16 come up with some draft recommendations to try to line
17 things up for how we might go forward.

18 One thing that I wanted to do is talk about
19 next year. And Julie, do you -- we got some proposed
20 dates?

21 MS. DAVIS: I will send them around by email,
22 but we're thinking of meeting in February, May, and
23 September.

24 MR. GRAHAM: Okay. Do we --

25 MR. NELSON: Are we having another one this

1 year, or are we done for --
 2 MS. DAVIS: Not in 2016.
 3 MR. GRAHAM: Okay. So that should be coming
 4 shortly.
 5 If we are not meeting again until February, I
 6 think there is a good chance we might end up with a
 7 telephonic meeting to talk about some of these
 8 recommendations.
 9 All right. Again, thank you for coming. See
 10 you next time. Thank you.
 11 (Applause.)
 12 (Whereupon, at 3:25 p.m., the meeting was
 13 adjourned.)

14 * * * * *

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1 PROOFREADER'S CERTIFICATE
 2
 3 In The Matter of: ADVISORY COMMITTEE ON SMALL AND
 4 EMERGING COMPANIES
 5 File Number: OS-1005
 6 Date: October 5, 2016
 7 Location: Washington, D.C.

8
 9 This is to certify that I, Nicholas Wagner,
 10 (the undersigned), do hereby swear and affirm that the
 11 attached proceedings before the U.S. Securities and
 12 Exchange Commission were held according to the record and
 13 that this is the original, complete, true and accurate
 14 transcript that has been compared to the reporting or
 15 recording accomplished at the hearing.

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 17 _____
 18 (Proofreader's Name) (Date)

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