U.S. SECURITIES AND EXCHANGE COMMISSION

ADVISORY COMMITTEE ON SMALL AND EMERGING COMPANIES

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Securities and Exchange Commission

100 F Street, NE

Washington, D.C.

PARTICIPANTS:

COMMISSIONERS:
Mary Jo White, Chair
Michael S. Piwowar
Kara M. Stein

Stephen Graham, Co-Chair
Sara Hanks, Co-Chair

Robert Aguilar
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Xavier Gutierrez
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Keith Higgins
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Michael Pieciak
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Annemarie Tierney

PARTICIPANTS (CONT.):

Gregory Yadley
Laura Yamanaka

Presenters:
Cari M. Dominguez
Stephen Luparello

C O N T E N T S

P R O C E E D I N G S

MR. GRAHAM: We will go ahead and get started. Thanks to everyone for coming. This is good to see you all again.

Sebastian, I assume we have a quorum.

MR. GOMEZ: As soon as the rest of the members come to their chairs, we will.

(Laughter.)

MR. GOMEZ: So in the room we have a quorum. Maybe not at the table yet.

MR. GRAHAM: Okay. Our agenda today encompasses a variety of matters.

First there will be a discussion of Regulation S-K, the integrated disclosure requirements used both for registered offerings and ongoing reportings. Congress passed legislation last December that requires the Commission to consult with both this advisory committee and the investor advisory committee in connection with the disclosure requirements in Regulation S-K. This committee has spent time in the past discussing the benefits of scaling certain of those disclosures for smaller companies. And I am fairly certain we will have thoughts to share.

Secondly we will turn to a topic that Xavier Gutierrez suggested, and we are pleased to take up, and that is diversity in corporate boards. Our focus, as a committee, is capital formation and preservation with regard to small and emerging companies, and we believe that there is a correlation between board diversity and the level of a corporation's success.

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

(Laughter.)

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

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

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

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

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

(Laughter.)

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

(Laughter.)

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

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

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

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

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

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

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

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

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

Thus, as we move forward with thinking about how to facilitate capital formation for small businesses, we need to do our best to consider both the seen and the unseen consequences of our regulatory actions. Your outreach efforts in this area could be particularly helpful in this regard.

I hope that you have productive discussions today. Unfortunately, I won't be able to enjoy you for the entire meeting, but I hope to be able to join you again at various parts throughout the day. And if there are any particular issues you would like to follow up with me on, please feel free to reach out to my office any time. Thank you.

MR. GOMEZ: And Steve, the -- and for the committee members, the chair wanted to join this morning, but she has a meeting at the IMF. And she will be joining the committee this afternoon.

And I guess we probably should proceed to the first item on the agenda, and when Commissioner Stein comes in we can take a break and then she can provide her remarks.

MR. GRAHAM: Okay. Before we get to that, let's talk about who you are. So, Keith?

MR. HIGGINS: Well, I'm Keith Higgins, and I'm director of the division. And with me are Betsy

Murphy, associate director in the division; Sebastian Gomez, who you know; and Julie Davis from the office of small business policy.

But let me turn it over to Betsy to do the formal introductions.

MS. MURPHY: Okay. I think you covered the intros, but I will give the standard disclaimer for any SEC staff member speaking today. So that's to say that any remarks made by any of the SEC staff members reflect their own views, and not necessarily those of the Commission or any other member of the Commission staff.

Back to you.

MR. GRAHAM: Well, before back to me I want to just extend my thanks again to Sebastian and Julie for all the help they gave to this committee. None of this would happen without them.

So, Commissioner Stein, we will turn it over to you.

COMMISSIONER STEIN: Wonderful. I'm sorry I got held up by traffic. I have a long commute in the morning, and it's a little hit or miss.

I want to welcome everyone here. Thank you very much for your pro bono contributions. I want to keep saying that, because I don't know if everybody

realizes people do this for free to advise the Commission.

I am really excited about today's agenda covering Reg S-K disclosure requirements -- we've been delving deep into those at the Commission -- corporate board diversity disclosure, and the recently-launched tick-size pilot project.

And these agenda items call on the committee to consider, I think, what investors want to know in order to make investment decisions; how smaller companies can best give them that information in order to attract and maintain investment in the company; and how quality information may be linked to enhance liquidity in small to mid-cap companies. So sort of understanding do the companies that have better disclosure get more people willing to invest in them, or is there any connection there? And I think that's something really important for us to keep considering.

I'm going to -- section 72003 of the Fixing America's Surface Transportation Act might be surprising to you -- requires the Commission, in consultation with the committee, this committee, and the Investor Advisory Committee, to study the disclosure requirements that are set forth in Regulation S-K. And that's, to some degree, one of the

reasons we started this project, although I think the Commission was focused on this pre-Congress.

The non-financial disclosure requirements -- so the non-financial requirements of Reg S-K tell us the story of each business. What level of disclosure and information is needed to tell the story of a small company in a way that will produce interest, investment, market confidence and growth?

To date, much of the discussion about the appropriate level of disclosure for smaller reporting companies has focused on scaling or eliminating disclosure. The cost of disclosure to smaller companies is sometimes characterized as burdensome. Yet the cost to smaller companies providing insufficient or inadequate disclosure has been shown to negatively impact the level investment in the company. The liquidity of its shares and its growth.

So it's sort of understanding the benefits that come from disclosure, because people are more willing to invest because they understand what they're investing in. And then, on the flip side, how can we help the companies not have a burdensome, you know, process? And I think we're in a new age here with computers, and we need to be thinking differently about what gets disclosed, when it gets disclosed, and in what form.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

MR. GRAHAM: Whatever you want.

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

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

And Sara, I will turn it over to you.

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

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

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

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

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

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

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

report of findings and recommendations to Congress.

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

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

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

incredibly entertaining. It was about tyranny and stuff.

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

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

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

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

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

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

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

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

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

Materiality definitely is the starting point. Principles-based disclosure can be more helpful for smaller reporting companies, I think, than other companies. And the idea of a company profile may go hand in hand with that.

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

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

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

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

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

MR. GRAHAM: Thanks, Greg.

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

(Laughter.)

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

And I think -- and I immediately thought about

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

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

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

(Laughter.)

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

MR. GRAHAM: Patrick?

MR. REARDON: Thank you. I have a few

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

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

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

And I had a conversation with the CEO and the chief legal counsel last week of a public company, and it's bigger than one of the companies -- than any of the companies we deal with, but it hasn't been there that long. And there is this difference between what they get asked about by the analysts and what we have in the disclosures. I mean I will just tell you that one of the things that they complain about is the restrictions on disclosure of non-GAAP measures, that -- they say that the analysts are the ones pushing for that, that they are not pushing it out there to the analysts, it's the analysts who are asking for it.

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

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

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

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

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

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

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

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

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

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

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

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

And finally, in the -- in my comment letter, I think that the Commission, for its own purposes, should require each reporting company to include in its 10-K its annual routine '34 Act compliance costs. It doesn't have to be with great precision, because they're allocations, but plus or minus five percent. And have it certified. And the reason for that is that's going to give you an instant benchmark on what it costs to be a public company. And you may not like the number. Keep scowling over there, like I said the most horrible thing in the world.

But, you know, how much does it cost? And the way I'd present it, because you're going to get some pushback for one more thing, is this is so we can see what we're doing to you, and what your costs are, because we need to be able to compare. But I think that would be useful information, and it might be surprising. And then you wouldn't just have anecdotal comments of, "It cost my company this to do it." And I don't think there is any disclosure like that at present.

Those are my comments.

MR. GRAHAM: Okay --

MS. HANKS: Steve?

MR. GRAHAM: Yeah, please.

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

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

work.

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

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

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

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

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

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

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

MR. GRAHAM: Laura?

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

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

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

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

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

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

And so, that reporting formalizes the information that they actually really know of the company: the people who are running it, maybe the product, maybe they've been tracking the trend of the development. I see Brian shaking his head, but I think that, in reality, is how it works.

So, if -- to the comments of knowing the consumer of the information, I -- although it is making it more complicated, I think, to segment this out, in reality that's what I think people are looking at.

Materiality, I'm going to make a very controversial statement here, and I'm going to lump it in with non-GAAP disclosures. That's where I think you get the meat. All -- you know, when you really look at reports, and you compare them, if they all look the same the material things are going to be okay, whatever. You really -- the gotchas that I think that everybody has ever, in my experience, been generated in my world, is the non-material.

I am going to give you an example. There is a company that -- they were looking at, you know, who ever looks at deposits, right, unless you're into that business. Deposits -- always small, it's always like, you know, rent deposits or something. It always kind of stays the same. And I remember looking at some financials. It's been very consistent. And all the sudden it spiked up. Wasn't material, you know, but it was just kind of wow, maybe they got a new building, maybe they're -- you know, whatever.

Well, it turns out that they had changed --

they were thinking about changing the course of their business. They were going out and committing to buy all these properties. They really hadn't committed to change the approach or to expand the approach of the business. Maybe it should have been disclosed elsewhere. But since it was in pilot stage, and they really weren't sure if they were going to do it yet, they didn't feel it was -- that they had to disclose it.

On the other hand, if you looked at the agreements, it's like, wow, they're on the hook for all of this stuff, and that next quarter it could significantly change if they pull the trigger.

So, sometimes it's the small things that pick -- that I think reveal things. Also non-GAAP, I totally understand why the investors or the analysts want that information, because we found that when we deal with CEOs, presidents, business owners, if they are really good at what they're doing, they don't wait until the financials to get the information and know where they're at. They've got early warning indicators. They have certain metrics that identify are we okay, are we on track, how are we doing, and that's what they use to run their business and monitor their business, and the analysts want to know that,

because they know the financials are rearview driving.

So it's a very sticky wicket, it's different from -- for each company. It is very unauditable many times. But that's the kind of underground information that I think that the people who are really good at investing are looking at.

MR. GRAHAM: And, you know, I think it's clear that one size doesn't fit all. And I think one way to address this is to kind of head into the principles-based system, if you will. But I -- and I think that your example kind of underscores that, because maybe what you are looking at, what you have identified, is something "small." But maybe in the context of that particular business, it was material.

Oh, Annemarie?

MS. TIERNEY: So before I express my views, I will give my own disclaimer, which was my first job out of law school was with corpfin, so I love disclosure. I'm a big fan of disclosure, and I think disclosure is necessary.

But I've had two other jobs, I think, that give me a slightly different perspective on disclosure. One was the general counsel of a small, publicly-traded company. It was a broker-dealer, and it was NASDAQ listed, and we made, I don't know, maybe 125 million to

150 million a year, and we spent 2 to 3 million a year on disclosure. That was very disproportionate for our company.

But there are a few things to keep in mind. The disclosure requirements, you don't want to be outside the box because that leads to litigation risk and your board is terrified of doing something different because they don't want to get sued. So we had a lot of, you know, staying in a typical disclosure structure with typical disclosure, good disclosure. We had excellent outside counsel, we had excellent accountants. But my team spent half of our year on disclosure, and that's four or five people plus our CFO and our controllers. So there is a lot of focus in a very small company on mandated disclosure and meeting the disclosure requirements.

I agree with Patrick. I was at the New York Stock Exchange when the CD&A requirements were adopted. That's just as we were going public. And that is a increasing creeping disclosure requirement that I think is outsized to the actual benefits that it gives to investors. And I think, Commissioner Stein, you asked the question, like, "Who is reading the disclosure?"

So, when I was -- NYFIX was the name of the public company I was the general counsel of. We did a big revamp of our proxy statement. We tried to make it really user-friendly. We upgraded everything. I was really proud of the result. We were really proud of the result. We sent it out into the, you know, ethos, and I feel like nobody read it.

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

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

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

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

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

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

I think a lot of the disclosure is outsized

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

MR. GRAHAM: Thank you. Xavier?

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

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

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

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

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

So, those are my comments.

MR. GRAHAM: Okay, thank you. Brian?

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

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

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

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

MR. GRAHAM: Okay. Patrick?

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

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

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

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

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

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

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

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

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

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

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

It's focused on a completely different thing."

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

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

Jonathan?

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

(Laughter.)

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

(Laughter.)

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

MR. NELSON: Anyone but me.

MR. GRAHAM: Okay.

MR. NELSON: One of the things that I had -- we just had a liquidity conference in Silicon Valley a couple of weeks ago, and we had one of the general partners of Saints Capital, which is one of the primary providers of secondary liquidity in Silicon Valley, and he was talking about a -- how many fewer public companies there are now, as opposed to 30 years ago. It's about 50 percent. And it's not just in the United States, it's also across other markets, like Japan and Brazil, Mexico.

And he also talked about the number of very large $1 billion, $10 billion companies, you know, unicorns, decacorns, that are actually public. And he said, "It's, frankly, a very competitive advantage to these companies not to actually have to file and not to disclose." And he said, "Frankly, I'm making a ton of money on this because, you know, I know all of these people and I can get into these deals. But private investors, the smaller investor, doesn't have access to these kinds of deals. And so they're actually not able to make the money that investors on the private side have been able to make."

And, you know, I am also doing research. The

Yale Endowment, you know, they're -- 30 to 40 percent of their capital goes into private placements, alternatives, private equities. And they usually estimate that they're going to do about 20 percent, year over year, which is another 10 percent on top of what an index would do on the public markets.

And so, I think that there is a lot more money to be made for investors on the private side, where disclosures are much smaller. The standard for one of our portfolio companies you go for a Series A is a 10-page deck and then due diligence, like, you know, a page of web analytics and a page -- you know, access to the QuickBooks account.

And a lot of million-dollar investments are actually made on those terms. And a lot of it is relationship-based. And I understand that public markets are much different. But it just seems like -- one of the things that Ken mentioned was could we actually start asking, and he said, "People are going to hate me for saying this: Could we actually start asking non-public companies, if they reach a market cap of over $10 million, maybe they should start filing too, just to kind of level the playing field?"

I am not going to agree or disagree with that. I thought it was very interesting, though.

MR. GRAHAM: Thank you.

Laura?

MS. YAMANAKA: I just wanted to comment on what Sara just said, and the significance of what she just said. Right?

So here is Sara. She's got some chops, right? She's got some credibility. And it takes you to go up against counsel and attorneys to add that in. So my clients, the people that I know, they're just doing whatever they're told. If somebody wants an additional disclosure in there, it's not fighting not to get the disclosure, it is, "Does anybody object to the wording," you know?

And so, that's how it just layers on and layers on. It's like one time I ask them, "What is all this stuff," right?

And they go, "Oh, the attorneys said that we needed to do it." I go, "Do you understand it? Because I will just tell you I don't." Right?

And they go, "No, but the attorneys said we needed it. And if we go back around, it's going to cost us, you know, $750 for somebody to explain it to us, and they do it all the time, so let's just leave it in. We'll deal with it later."

So, next time comes around, and I'm like,

"It's still in here. Does anybody know what this means?"

And they go, "No. But if -- they just put it in. If we ask to change any of the pre-existing wordage, verbiage, it's going to cost us $950," you know, price went up.

(Laughter.)

MS. YAMANAKA: And so they just do that. So I just want to make the comment that, again, if Sara is having to do that, then, you know, all these small little companies have no chance.

Brian is laughing. Did that happen to you?

MR. GRAHAM: That -- those kinds of examples are out there.

MS. KASSAN: I just have a question for Annemarie.

You mentioned the multi-million-dollar disclosure costs, and it is a -- it was a broker-dealer. So I was just wondering how much of those costs were related to being a broker-dealer versus being a public company.

MS. TIERNEY: None of them.

MS. KASSAN: Okay.

MS. TIERNEY: Those were just public company costs. Yeah. Broker-dealer costs were a separate bucket of delightful money.

MR. GRAHAM: Sara?

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

MR. GRAHAM: Fair comment.

Greg?

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

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

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

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

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

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

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

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

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

MR. GRAHAM: Thank you, Greg. Anyone else?

Patrick?

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

that. Do you remember it?

(Laughter.)

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

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

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

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

Okay. Next topic, board diversity. We would like to discuss, one, the premise that there is a correlation between a corporation's level of success and board diversity; and, two, assuming that to be the case, how might the SEC encourage rate of diversity through its disclosure requirements.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

So thank you, Cari, for joining us.

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

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

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

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

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

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

improved that much.

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

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

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

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

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America?

So we do that -- we have 17,000 members. And if you look at the composition, we have full board membership and we also have individual membership. The full board membership: 73 percent are publicly-traded companies, they come from publicly-traded companies, 16 percent from privately-owned companies, and about 10 percent for non-profits. And, as you can see, the top represented industries really come from a highly-regulated environment: banking, financial services, insurance, energy, utilities.

We -- in addition to the 17,000 members, we have 22 chapters all over the United States. So we hold all kinds of director professionalism classes for these individuals.

Some of the publications that have been very well received -- cyber risk, as we know, is a hot, hot topic in corporate America. Director compensation, I heard a lot of comments about that this morning. We have an annual survey on public company governance, what are the issues that they are concerned about, as well as, obviously, Dodd-Frank is a big issue for our members.

These are some of the examples of the blue ribbon commission report. Every year we put together a

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commission, and we talk about what -- some of the timely issues that are affecting board governance: talent development, compensation is always the hot topic, long-term value creation. How do you manage short-term results with long-term value creation? Strategy, and, of course, what I will talk about is the diverse board. I had the privilege of co-chairing that board, that commission.

These are four councils that NACD has. They convene 400 to 500 committee chairs. And, of course, it follows the structure of governance: audit, nominations, compensation, and risk oversight.

And, of course, just like SEC, we are multi-vested with all the stakeholders that really weigh in on the issues of corporate governance, including institutional investors, media outlets, and government officials. And we're very proud of our relationship with the SEC and the work that we have done together.

Okay. Boardroom diversity. This is a statement that -- the result of a one-year-long study that came out of our blue ribbon commission. Board's performance really relies on its understanding of the company and its operating environment. In today's business landscape, the board cannot properly fulfill this responsibility without having directors who

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reflect the composition of its stakeholders, particularly the employees and the customer. So what we're trying to do is make sure that board governance reflects the diversity that exists in the marketplace.

Betsy mentioned some statistics. These are some of the statistics that just came out of the 2015 Spencer Stuart board index. We have an 8.6 percent directors that are -- come from the African-American descent, which is down slightly from 9.6 percent in 2010. These are S&P 500 companies. So, African-American directors make up 8.6 percent. Hispanic-Latino directors, 4.8 percent, a slight increase from 4.2 percent. And Asian descent, 1.8 percent, a slight increase again from 1.3 percent.

So, as you can tell, the ethnic and the racial diversity of board members has really kind of stayed static, kind of stagnant, it really hasn't progressed to the extent that we had hoped.

If you look at women, women make up about 20 percent of all directors. About 75 percent of all S&P boards have 2 -- at least 2 women directors. And, interestingly, from all independent directors that come internationally, that has come down. I think it probably has to do with the logistics of travel these days. It's very difficult. But it's gone from 12

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percent back in 2014 to 9 percent in 2015.

The median age of board members has gone up from 61 to 63. I think that has to do with the fact that a lot of companies now have extended the age, term limits, to 72, to 75. Some don't have age limits, which really has -- and we'll talk about this in a little bit, but has an impact on the ability of new board members to come in to the board.

If we look at the state of board diversity in the U.S. compared to other countries around the world, I think we're at -- in terms of European countries, we're number 11. Norway, Sweden, France, Italy have approached the gender inclusion issue through targets and quotas. So they are pretty firm about, you know, the representation of women, and looking for ways to accelerate that representation.

Australia and the UK, in particular, have used other kinds of things that have nothing to do with quotas, and we'll get into that in a second. But it's been equally as effective, and continues to be quite effective. And, of course, in the United States, we -- as has been indicated, the disclosure statement doesn't really give us much of a window to make some comparisons, in terms of the growth that we have and companies have diversity and which ones don't, in terms of ethnic and racial diversity.

So, the findings from the blue ribbon commission: directors and stakeholders agree on the importance of increasing boardroom diversity, but the progress has been quite, quite slow. And it's been a very sluggish transition. It really hasn't kept up with the technology, it hasn't kept up with the pace of business, as well as the human progress, in general.

This is the most recent survey that we have, 2016-2017 new findings. Boards are largely relying on expanding their search criteria for new candidates and diversifying the composition. So boards have traditionally looked at certain search firms. Now they're saying, okay, let's expand the criteria. There's a bias towards CEOs, or presidents of operating divisions. They say, "What about somebody with an IT background? What about somebody with international experience?" So the criteria has been broadening in an effort to increase the representation of prospective board members.

And, please, if you have any questions at any point, feel free to ask. Any questions so far? No?

MR. GRAHAM: Yes.

MR. AGUILAR: I have a question.

MS. DOMINGUEZ: Yes.

MR. AGUILAR: You mentioned that Norway, France, and Sweden have quotas that they fill to include women on boards. Where do those quotas come from? Do they come from regulation? Do they come from legislation? Internal policies? Can you talk a little bit more about that?

MS. DOMINGUEZ: Sure. Most of them are legislative, mandated. And some are regulatory executive mandates. For example, Germany, they just imposed a quota that -- through -- directly through Angela Merkel.

So, it comes in different iterations, but it's either through rulemaking or its legislatively imposed. Norway was legislatively imposed, and they actually are at the top of ranking at 40 percent representation. So it varies, and I will talk about the UK and Australia in a second, but they are actually using other non-quota tools to really achieve more of a gender equity.

Unfortunately, the ethnic and racial components don't apply outside of the United States, so our comparisons are mostly on the gender side and on the ethnic or racial side outside of the United States.

I mentioned this before. A few boards are adjusting tenure limiting mechanisms or adopting formal

quota to promote diversity. They don't really talk about quotas for those companies within the United States, they talk about the 30 percent coalition. They try to set targets to try to encourage chairs and nominating committee and CEOs to reach those targets through peer pressure, through public CEO sort of -- a little bit of cajoling, if you will. But we don't really have -- as we know, we don't really have -- impose quotas. We do have that peer pressure that we'll talk about in a second in more detail.

Let's see, expanded director search criteria, diversify composition of the nominating and governance committee. This has been a pretty helpful tool to try to get more consideration of diversity, to try to get the nominating committees to reflect some diversity. Historically, we haven't had that much diversity, but this has been a helpful tool. One of the boards that I sit on, which has changed the chair of one of the committees, and, you know, it's -- really has expanded the conversation as it relates to diversity.

One other option is to increase the size of the board. When the board is actually shrinking or down to an average of 9, 11, increasing the size of the board to allow for new board members has been a positive way of increasing diversity at the board

level.

Let's see, institute or change tenure limiting mechanism. Again, with board members getting older and not -- there is a little bit of reluctance to leave a board, because there is a perception that if you're asked to leave a board, that there is -- you know, it's kind of a stigma attached to it. And so we're trying to think about what -- if you have term limits, or something like that, where board members can be -- can move around and participate in other boards, I think that would be a positive way.

You know, we talk about the representation of African-Americans and Hispanics, but essentially a lot of those individuals are being recycled. They are going from one board to the other, so we're not really growing the base, we're just having that -- and if you have women of color, that too, you know, changes the discourse.

So, how do we change that, you know? What types of criteria do we look at? And I think some of the things we've talked about, looking at -- you know, you don't have to be a CEO, you don't have to run a major division exclusively, although there is a bias toward those types of credentials. But we have the talent pool, we have the pipeline, and I think it's more of building the awareness and some of the accountability that goes with it.

And some have adopted the racial or gender diversity targets, but that's few and far between. I'm not -- this is summary data, so I'm not really aware of which companies have adopted that.

In terms of public -- the boards of larger companies are far more likely than those of smaller companies to discuss diversity of their members. Some of the informal surveys that we have conducted, we have found that it's very little discussion at the board level about diversity. A lot of the discussion takes place at the committee levels, but not really at the board level, the full board.

And half of the small cap respondents said that their boards did not discuss gender diversity, and most didn't discuss racial or ethnic diversity. As you can see in the chart, it really depends on -- we talk a lot about professional industries, skill sets. We talk a lot about gender diversity, a little less about ethnic and racial and age diversity and other kinds -- international experience is another one.

Now, if we look at Australia, for example, I think it's a good example, as this Commission, SEC, considers expanding or amending their S-K regulation.

They have actually brought change in a non-quota market by calling on boards to establish measure and report their diversity outcome. What proportion of their boards are women? What proportion of their senior managers are women? And if they don't wish to report it, why not? You know, what's the reason why they don't want to report it?

So, I think they've made some significant progress by calling on these requirements in order to be listed as part of their Australia stock exchange. And they do have champions of change. They have a coalition of very high-profile businessmen, primarily, that are -- have coalesced to talk about diversity, and to talk about gender inclusion as a competitive business asset, not as a nice-to-do or, you know, we're falling behind, but as a competitive business asset.

If you look at the United Kingdom with Lord Davis, it was a government-backed commission that examined the under-representation of women, and they have had tremendous success. They had set a goal of 25 percent by 2015 and, in fact, have exceeded that goal last year. So now they're trying to increase it.

They have an approach called name and shame, which is if -- they use the press, they use whatever public bully pulpit is available to talk about the

companies that have increased their representation versus those that have not increased their representation. So, last I heard, there was one or two that hadn't quite gotten there. And, you know, a couple of phone calls, a little nudging, and -- just really helped. So let's not under-estimate peer pressure as it relates to opening up inclusion and diversity.

It's a voluntary framework led by business. The Coalition of British Enterprises is a very, very powerful -- led by business leaders, and they have been pushing for change.

Institutional investors pressure big business. There is also this assumption that if you served on a board longer than nine years, you're not really considered independent. They're considered more -- less independent than those who have served for less time.

This is the -- what the trends has been for non-quota markets. And I think it's relevant because we're not thinking -- you know, United States doesn't recognize quotas as an acceptable tool in the marketplace. So I think the fact that we have some examples of opportunities to reach gender inclusion, gender diversity, and racial and ethnic diversity

without that component, you can look at the trend line. This is only to 2014. The numbers have gone up significantly last year.

These are the basic findings that our commission found. First of all, we said we had some serious structural factors that are keeping -- that are slowing down the pace of inclusion at the board level. The absence of tenure limiting, as well as limited mechanisms such as term limits, that has been a structural issue.

The recommended solution has been to preserve, enhance, or consider adding mechanisms to increase director turnover. One of those tools is board evaluations, you know. We don't really evaluate boards, the full level, on a general basis. So that's an opportunity to do it.

We also have, structurally speaking, small board sizes. Again, a lot of the boards are going down to 9 or 11 as sort of the average range. So if you're thinking of diversifying, one option would be to include -- to expand the board seat until there is some turnover, and allow that person to serve as sort of an understudy for that period of time.

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

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

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

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

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

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

(Laughter.)

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

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

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

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

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

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

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

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

But obviously, public pension funds have petitioned you to require disclosure. It's very simple, just put a little chart, a matrix. I had gender identity and ethnic and racial, and it's not going to be very burdensome, in general, but it would help the disclosure, knowing how the appointment process is proceeding.

And we've got a number of state initiatives that have passed resolutions urging for more women on boards. And, by extension, ethnic and racial diverse board members.

This is a coalition I talked about, the Thirty Percent Coalition, organization of executives that really press, use peer pressure, use publicity. I know they've pushed for increased SEC diversity disclosure. I attended their meeting last November, and it really has taken a lot of momentum in the private sector.

And, of course, we have impact investment funds that are being created to generate social change, as well as financial returns: State Street Global Advisors, we've received $250 million investment from CalPERS to take a look at gender diversity.

In conclusion, you know, I think we have all of these pieces converging. But all together, I think at the end of the day it's really about how do we influence change. I -- it's going to take a village. It's going to take everyone from different angles, but it's also going to take strong leadership, and a change in the corporate culture. If we don't change the corporate culture, you're going to have a CEO who is

very passionate and really works well with a board. And once that CEO leaves, the change -- you know, there might be some regression in that advancement. So it does take leadership, it does take a change in the corporate culture.

And we think, by having all the stakeholders involved, whether they're regulators, whether they're legislators, the private sector, the social groups, the associations like the Chamber of Commerce, all of those groups working together to recognize that this is no longer a social matter, it's really a business imperative. That's what's going to, I think, drive change.

And I love this quote from Thurgood Marshall. And he says, you know, "The law can only push open doors and tear down walls, but it cannot build bridges. And that job belongs to you and me." I think the key here is how do we keep the burdensome -- the burdens of data reporting to a minimum, and at the same time allow for sufficient information with which to make informed decisions. So, SEC really has a critical role to play along those lines.

MR. GRAHAM: Well, thank you very much, Cari. I think we can agree that diversity is what you make it. If something that doesn't work -- if we're trying

to generate information for shareholders and to assist with governance, an adequate definition is needed. And certainly diversity of thought and experience and the right skill sets, all those things are important and are part of the conversation.

It sometimes becomes a more difficult conversation when we talk in terms of gender and ratio and ethnic diversity and sexual orientation and, you know, those kinds of things. You know, but those -- but that should be part of a definition, as well.

The SEC, as we know, cannot mandate diversity. And I know that some quotas have imposed quotas and that sort of thing. And even if we were in a position to impose quotas, I wouldn't be in favor of that. But I think the SEC clearly does have a role, in terms of disclosure, of course, and related to education regarding things that are important to investors in the context of company performance.

The -- you know, I'm convinced that there are those corporations out there whose boards are lacking in diversity because their thinking is similar to that of the mid-20th century Red Sox. You know, even if it's only through the magic of implicit bias. Maybe they don't even know it.

I'm equally convinced that there are those

corporations out there lacking in board diversity because they really are not paying attention, and not really aware of -- you know, in terms of percentages -- the under-representation of minorities and women.

And I think that there are those corporations out there that are not really aware of their own boards, because they look around at their boards and their subconscious tells them that what they see is normal. They do not depreciate the implicit bias or, as I've said before, don't -- do not acknowledge an unwillingness to get out of their comfort zone when thinking about what their colleagues look like.

So, with that, let me open it up. Comments? Kyle?

MR. HAUPTMAN: That was a great presentation. And the materials provided for this provided a lot of great information, including an editorial by Chair White.

I think your organization, as a private-sector organization, is in a terrific position to do this. The one thing that set off alarm bells when I read about the UK, government-backed commission. I guess it wasn't a government mandate, but it was a government-backed commission was doing naming and shaming. I would think if you went out to most of America and said there is the free enterprise system, people working, and then there is the public servants in D.C. whom they hire, that if there is any naming and shaming to be going on, I'm not sure they would think it should be going from D.C. out to them. Right?

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

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

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

sweatshirt."

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

MR. GRAHAM: Xavier?

MR. GUTIERREZ: So I have a number of

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

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

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

Now, how to do it? And I echo the comments -- Kyle, that we have to be very careful of what it is to be diverse. You brought up socio-economic diversity, which I think is really, really non-existent in the conversation of diversity discussions. And so I would agree with you.

But to Stephen's point, just because something is hard to define, doesn't mean that we shouldn't undertake exploring it. The role of the SEC, I believe, is to be more clear in its disclosure requirements. I believe that several of the recommendations brought forth by The NACD and other organizations should be things that the SEC should undertake because, again, you can't improve what you can't measure. Those in Silicon Valley love data, in particular, and clearly we are having a data problem to start.

And so, I would very strongly urge the Commission to think of ways to improve its disclosure in order to address this matter.

I was particularly, I guess, disturbed by the fact that small companies, in particular, don't entertain or engage in this conversation. One, because there is more of them. Two, because they tend to, in

essence, be the bench for the directors for larger companies. So, when we're talking about some of the structural issues, directors on smaller company boards, whether public or private, tend to be the candidates for larger-company boards.

And so, if we are having a particular lack of engagement at that level and size of company, then clearly we're going to have an issue at the larger companies. And so, given our purview in terms of smaller companies, public and privately held, I think it's especially important that the SEC Commission and staff look at the small companies and the micro-cap companies, and what they're doing in terms of disclosure, not only of the results, but also of their policies. So thank you.

MR. GRAHAM: Thank you. Sara?

MS. HANKS: Yeah. I just want to respond to something that Xavier said there, which is -- I mean coming to this as the small and emerging companies committee, people might think, well, you know, this is a thing for big companies. But as we have seen, there is a tendency for smaller companies to stay private longer, and then they suddenly emerge on the public company space, where they become regulated by the SEC.

And at that point they're like, oh, yeah, we

have a board. It's 12 guys. And we've seen that recently in one of the very, very big companies who suddenly emerged and started to file, and everyone goes, "Ha, you've just got guys on your board. Do you not know any women? Are there no women in California?" And it was -- to build on something that Kyle said, there was the -- nobody needed to name and shame them from the government point of view, because Twitter did it for them. And they said, "It's so sad you don't know any women." And, goodness, they went and found one or two and appointed them. And how easy that was.

And so, it is -- this is an area that is very much within the remit of this committee, because if you don't do it when you are small and emerging, you're not going to have fixed it by the time you go and do your IPO.

MR. GRAHAM: Thank you. Greg?

MR. YADLEY: I also would like to thank you, Cari. And I think the dissemination of information on why this is good shouldn't be necessary. But particularly the studies that show that companies perform better, including their financial results, that is very powerful, and it gets the discussion going.

I have some reason to be optimistic that we will get there. To come back to my earlier comment

about exponential, I'm not that old, but when I was in law school I went to a national law school, and I think there were 11 women in my section, and there were 3 sections, not very much. Our law firm, new hires are at least 50 percent women, which reflects the diversity, gender diversity, in the law schools. Not doing nearly as well, racially.

My daughter-in-law is a physician. She's finished her residency. Majority of women. And I was proud to send an article from my alma mater, Dartmouth, where the engineering school this year graduated more women engineers than any -- than men. And that was the first time for a major engineering school. So, hopefully, exponentially, women are taking place. And it's not a situation where Sara just mentioned, where we don't know any women, because they're sitting right there. But it may take 40 years.

I think that once the discussion gets started -- some of the earlier comments that were made about we're in business, you know. Who is investing? Who is buying our products? What are the social forces? So I think it can happen, and I think the disclosure ability of the SEC is extremely powerful, as Kyle said, with the three percent example. You know, I think if you do that, maybe it will encourage us all to build more bridges.

MR. GRAHAM: Thanks, Greg.

Patrick?

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

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

And I think there are some very good answers.

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

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

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

but I know there are people who would say that.

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

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

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

(Laughter.)

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

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

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

Yes, Cari?

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

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

So I think -- and I believe -- I reflect the views of NACD when I say that we don't want a prescription, we just want disclosure. I wore the hat of director of the office of federal contract compliance programs when I launched a glass ceiling initiative. And there was all kinds of regulations, and The CEOs would say, "Well, Cari, we did everything we're supposed to do," but there were no results, because it wasn't given to their creativity, to their culture.

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

MR. GRAHAM: Kyle? Robert?

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

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

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

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

MR. GRAHAM: Thanks.

Michael?

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

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

And one of the things that was interesting I

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

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

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

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

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

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

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

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

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

MR. GRAHAM: Jonathan?

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

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

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

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

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

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

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

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

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

MR. GRAHAM: Thanks.

Kyle?

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

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

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

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

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

Surprising.

MR. GRAHAM: Annemarie?

MS. TIERNEY: So one of my questions, when I looked at the statistics on the racial diversity is the percentages on boards, how they translate to a percentage of what you would deem qualified applicants in the marketplace. Because I think part of the problem, at least for women in my experience, is there is -- I think there is still not a clear path to becoming a board director for a lot of women in different categories of professional experience and/or potentially for people of different ethnicity or race.

So, do you have to kind of self-select that you want to become a board member? I think that's the first step for everybody, make a decision on their own. And how do we encourage more people to self-select, to want to be board members, to increase the pool of diversified candidates, to be considered? And so I think that's a challenge, and I don't know how you solve for that.

How do you get people of different race and ethnicity wanting to be on boards, like a Laura or a Sara or a -- you know, or a me. Like, how do you create a pipeline for education and opportunity, networking? So many board memberships are based on

personal relationships with CEOs and other people at the management level. That's a time-worn problem for anybody trying to become an executive in a public company in the United States of America. We need to have a different pathway to self-select. You want to become a board member? Different educational processes and a better, more diverse pool.

You made the comment that, you know, there was some diversity candidates who are recycled from one company to another. Is that because there weren't any other options for the companies who were doing the board recruiting at the time? Were they looking for diversity and the candidates just weren't presented to them? That would be some information I would love to understand. Like, how do we create a more diverse pool of appropriately-educated and experienced candidates to meet expanded search criteria? That would be one thing I think should be a goal of anybody looking to diversity their board.

The second thing was just kind of a basic thing on disclosure. A really easy way to disclose the diversity of your board is to add pictures in your proxy statement. That's what we did. We included photographs. Because some people don't want to self-select. I have biracial nieces and nephews who might

not want to self-select. Am I white? Am I Asian? I have other nieces and nephews, cousins' children, who are biracial, you know, Caucasian/African-American. They may not want to self-select a race. But if you put a picture of somebody in a proxy statement, then their ethnicity is more clear.

But that's -- you know, I wouldn't like to see a chart that sort of says, you know, "I consider myself white and Asian," or, you know, confusion, right? So I don't know the best way to disclose diversity, but photographs might be a easy way to kind of get that conversation started.

MR. GRAHAM: You know, I don't know the best way, either. But -- and this -- I mean there are a lot of things to think about. The more you think about it, the more complex it gets.

But, you know, I don't think people should be required to self-select. I think that if someone wants to identify themselves as this or that, they should be allowed or encouraged to do so. But I don't think it should be a requirement. That's just my view.

Laura?

MS. YAMANAKA: So I totally agree with that, because I prefer to think of myself as a strong, intelligent businesswoman first, who happens to have an

ethnic identity, and who happens to be a woman, right? So I totally agree with that.

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

So, first off, I want to say I really do applaud everybody who had a part -- Xavier, the SEC, Stephen, you know, Sara -- of bringing this conversation to the forefront. Thank you, Cari, so much for providing some context and background. And to echo Robert's point, it's a difficult conversation, right?

I mean I don't play in this world all the time, so it's just, hey, you know, you just -- heads down, and you're working, for the most part. And when you have the opportunity to sit and listen to this conversation and think and dwell, it is -- I think it's really important to understand how critical everybody is in this room to actually changing something. Right?

So the fact that we can have a conversation about this, and have difficult conversations, and have varied positions on this, is a good thing. And we need to take this back and do more of this at home, wherever home is, and not just in a confined -- "Okay, now we're going to do diversity" kind of meeting today.

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

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

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

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

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

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

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

So, that was an allocation of funds issue, it

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

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

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

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

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

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

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

So, as far as if we could use anything that we could do from an informational basis to level the playing field -- I'm not talking about giving anybody a free ticket, because, frankly, I think, if you asked anybody who's been on the outside, looking in, they don't want to get a free ticket, they just want to get an opportunity to play and strike out. Right? Not everybody is going to make it. Not everybody should. The best, we want the best. We just want to take off the blinders, as far as what defines the best.

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

MR. GRAHAM: Thank you.

Yes, Brian?

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

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

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

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

MS. HANKS: Stephen?

MR. GRAHAM: Sara?

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

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

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

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

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

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

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

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

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

So, I think, from a cultural perspective, and from the dynamics of unconscious bias, which you referred to, I think those are some of the barriers that really are affecting the parity. And I hope it doesn't take 40 years, but that -- you know, we have a number of CEOs with daughters and professional wives, and they're actually leading the charge to make sure that --

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

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

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

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

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

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

greater social decision.

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

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

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

Anyone else? Xavier?

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

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

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

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

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

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

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

(No response.)

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

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

A F T E R N O O N S E S S I O N

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

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

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

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

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

Does anyone have anything to add to that?

Greg?

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

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

MR. GRAHAM: Okay. Anything else?

Patrick?

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

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

MR. REARDON: Framework, okay, thank you.

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

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

Anyone want to add to that?

(No response.)

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

First of all, as we mentioned this morning, Chair White was offsite at a meeting. She was meeting with the IMF. And so we missed her this morning. But we're pleased to have her join us now. And Chair White would like to make a few remarks.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

MR. GRAHAM: Well, thank you, and you're not interfering. And if you would like to give more remarks, you're welcome to do so.

(Laughter.)

MR. GRAHAM: Okay. Sara?

MS. HANKS: Okay, thanks. Well, I was very pleased to hear the chair say four for four on priorities, because there is a few of the items that we're going to discuss with Steve Luparello today which are very much things that we care about, too.

Much of our committee's focus is on matters that are handled by the division of corporation finance. This is, of course, disclosure rules, exemptions from registration, but we've also got a lot of interest in topics within the wheelhouse of the division of trading and markets.

Like Corpfin, trading and markets has a very broad mission. It regulates the major securities market participants, including broker-dealers, stock exchanges, clearing agencies, and FINRA.

We've previously talked about the finders issue several times, and urging the Commission to take steps to clarify the current ambiguity in broker-dealer regulation for people who act as intermediaries in private placements to identify or find potential investors.

We made a recommendation to the Commission along these lines in September 2015. We have further pointed out several times the need for some certainty in this area, both for established business models and the new online investment platforms popularized by the Jobs Act.

I also want to note the continuing work by the private broker task force of the ABA, which has been nagging T&M for some 16 years now, also looking for some certainty.

Going back to 2013, several times this committee has taken up issues surrounding the fact that the current U.S. equity markets don't always offer a satisfactory trading venue for the securities and small and emerging companies, because they don't provide sufficient liquidity for those securities, and because the listing requirements are too onerous for many of them.

In 2013 we recommended the Commission adopt rules that would allow smaller exchange-listed companies to voluntarily choose trading increments or tick-sizes greater than the current increment of one penny. The SEC, happy to note now, has now put in place a pilot to help assess The tick-size, The effective tick-sizes, on market quality for smaller

companies. We look forward to hearing the results of that.

And, of course, today we have with us the director of the division of trading and markets, Stephen Luparello. Steve returned to the SEC as division director in February 2014 from the law firm of Wilmer Hale, where he had been a partner specializing in broker-dealer compliance and regulation, securities litigation, and enforcement. He joined Wilmer Hale after 16 years at FINRA and its predecessor, the NASD, where he most recently served as vice chairman of FINRA. Prior to his time at the NASD, he served as chief of staff as the CFTC, and a branch chief at the SEC.

Steve, thank you for being here.

MR. LUPARELLO: I think always in the interest of time you should waive the reading of my resume, which only makes me feel old. And the chair is leaving, which is unfortunate, because I was going to yield my time back to her, but --

(Laughter.)

CHAIR WHITE: But I figured he would just step on your line, right?

(Laughter.)

MR. LUPARELLO: So I'm -- thank you, Sara, for

the introduction. And I'm happy to sort of talk on a variety of topics, but I know there are certain topics that are of specific interest to you, and I'll do my best to hit them along the way.

I think Mary Jo started with a discussion of the tick pilot, which did, after a very, very long wind-up, go effective on Monday. It's a -- as we usually do things in the secondary markets, it's an extended roll-out, where it won't be fully in place until the end of the month. It's a two-year pilot. But unlike, I think, other pilots we've done in the past, I think we've gotten a little smarter on this, where we are actually evaluating data as we go.

So, historically, what we've done is we've put pilots in place that come to an end, and then we've started to study what the implications were. And that tends to drag things on. And you're generally faced with reaching a conclusion of either shutting it down and incurring the cost of starting it back up, or just keeping it going, irrespective of whether you've decided it's a good idea because you need the time to study.

So we've built in milestones during the two-year period, which will allow us to evaluate The efficacy of The pilot.

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

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

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

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

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

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

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

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

(Laughter.)

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

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

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

a very, very short period of time.

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

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

So, there are a variety of other things, including a pilot on access on maker-taker access fees that are also in the works. And one very big thing that we're moving along on that is more of a market infrastructure initiative, not a market structure initiative, is the consolidated audit trail, where we have a 180-day deadline that is in the month of November, which is -- so I'll leave here and go back to working on that.

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

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

(No response.)

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

(Laughter.)

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

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

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

MR. GRAHAM: Great?

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

(Laughter.)

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

And, in fact, some of the early experience

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

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

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

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

start-up.

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

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

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

And I think one of the ways in which that conversation tends to get discussed is in the context of old no-action letters, including Paul Anka, right? And I think, historically, the division has taken a very narrow view as to what Anka permits and what Anka does not, you know, give coverage on. And I think our general understanding is that maybe the industry has moved it a little farther than the division would have wanted to move it, and has locked that in as basically tacit no-action relief.

I think we are generally appreciative of that. And, you know, I think if we take it away, we would take it away in a more formalistic way. But I suspect that in these conversations, which have always been very polite and nice, but seemingly not moving in any expeditious direction, it's because the gap continues to be pretty wide. That especially when you're talking about the prospect of reaching out to the full breadth of customers, including retail customers -- and if you have retail customers and you have transactions and you have transaction-based compensation, that strikes at our core and we have a very difficult time, just based on The nature of The instrument getting comfortable on it.

So I think there hasn't been a whole lot of movement over The years because both sides haven't moved very much.

MS. HANKS: But if I could just respectfully make the point that if we don't have any movement, especially with the way the online markets are moving -- and these are online markets which are dealing not

just with accredited, but with non-accrediteds, we are either going to end up somewhere that you really don't like but haven't said that you really don't like it, or we'll have regulation by enforcement, or nobody knows what they're doing.

And a point that I've made in the past is, for the companies -- for the intermediaries who are absolutely trying to do the right thing, it is so unfair to them --

MR. LUPARELLO: Absolutely.

MS. HANKS: -- to be complying, when everybody else is, hey, we can do whatever we like. We can solicit, we can send out emails, we can advertise on the TV. And this is not helping anybody, and it's just going to get worse.

MR. LUPARELLO: So the reaction to us rescinding Anka would be what? And I'm not -- I'm just asking that as a --

MS. HANKS: Hypothetically, if you were to do that --

MR. LUPARELLO: Thank you for asking the question better. I appreciate that.

(Laughter.)

MS. HANKS: It would only be a very small part of the overall uncertainty. I mean that is one

specific area of uncertainty, but we've got a whole area which is now increasing. You know, the cone of uncertainty, like a hurricane, is getting bigger every day.

MR. LUPARELLO: And those other areas -- so we have provided, obviously, some narrow guidance in the private issuer space, which was considerably narrower than the initial request. So I think we both signaled what we -- where we were and where we weren't at that point.

So, in terms of other areas where -- and likewise, to the same in M&A, right before I arrived -- so in other areas where you think we haven't spoken at all, what are those areas of focus?

MS. HANKS: Being in the business, you know, what is the nature of being in the business. And I would circle back again to some of the questions that were raised by the task force. I mean there is a lot of unanswered questions there. And if we could add online platforms to that, and get answers, that would help a lot.

MR. LUPARELLO: And the online platforms are doing what that is different from both what finders have to -- what finders and other have traditionally done in the space, as well as what the platforms are

doing in the context of crowdfunding? What are they doing that is in that gray area?

MS. HANKS: It depends on the platform, to be honest. I mean it's a complete variety. But there is -- I know that -- you know, I represent some clients who look at things and say, "How can they do that? How can they put out that video? How can they put out that social media?" You know, there is a very wide range there.

MR. LUPARELLO: No, I think that's --

MS. HANKS: And a lot of it technology-driven.

MR. LUPARELLO: And their compensation structures are likewise all over the map?

MS. HANKS: Yeah.

MR. REARDON: I'm Patrick Reardon. My comments are -- well, this has been going on for 16, 19 years. If there ever has been a bureaucratic Waiting for Godot, this is it. Okay?

I mean I don't care about -- we're asking questions after 16, 19 years? You should know all the answers to the questions by now. There are people out here stealing in my home state of Texas who are unlicensed broker-dealers. I have spoken to -- who was the lady who was -- had a corporation finance under Mary Shapiro?

PARTICIPANT: Meredith Cross.

MR. REARDON: Yeah, I spoke to her, I talked to somebody in the office in Fort Worth. I mean nothing happens.

MR. LUPARELLO: You should become a whistleblower, Patrick.

MR. REARDON: I became a whistleblower. I'm a badass.

(Laughter.)

COMMISSIONER STEIN: You'll become a rich badass, too, if you're --

MR. REARDON: Well, I don't care about that. I mean there are people who are stealing from our clients. I call the SEC, I said, "I've got an unlicensed broker, somebody in your division."

"Well, yeah, they're unlicensed. Don't you get in bed with them and do a deal with them, because you'll be aiding and abetting, a violation." But you won't pass a rule that says, you know, what is a limited exemption.

I'm not going to go to the trees and tell you, because I don't think, after 16, 19 years, you're going to pay any attention to me.

MR. LUPARELLO: So --

MR. REARDON: What I think is Congress is

going to have to step in here and do this, because you all have had plenty of time to do all this. I am frustrated, as a lawyer, and I am even more frustrated, as a taxpayer, because there are people out there who are being stolen from, and you all just sit on your hands and ask questions.

MR. LUPARELLO: So we -- I am a big supporter of bringing stand-alone 15(a) cases, and I have worked very closely with the director of enforcement to bring stand-alone 15(a) cases. They aren't the sexiest cases in the world, right, because a lot of times there isn't actually customer blood on the floor in the instance where you find it, but you are preventing blood on the floor later on in the process.

So, can't actually speak for 14 to 17 of those 16 to 19 years, but I can say with Andrew at -- in -- as the head of enforcement, and in conversations and interactions on what's important to our collective programs, unregistered broker-dealer cases, despite the fact that they're not terribly exciting, have become a much greater priority. And there are a lot more cases in the last couple of years than there have been, historically.

MR. REARDON: Well, it would help separate the crooks from the honest -- the people who are pure of

heart, but just can't afford to comply, if we had a simplified registration. And you can ask all the questions you want to ask. I don't care what you do. Just do something.

MR. LUPARELLO: Yeah, no, I agree. And I also think that there are probably a lot of people out there who would rather -- if broker-dealer regulation wasn't burdensome, and that's why I think we encouraged FINRA to go down the road of capital acquisition brokers. And I don't think we're married that they've got the four corners of that entirely right.

If there are ways in which it can be made a little bit more flexible, both in terms of the business you're allowed to do and the rules you need relief from, I think those are things we're willing to explore, because I agree. I think the much better answer is to get the good people inside the tent and create -- eliminate the distance -- sort of them being outside the tent.

But I also agree that the -- that always needs to be married with a reverse enforcement program, where you sue people for acting as --

MR. REARDON: Oh, absolutely. I am all in favor of enforcement, and I've made that clear.

And when will you have a rule out proposed on

this?

MR. LUPARELLO: A rule proposed on what?

MR. REARDON: On a limited financial broker whose --

MR. LUPARELLO: So --

MR. REARDON: To sell in private placements.

MR. LUPARELLO: So --

MR. REARDON: Okay. After 16, 19 years, what's the schedule?

MR. LUPARELLO: I believe the schedule is that The FINRA capital acquisition broker rules go into place six months after they put out a notice, which is at some point in the month of October. At that point I think broker-dealers who -- people who are acting as unregistered broker-dealers and who claim that, given the marginal nature of the business and the great burdens of being a regulator -- being regulated -- don't have that argument any more. And so, one would hope we would see even more 15(a) stand-alone unregistered broker-dealer cases.

We don't do rules -- occasionally we do rules -- that define broker-dealer. But I think our definition of broker-dealer probably stays the same. Our enforcement of unregistered broker-dealers, when there is an easier path to be a broker-dealer, is

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something where you make the progress.

MR. REARDON: So you would totally defer to FINRA's rule. So if I'm registered with FINRA, I'm good with you.

MR. LUPARELLO: Well, if you're registered with FINRA, you're also registered with us.

MR. REARDON: Okay. So that's a limited registration with you, is what you're saying.

MR. LUPARELLO: I don't believe there is that notion of a limited registration with us.

MR. REARDON: I mean is it a 15(b) registration or not?

MR. LUPARELLO: I assume it is, yes.

MR. REARDON: Okay. Thank you.

MR. LUPARELLO: Sure.

MR. GRAHAM: Greg?

MR. YADLEY: Yeah. I think what a lot of people were hoping would be acknowledging that the SEC is, you know, a political -- there is a political dimension -- small P -- to it. But I think a lot of people were hoping for leadership. And we talked about, you know, name and shame this morning in another context, but if the Commission is going to punt to FINRA, why not have an exemption from federal broker-dealer registration for limited concept? This

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committee has recommended the state registration would -- could be a condition of that.

I think the North American Securities Administrators, there is a whole bunch of constituencies there, all the different states, and yet they've been effective on a number of fronts recently, working together.

And somebody has got to be the leader here, and I think Patrick's frustration and others has been that, yeah, we have the states and we have FINRA and we have the SEC, and many of us hope -- because we have such high regard for the SEC, sincerely, or we wouldn't be here today -- that -- we hope you take a couple of lumps to the head and lead this. If you can't do it, or you feel it's not appropriate to do it -- but there is lots of investment advisor and other areas. This is federal, this is state. And if we have to -- if FINRA becomes the arena, then that's where we'll go. But -- and, of course, Capitol Hill.

But, you know, I think most of us believe that, if the -- something within the SEC's purview, the agency will do a better job because it has more expertise and it's not capital-P political, and therefore will get better regulation that protects investors and helps capital formation.

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MR. LUPARELLO: Well, and those are policy calls that are, frankly, over my pay grade. But what you said at the last point is the counterweight to that, right, which is walking away from registration of broker-dealers, especially a subset of broker-dealers that interact with retail customers, is something that the Commission, I think, would do only with great hesitation.

MR. YADLEY: Well, but also -- and, you know, we're not debating. As Patrick said, the information is out there. It hasn't been demonstrated that the kind of people we're talking about are committing fraud. It's just not where we've seen it. You know, these are -- we're trying to get people regulated in a reasonable fashion, not have them out there doing whatever they want to do.

And it's a real problem -- Patrick alluded to that too -- because, as I'm sure you know, many states have regulations that, in the private placement area -- and I am from one in Florida, where I don't have a private placement exemption. If somebody that fits within the definition is getting paid, and people, for small deals, just don't come into my office on day one and say, "Greg, start the meter, tell me how to run my life." They meet people, they get introduced to

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people, they are happy when somebody says, "Look, I would love to help you. If it doesn't work out you don't have to pay me anything. But, you know, if I introduce you to my friends, and I help you raise $100,000, yeah, you can pay me X."

I mean we know that that is within broker-dealer land. But it shouldn't have to be regulated by a full FINRA registration.

MR. LUPARELLO: And again, I think we will continue to look for ways in which very narrow stripes of the business can be relieved of those obligations, and then we will continue to look for ways in which we can relieve fully registered broker-dealers from a substantial portion, including all of the regulatory burden that doesn't particularly apply to that business.

And I think, you know, I will come back again after the capital acquisition broker rules are in place and get your sense for whether you think those are a good start or not, but I think that's the approach.

MS. KASSAN: I have a question. There is an intrastate exemption for broker-dealer registration, is there not?

MR. LUPARELLO: There is.

MS. KASSAN: Okay. But I guess we're -- it's narrow, so people aren't --

MR. LUPARELLO: I don't know that there is a single broker-dealer taking advantage, because, obviously, any interaction with a customer outside of the state is going to destroy the intrastate broker-dealer exemption.

MR. GRAHAM: Anyone else?

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

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

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

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

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

MS. HANKS: Thank you, Steve.

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

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

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

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

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

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

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

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

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

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

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

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

respective clients when their clients comes to them.
Because the reality is a lot of you in the trenches are going to be the ones that are going to be approached by a company who comes to you and says, "I need to raise capital." They may not know how to raise the capital. But part of what your job as a lawyer advising that company would be is what are the pros and cons of raising capital.
I, as a government staffer, can't tell someone that they should use one rule over another one. I can tell you what the rules are, but I think it's probably your role, as a lawyer, to provide that advice, itself. What I found the most enlightening about that -- and Steve, you alluded to it -- I think sometimes the bar is a little hesitant to embrace new things.
And when you go to an ABA panel or a PLI presentation and you are talking with people who are very used to companies raising capital in the form of a registered offering and form S-1, and you are telling them about what the new features of Reg A are, in a way you are trying to change what has been the practice, what people really know. Is it the right approach for every client? That is going to be your role. But my role is to give you the tools to know what the exemptions are, so that you can help your client. So

that's one point on outreach.
We have been doing outreach alongside the SBA and the office of minority and women inclusion to business owners themselves, and specifically minority, women, and veteran-owned businesses. I find those events to be extremely rewarding. They are very different than an ABA panel. And don't take offense, for all of you who go to the ABA presentations. But they tend to be smaller events, we're talking about 25 to 50 people, who are not lawyers, for the most part. They have broad ideas, lots of energy. They are excited about what they're doing. They need capital, and they want to know what their options are. It's very refreshing to speak at those events, because you can feel the passion from those business owners.
The third one that I also think it's important that we've done, some of it, is also to reach out to the investors. I went and spoke at the Angel Capital Association event. Angel investors are very used to 506(b). Well, 506(b) is not the only way to raise capital. There is other options out there. So I wanted specifically to talk about Reg A and what Reg A permits and what the difference are between a security that you acquire pursuant to Reg A versus 506(b).
So, our approach has been trying to address

different constituencies, and trying to get The information to those different constituencies. Pretty much almost -- Julie has done several events. Others in the office, we have teamed up with the division of trading and markets, specifically when it comes to crowdfunding outreach because of the fact that a lot of that relates to intermediaries and the work that funding portals do.
But that's a type of outreach we've done. I would love to hear from the committee about creative ideas to deploy what you know are very limited resources, both from the standpoint of money and people to be more effective.
MR. GRAHAM: Thank you, Sebastian. When you talk about those meetings or conferences or whatever they are where you've got a relatively small group of passionate people on the woman, minorities, and veterans side of the equation, and you've got people there that are saying, you know, "Help me, tell me" -- you know, "Just tell me what the framework is, tell me what, you know, where I might find the capital," it really does sound like that's, you know, exactly the kind of conversation that needs to be had. How do you expand that?
MR. GOMEZ: So also, let me tell you what the

challenges are with those, and why I liked the fact that we partnered with the SBA. Like --
MR. GRAHAM: Yeah, because I think -- excuse me, but I think that this is important from The standpoint of figuring out some mechanism so that we understand their perception of what the issues are.
MR. GOMEZ: Yeah. So the challenge is always the fact that we can tell people what the options are, people always want to know, "Which one should I do?" And I can't provide that assistance to them at those events.
The SBA, on the other hand, does have regional centers, when they can -- someone asked me at the first event that we did in Baltimore, someone said -- they raised their hand after the presentation, they described their business, and they said that they realized that the next thing they needed was to put together a business plan, and they didn't know where to start with the business plan. The -- our colleague from the SBA pointed them to their regional center in Baltimore, and invited them to stop by and try to get help there.
Part of the challenge is what can I say and do at those events. A different challenge to the events is when we go to these events we are reaching out the

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

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

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

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

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

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

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

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

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

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

MR. GRAHAM: Laura?

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

(Laughter.)

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

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

all the options I think is so important.

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

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

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

So there is a need to educate lawyers, entrepreneurs, regular folks who don't even understand what it means to be an investor in a small business. So I just want to help in any way I can, you know. I want to interview everyone for my book if you have things to contribute, because I really want this -- you know, I want this book to possibly be a tool that will be, you know, used by many all over the country.

MR. GRAHAM: Okay. Thank you for that. Laura, you had something?

MS. YAMANAKA: Yeah, I think that what I'm going to say is not going to be pleasing to anybody, because where have we ever thought there is one solution for everything, right?

And, in reality, if -- because I get clients all the time who run the full scope for -- they come in, they come through my door, we haven't met or anything. They go, "I want to go public." Right?

(Laughter.)

MS. YAMANAKA: And I'm like, cool, this is going to be a big client, I'm going to make a lot of money, there are structures in place. And I go, "Okay, let's look at your financials first."

"Well, I need to get some." Right?

(Laughter.)

MS. YAMANAKA: And -- yes. And so -- and, of course, they're not making money. And they go, "Well, I've heard, I saw that you don't have to make money to go public." And technically, they're right, right? I mean there have been companies that do so.

And on the other hand, you've got people that have finally shown up, and they said, "I've done all this research, but I don't know who to believe, because when I go out there I've spoken to 42 different accountants and attorneys, and they're all telling me conflictory things."

So, even if you just go in and Google "how to raise capital," you know, there is all this -- there is quacks out there, and there is legitimacy. So I think -- and then you're talking about the human touch, because that's what people are craving.

So, I've always thought it would be so great that we could get some kind of sanction, like an SEC site that says, like, simple YouTube, "How to Raise Capital, Part One," you know, "What Does Capital Mean," and go all the way from, like, cradle to grave. Fifteen minutes, make it short, because, actually, more and more people go to YouTube to get their preliminary research, and particularly when you're younger.

So, I -- you know, I remember I was talking to one of my staff people, and I go, "I'm going to send you to this conference, we're going to sign you up for, like, these classes on this," and they're going, "Why don't I just look on YouTube first, before we spend all this money?" And then, "Could I take the money if we save, and do something else," right? And, sure enough, The YouTube was there. The issue was how do we validate what's good and what's quality versus not.

And then, if we could then have, like, 101 on capital with a sanctioned source that is not, you know, Joe Bloe Fly By Night YouTube, The resources that they can go to get one-on-one help that are valid, and how do -- how -- and maybe even a session that says, "How do I evaluate who is good and who is not?" What is a good accountant? What is a good, you know, attorney? What are the things that I should be asking?

And then have them be aware that some people are one-trick wonders, right? I mean it's the whole, hey, I know how to use a hammer, and I'm going to keep using the hammer, and this is the only kind of financing I do, and I'm going to tell you this is the only kind that you can get.

So, again, I think a lot of the infrastructure is there with the SBA, with the incubator groups.

Well, I shouldn't say that. For large economic areas, The LAs, The coastal areas, certain parts of the Midwest. There is a vast majority, I think, if you don't have access to that locally, it's going to be strictly online. But if you could have a validated, secure, safe, sanctioned, legitimate source, and then a listing of resources to say, "Go here for blank, blank, blank," that's kind of, to me, the simple way to do it, because you're not going to get around.

Sebastian, you don't have enough budget, time, and miles to, you know, go out and talk to groups of 25 people.

(Laughter.)

MS. YAMANAKA: And, frankly, the people that are asking you about, you know, "I want to get capital, and first thing I have to do a business plan," you know, they should be disallowed immediately.

So, I mean -- and 90 percent of the people who show up to those things are. So I kind of think it might be easier, in a way, to reach a broad, legitimate constituency, I should say.

MR. GRAHAM: That's a good idea, Laura.

Sebastian, can we do that? Have you already done it?

MR. GOMEZ: So we get about 1,700 calls a year in OSBP with questions about interpretive guidance on mostly exemptions. I can tell you that the vast majority of the answers to those questions, we answer them by pointing the people to something on our website, where the information is already there.

So, the question is, how do you deploy that vast amount of information? So what I was -- in my head I was nodding as you were talking about it. I mean we have on our website a document that talks about what's a security. And perhaps the question is how do you present the information.

But it's written to go through the process of what's a security, why do I have to deal with the SEC? What are my options if I want to register? Because a lot of people want to do the IPO, initially, until they find out more about it. What are my options if I don't want to register and I want to do an exempt offering? And then, what are The differences between a 504 and a 505 and a 506(b) and a 506(c)? What's crowdfunding? What's Reg A?

And then, part of what that document also includes is, well, what if you just want to reach out to others, like the SBA. The SBA -- I would love for Mark to have been here today. I mean the SBA has its own programs to facilitate that.

MS. YAMANAKA: You have the information, but you don't have it in the form -- in my opinion -- that people can easily digest. They've got attention spans of this, especially entrepreneurs, right? Like this.

MS. KASSAN: Also, is it up to date? Because I remember seeing something about the from S-2 up there not too long ago for a small business --

MS. YAMANAKA: And I wouldn't even go with the acronyms and the S-2s, whatever. They need intro, and then --

MS. KASSAN: Well, my point is that I just remember there being some stuff up there that wasn't actually up to date. So --

MS. DAVIS: I'm sure there is stuff that is not up to date. I mean I -- when callers call, and we're the ones on the front lines that get the calls, I mean I often have to say, "Our website is like my grandma's attic, in that everything is in there, but you just can't find anything."

And so, I mean, I walk them to the spot that talks about the difference between 506(b) and 506(c), and then they're -- they get it. But that's one person, and we talk to 1,700 of them, and a few of those calls are, "How do I register my local hair salon?"

So, you know, they're not all securities-related calls, and that's fine. We try to point them when we can to the right place, but, you know, I'm just glad they called at all, because I'm sure the folks who want to comply are the ones calling. There's a lot who are not calling, right? But we're happy to talk to those who do call, and point them to the right place.

But I definitely take your point, that no one --

MS. YAMANAKA: YouTube.

MS. DAVIS: Very few people can find the information, even though it's there.

MS. YAMANAKA: Seriously. Seriously, YouTube and a camera like this I think would be a very low-cost pilot. How about piloting it?

MS. DAVIS: And I think we could -- well, I say this. We would have to talk to our general counsel and see all this stuff, but I think it would be very hard to do a video that's 15 minutes that even begins to start to scratch the surface.

So I think it would -- I'm not saying that we couldn't do it, it's just you have to talk about whether you -- look where -- these are securities. That's all we can cover. We're not going to do loans -- or, well, loans of security, but we're not going to

do SBA loans, we're not going to talk about other forms of capital-raising.

MS. YAMANAKA: Do it in modules. So anyway, it's just an idea.

MS. DAVIS: No, it's a good idea.

MR. GRAHAM: Greg?

MR. YADLEY: Yeah, and not trying to pile on here since Steve has left, but you have a green blouse on, so it goes with my green tie.

For part -- for some deals, for some issuers, having private placement broker, as we've talked about, is an access point. It doesn't answer, you know, which exemption do I need to rely on here, and what's better, but the investor doesn't really care what the exemption is and what the acronym is. They want -- how do I -- I need this much money. How do I get it? And you get it from the people who have the money.

So, that was really the fundamental thrust of your question, Sebastian, is how do we put the people that need the money together with those that have the money? And we know that, for large amounts of money, for companies that are going to really go places, there is plenty of people willing to advise them. And we are now -- we have the ability since May to see what will happen with crowdfunding, where people want a relatively small amount of money, and it wasn't the SEC's fault, but done a good job implementing rules that now have them go through somebody other than a full registered broker-dealer, and we'll be able to see how that works.

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

MR. GRAHAM: Great idea, Greg.

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

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

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

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

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

MR. GRAHAM: Any other thoughts? Oh --

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

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

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

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

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

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

MR. GRAHAM: Okay --

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

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

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

MR. GRAHAM: Any other ideas? Outreach?

Closing the gap?

Annemarie?

MS. TIERNEY: You know, I know that there is a lot of educational programs across the country, you know. Is there a way that there could be, like, some kind of information aggregation so that you could point people to different educational opportunities available to them?

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

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

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

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

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

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

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

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

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

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

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

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

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

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

MR. GRAHAM: Okay.

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

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

MS. KASSAN: Me too.

MR. NELSON: Because, like, as an

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

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

(Laughter.)

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

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

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

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

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

(Laughter.)

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

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

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

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

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

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

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

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

PARTICIPANT: Good luck.

(Laughter.)

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

(Laughter.)

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

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

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

MR. GRAHAM: Okay. Do we --

MR. NELSON: Are we having another one this year, or are we done for --

MS. DAVIS: Not in 2016.

MR. GRAHAM: Okay. So that should be coming shortly.

If we are not meeting again until February, I think there is a good chance we might end up with a telephonic meeting to talk about some of these recommendations.

All right. Again, thank you for coming. See you next time. Thank you.

(Applause.)

(Whereupon, at 3:25 p.m., the meeting was adjourned.)

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PROOFREADER'S CERTIFICATE

In The Matter of: ADVISORY COMMITTEE ON SMALL AND EMERGING COMPANIES

File Number: OS-1005

Date: October 5, 2016

Location: Washington, D.C.

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

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