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Transcript: SEC Advisory Committee on Small and Emerging Companies Meeting

Speakers: Stephen Graham, Fenwick & West's Life Sciences Practice; Sara Hanks, CrowdCheck; Annemarie Tierney, NASDAQ Private Market; Patrick Reardon, The Reardon Firm; Xavier Gutierrez, Meruelo Investment Partners; Catherine Mott, BlueTree Capital Group; Laura Yamanaka, teamCFO, Inc.; Robert Aguilar, Cabrera Capital Markets, LLC; Jenny Kassan, Jenny Kassan Consulting; Jonathan Nelson, Hackers/Founders; Lisa Shimkat, America's Small Business Development Center at ISU; Michele Schimpp, Office of Investment and Innovation; Greg Yadley, Shumaker, Loop & Kendrick LLP; Brian Hahn, GlycoMimetics, Inc.; Mark Walsh; Sebastian Gomez Abero; Mike Pieciak; Julie Davis

This transcript has not been edited for content.

Annemarie Tierney: Hi, it's Annemarie Tierney.

Julie Davis: Hey, Annemarie, it's Julie. We've gotten a few folks on but we're going to wait for a little while to get a few -- at least get a quorum. [chuckles]

Annemarie Tierney: Okay.

Patrick Reardon: Could you tell some jokes while we're holding, Julie?

Julie Davis: You don't want to hear my jokes, I promise.

Patrick Reardon: Aw, come on. [laughs]

Xavier Gutierrez: Good morning, it's Xavier Gutierrez.

Annemarie Tierney: Maybe everybody that comes on has to tell a joke. Xavier, now Patrick's trying to get Julie to tell jokes. Do you want to tell a joke?

[laughing]

Xavier Gutierrez: I wish I had my eight-year-old giving me a joke for you, but I got nothing.

[laughing]

Catherine Mott: Good morning, Catherine Mott just joined the call.

Annemarie Tierney: Hi, Catherine.

Laura Yamanaka: Good morning, this is Laura Yamanaka.

Julie Davis: Steve, it sounds like we have a quorum if you want to get started.

Stephen Graham: Okay, hello everyone. Let's go ahead and get started. Julie, why don't we go ahead and take roll right now and see who's on.

Julie Davis: Sounds good. All right, Steve Graham, I think I've heard you already.

Stephen Graham: Yep.

Julie Davis: Sara Hanks? Robert Aguilar?

Robert Aguilar: I'm on.

Julie Davis: Xavier Gutierrez?

Xavier Gutierrez: I'm on.

Julie Davis: Brian Hahn? Kyle Hauptman? Jenny Kassan?

Jenny Kassan: Here.

Julie Davis: Catherine Mott?

Catherine Mott: I'm here.

Julie Davis: Jonathan Nelson?

Jonathan Nelson: Present and accounted for.

Julie Davis: Patrick Reardon?

Patrick Reardon: Yes, ma'am.

Julie Davis: Lisa Shimkat?

Lisa Shimkat: I am here.

Julie Davis: Annemarie Tierney?

Annemarie Tierney: Here.

Julie Davis: Greg Yadley? Laura Yamanaka?

Laura Yamanaka: Yes, I'm here, and my apologies to the group, but I will be peeling off after an hour and I'm going to put you on mute since I am in the car traveling. So again, my apologies.

Julie Davis: No problem. Mike Pieciak?

Mike Pieciak: Hi, Julie. How are you? I'm here.

Julie Davis: Mark Walsh?

Mark Walsh: I'm here on speaker with a colleague who I will introduce when the agenda comes to me.

Julie Davis: Excellent. So, maybe we'll go back through. I don't know if anyone just joined since the roll call, who didn't get to state your name earlier.

Sara Hanks: Yes, Sara Hanks is here.

Julie Davis: Hi, Sara.

Stephen Graham: So, Julie, it sounds like we do have a quorum.

Julie Davis: Indeed.

Stephen Graham: Okie doke. So let's get started. But just a couple of rules of the road, if you will: 1) If you're not speaking, please stay on mute. 2) When you do wish to speak, please state your name so that we know who's talking. It's always difficult in this format, but let's try not to talk over each other, and with that, let's get started. So, welcome everyone, and that includes members of the public to today's SEC Advisory Committee on Small and Emerging Companies meeting. As you will recall, we discussed board diversity at our last meeting, and whether the Commission's rule concerning board diversity should be amended to generate more useful information for stakeholders. We decided at that time that instead of trying to get something finalized last October, with the time that we had, that we would try to get together to work on it before the end of the brief meeting to finalize the recommendation for the Commission. So here we are. And, as long as we're getting together, we thought it would be a good idea to take a little time to supplement our discussion on outreach. So I guess now might be a good time Sebastian for you to give the SEC Staff disclaimer.

Sebastian Gomez Abero: Sure, happy to, I'm Sebastian Gomez, Julie is going to be joining me today and with respect to both of us, any statements that we provide today represent our own and they may not represent the views of the Commission or any of the commissioners or my colleagues or the staff.

Stephen Graham: Okay, thank you. Let's go ahead and start with outreach. As you know, our fellow committee member, Mark Walsh, is the Small Business Associate Administrator for the Office of Investment and Innovation, and the SBA does a lot in terms of outreach to smaller businesses. And it would be good as part of our efforts to try to come up with ways to increase awareness among smaller businesses of potential capital sources as well as to better understand the securities regulation framework if we, you know, had a chance to kind of understand better what the SBA in fact does. So Mark has agreed to say a few words about some of the outreach programs due to the SBA and their impact. So with that, I would just like to turn it over to Mark.

Mark Walsh: Thanks so much, everyone on the call and those listening in on the web or other features. My name once again is Mark Walsh. As was noted, I run the Office of Investment and Innovation here at the Small Business Administration. I'm joined today live on the speakerphone with my colleague and deputy, Michele Schimpp, that's S-C-H-I-M-P-P, one L in Michele. Michele and I joined literally a year ago -- or slightly over a year ago -- together so we've been partners in arms in a couple of initiatives. One we're particularly excited about to describe to you today, at the end of our short slide presentation. Hopefully all of you either have gotten or have in front of you or at least got a chance to take a peek at the few slides we sent out in PowerPoint form about our major programs. I will not read those slides to you because that is stupendously boring, but I will verbally touch on a few high points on the slides and then specifically drill down on the last slide, which is our new initiative with LinkedIn called "ONBOARD" to attempt to get more diversity in the private company boards and board of advisors that we invest in.

Julie Davis: Hey Mark?

Mark Walsh: Yes.

Julie Davis: I'm sorry, this is Julie. I just wanted to point out for folks listening on the webcast that the slide that Mark Walsh's presentation, that he just mentioned the slides, there's a link to that available on the webcast page.

Mark Walsh: Thanks so much, I appreciate that, and hopefully those listening in can take a peek at it. But, again, even if you can't, hopefully my verbal, and Julie, this is a fair point -- my verbal presentation will surge the tops of the waves briefly and tell folks what we do. And the reason this is sort of important is that I have found, when I came from the Private Equity and Venture Capital Industry, amongst others here, is that very few people actually know what our Office of Innovation and Investment does, so we have three main legs of the stool. I'm now on slide two, it's Office of Investment and Innovation at 30,000 Feet. We're really effectively the government's venture capital arm, and we have a number of ways of deploying capital. And let's go to slide three and we'll start with the first one. The government is a bad marketer of its services, I think as we all know, so the programs are badly named, but I will walk through them.

First is SBIC, which stands for Small Business Investment Company. The SBIC is one of the largest funds-of-funds in the United States. We are authorized by the United States Government to invest up to \$4 billion each year into SBIC licensed funds. They are typically professionally managed venture capital or private equity funds. The ratio is 2:1. So if you start a private equity fund and raise \$50 million from the Michigan State Employee's Pension Fund and endowment of Princeton University or other limited partners like Wells Fargo, and you came to us and got a license, we would give you \$100 million. So that's two dollars for every dollar you raise. The \$100 million we give you is non-dilutive cheap debt. It's about three percent a year, 10-year term, no prepayment penalty. We have about a little over 300 licensees currently existing. This past year, we did about it looks like \$6.2 billion in financing. That's both the private capital of the licensees and the non-dilutive debt leverage that we extend. It generates a lot of jobs as you can see. We do all sorts of outreach activities to try and discover both funds that are diversely managed, gender and demographics. So the funds we invest in have diversity in their management team -- and we also have some research with the Library of Congress we just concluded, which I'm happy to send to anybody if they would like, we announced a couple of months ago -- that shows conclusively that funds that we invest in that are diversely managed, be that gender and demographic themselves, have a multiple behavior set of themselves investing in diversely managed companies, be that gender and diversity as well. So if the market rate is X for investment in diverse-run companies, we have about a three to a four times X multiple funds we invest in that are diversely managed, those funds investing in diversely-managed companies. As a quick history lesson, to the right on slide three, are some logos of some of the companies that have gotten dollars from our SBIC funds that we are part of. You can see some iconic names there. Just as an example, in 1977, an SBIC fund owned five percent of a small technology company in Cupertino, California called Apple. We did not keep that five percent, just so you know, because we are in the debt business not in the equity business. But clearly names like Tesla, Whole Foods, Staples, Amgen, Intel, Costco -- the list goes on and on. Many companies you haven't heard about that are very, very successful have grown tremendously generate positive EBITDA and are a tremendous generator of sustainable American jobs. So that's the SBIC program.

Moving on to slide four, SBIR stands for Small Business Innovation Research. As is detailed here, we typically get about three percent of the research budget of the 11 major federal agencies allocated to our efforts. That three percent equals about \$2.5 billion per year. We have a sight sbir.gov, which is effectively a dating site -- forgive my shorthand -- but all the other major agencies put up on sbir.gov an RFP, an RFQ, some sort of need, either a problem they need solved or an issue they addressed or an aspirational thing or service or product or piece of software or platform that they would like to have. We then help reach out to startup

companies, even companies that our seed capital will create, and we hand them cash awards. The cash awards equal, as I say about \$2.5 billion a year. It's about 1200 companies a year. The cash awards come in two stages. Stage one is about \$200,000. And again, these are cash awards. It's not equity, not debt -- we get no ownership. Stage two, if the product works and is scalable, we give them -- I'm sorry it's phase two -- we give them between \$1.5 to \$2 million. As you can see, some of the most iconic elements of our day-to-day lives, including 60 percent of the technology inside your mobile phone, has come directly, directly from SBIR grants. To the right you see examples of companies that were started with SBIR dollars that you may have heard of, some of them you might not have heard of. But each year, I would argue one of the most amazing sources of corporate innovation with cash funding that not only solves a problem or need of the government, but in many cases becomes a sustainable commercially viable company selling its products and services to consumers.

The next slide -- and then we'll get on to ONBOARD and Michele and I will take your questions -- is our Growth Accelerator Fund Competition. This year was the third year in a row we give \$50,000 cash prizes to accelerators or incubators that apply to our competition. Over the last three years, we probably had 1,500 of those accelerators apply. We've handed out about 270 cash awards. Just as a quick example of the scalability and some of it is here in the key program statistics, but in the first two years alone we handed out those \$50,000 cash awards to let's say about 110 or so organizations. Those organizations, those accelerators and incubators, went on to themselves raised about \$70 million in external funding. And the companies that went through those accelerators and incubators, those companies raised about \$1.5 billion in venture capital. And those companies, as is detailed here, generated over 14,000 new sustainable jobs in real industries with real companies and real technology. The key thing here or at least one of the key things to us is that we're getting accelerators and incubators to apply from around the -- in a very geographically diverse way. So, you know, an a Tech incubator in Louisville, you see LACI, that's Los Angeles Clean Tech Incubator, and that's an example of very diverse in industries focus and we even have diversity in the management. So we have, it's detailed here in the bottom, we have incubators that are Native American oriented on Native land, incubators for gender diverse startups, all sorts of examples of that.

So let's go to the final slide and then we can begin our discussion. Michele and I were really proud to have initiated a relationship with LinkedIn, probably the most preeminent business to business or at least professional social network. And the reason we reached out is that we concluded that in our SBIC program, through our funds we're investing in thousands and thousands and thousands of private companies in the United States of America. Many of those companies are family owned and have a board of directors that all has the last name, because they were founded by a family. What we also concluded was that for publicly traded companies' boards of directors to become diverse, that's not going to happen that rapidly. Proctor and Gamble is not going to increase the size of its board of directors by five people nor are they going to make five of their directors resign and put in place more diverse directors. Both of those actions would probably cause undue concern by shareholders and analysts. So really what you needed to do, we thought, was to go sort of -- forgive the sports analogy -- look for triple A baseball. Go to the private companies where we can find domain expertise strong candidates that are diverse and reach out to the private companies that your dollars and hours are investing through the SBIC program and provide them with a platform of people that are talented that they can reach out to as they can expand their board. As these companies grow, seems to be completely dominated by one family or looking for acquisitions and growth through that pathway. So we reached out to LinkedIn and we created a private area called ONBOARD on LinkedIn. Many of you who use LinkedIn will know you can join clubs with your college alumni or whatever, but this is a private area on LinkedIn, SBA ONBOARD. If you go to LinkedIn and want to join, it's ONBOARD Diversity is the search term you would put in LinkedIn, but we also needed to create a supply because we're generating demand from the private companies that we invest in, so we needed to supply. So Michele and other colleagues here and me reached out, as you see, about 17 different organizations -- the logos on the right hand side -- PEWIN (Private

Equity Women Investors, the SBIA is our trade association, TOIGO is a diverse investment group, the Boardlist, the Board Academy, American Investment Council, and this is only the beginning. So you'll see us add a wide variety of other diverse membership organizations -- American Association of Black MBAs, American Association of Hispanic Engineers. There are many, many candidates on our list post this first 17. We have about 400 registered members now and, again, to conclude. Then Michele and I can take your questions. The end game here is to have a private place that the managers, the CEOs, or the investors of privately held companies that are being supported by SBIC dollars can be motivated, exhorted and encouraged to reach out to ONBOARD and find the next director. And when that director gets experience in a private company, because being a director of a company, the types of constituencies you must answer to, the types of responsibilities you have a director of a private company, truly will be a way we would argue to prepare you to serve as a director for a publicly held company. So again, forgive the sports analogy, but triple A baseball, we're very, very excited about this specific tactic to try and increase the diversity of the boards of directors and advisors in the companies that our SBIC dollars invest in. With that, I'll conclude and Michele and I will take your questions or comments or any element of the program that I just went through and the slides prior on board that you may have questions on.

Male Speaker: Well thank you Mark. That's a lot and that's great. I think a lot of us are going to want to spend some time better understanding what it is that is being offered by these programs and I think that will in turn over the next few months can probably generate more questions. But just for openers, I have just, you know, one question that's maybe it's two parts and that is that what is the size of your target market, and what is the estimated reach of these programs? So, in other words, you know, some sense of the groups or the areas that we might be missing, and ideas of how those might be closed?

Mark Walsh: So let's make sure I answer the right question. When you say target market are you talking about what ONBOARD is aimed at or the investment platforms themselves in a larger perspective?

Male Speaker: The larger perspective.

Mark Walsh: Okay, the licensee applicant, the professionally managed fund -- I'm talking about the SBIC program now -- when they come in, they present to an investment committee that Michele and I are both on. 1) They have to describe the target market of companies they're chasing, via geography, size of company, EBITDA positive or not. They have to describe their target financial structure whether they will put debt into the company or equity or some blend convertible debt, et cetera. They also have to describe their goals as far as industry that they're focused on, so it could be manufacturing companies in Missouri that are family owned, that are positive EBITDA and that's actually an example, to a small venture firm in California that is looking for spinouts from Stanford Accelerator Labs. Again, it's pretty much across the board. But by describing their strategy, we know what our dollars are going to do through them. 2) We have an annual examination, so we send out a team to each of our licensees and we validate that the companies they're investing in are the financial structure they promised us is exactly what they're doing. We have some flavors of SBICs, like an Impact SBIC, that's for impact investing. I think many on this call know exactly where we're going there. We have an early stage SBIC that you don't have to pay the interest for the first five years, which is aimed at venture capital style behavior. We have an energy SBIC for clean energy. So we have different flavors, as I mentioned, but in general, when you say the target market, really the licensee themselves define for us what their target is, what their structure is, the kinds that companies are looking for before we authorize them with a license and start giving them out the capital. Does that answer your question or am I missing something?

Male Speaker: No, I think that's helpful.

Male Speaker: Other questions, comments?

Patrick Reardon: This is Patrick here in Fort Worth. May I ask a question?

Mark Walsh: Sure.

Male Speaker: Please.

Patrick Reardon: Two questions: First, how do I apply for some of these dollars for research against fracking?

Mark Walsh: There's two answers. If you're looking for an SBIR TASH grant --

[laughter]

Mark Walsh: -- I highly encourage anyone on this call to go to sbir.gov and literally type in the keyword. You might type in fracking. You might type in oil and energy exploration. Type in all sorts of keywords that matter to you and I can personally promise you that you will find some department of the United States Government -- the Department of Energy is actually one of our big partners in SBIR -- that has put up something that you may find of appeal for you to apply for an SBIR TASH grant. For an SBIC license, if you want to start an investment fund chasing fracking or other extraction investments, feel free to reach out to me and Michele. Michele will probably survive January 20th's inauguration. I'm a political appointee, I will probably not, just to be clear on this. So folks on the call, if you need to reach out to Michele and our other colleagues in SBIC, feel free. We can take the discussion off line.

Patrick Reardon: I was being humorous. I assumed with the traditional oil and gas and particularly fracking is probably unacceptable under somebody's criterion. Anyway, the real question I want to ask is that I assume that -- how close to the startup stage do you get, and the rest of my question is that Steven, I know you and I have discussed and Commissioner Stein, if she is on the call, have discussed the desire to have more African American ownership of small business, and I think that's a noble goal and that's probably before -- that decision is probably before you ever get involved because the company, somebody coming to you, has already made that decision that they are going to start business and they're looking for funding. But how close to the startup stage do you find is the question, I guess really, that is relevant? Do you do that or do you do that with startups or -- you mentioned that you got to have financial statements. And I've seen financial statements that saw zero, zero, zero. That's where you've got somebody who's experienced in the business and it's extraordinary that somebody's getting funded like that. Can you respond to that or is that so vague that you can't answer?

Michele Schimpp: This is Michele. Why don't I take it? Thank you. This cuts to the very basics of why we have the portfolio we have of three programs Mark explained. The idea of yes, we need companies along their trajectory, from startups to IPO theoretically, and wherever they are along those lines. We feel the startups predominantly through two of our programs -- the Small Business Innovative Research often pre-revenue are coming in, individual researchers with a patent coming out the universities, starting up their venture, are often successful for the early stage phase one Small Business Innovative Research work. But the idea, too, is that they stay and they receive subsequent phases of non-dilutive capital through government grants and contracts to launch that firm. But the other piece that Mark was briefing -- this network of growth accelerators nationwide is another asset in our portfolio. These growth accelerators take in cohorts that stay with them and grow to the next stage of financing, through their participation in the accelerators. Now, in a perfect world, our Small Business Investment Companies would then be a resource in order to begin investing in the companies that have grown through growth accelerators and through the Small Business Innovative Research sometimes that happens. That's still a gap that we're working to address more and that's why

we've created subcategories of Small Business Investment Companies in the arenas of early stage and impact, so that we can make the bridge more seamlessly.

Mark Walsh: As far as diversity, we can again take this online, but in each of those stages that Michele referenced we have effectively sales people, she and I included, that are out shaking the tin cup at wherever two and three are gathered together -- as somebody once wrote -- looking for and pursuing and attending conferences where we are able to meet more and more diverse candidates who want to start companies, or have started companies and are on this journey, as Michele referenced that our dollars and our council and our rolodexes may be of value.

Michele Schimpp: One of the pieces is that we see right that startups are increasingly startup companies led by woman and African Americans, but if we're dealing with an investor community that doesn't have networks into and doesn't see the opportunities of those emerging startups, what can we do in order to make a difference? And board diversity for our Small Business Investment Companies was a big important contribution because, as Mark mentioned, there is a multiplier effect of having one investor of a diverse ilk in the community. They make two to three times more investments in portfolio companies that are diverse.

Patrick Reardon: Well, I'm all in favor of that and I appreciate what you're doing. As somebody who after 20 years of getting a regular paycheck went out and started his own business, I can tell you that's a big step to do and to take, and I think if nobody in your community has done that or few are doing it or the ones who've done have not succeeded, then it's a very big step. And I look for ways to encourage that and I'm glad you're doing what you're doing.

Mark Walsh: Thank you. We are too.

Greg Yadley: This is Greg Yadley in Tampa. Thank you for the presentation. I've got several related questions about the SBIR program. First, I wasn't entirely clear whether you all provide dollars in addition to the government agencies and departments or you're more the facilitator? And second, what's the average size of the grant or the range in which most of the grants are made? And third, how long does the process take for a successful grantee to work through the SBIR program?

Mark Walsh: The dollars come from the agencies. We are the facilitator, for your first question. We do not put extra dollars -- the grant comes directly from the agency, but we, as you mentioned, facilitate it. Secondly, I think I heard about time. Hey, it's the government. There's a little bit too much paperwork. It typically from the day an entity decides to apply for an SBIR grant, if they have no relationship with the SBIR program, to get everything finished and to have funds wired can be anywhere from nine to 12 months, which is too long and we're trying to truncate that. But you are organizing several parties, as I mentioned, the agency, us as facilitator, and of course, the people applying for the grant. And if I may have a sidebar that Michele and I see every day, and this is not a pejorative, but many of these folks are not business people, they're bench chemists at the University of Michigan Lab, they're software engineers who just decided to write a game that helps farmers figure out -- like Sim City -- for farmers. We just funded one of those. It helps farmers figure out how, you know, seed starts feeding that does or does not conclude in a successful farm. So that wide, wide, wide range of entrepreneur -- I saw entrepreneurs -- wide, wide, wide range of entities that are getting our funding, many of those entities are run by people that are not business people. So I think part of your question was sort of the success rate -- about 15 percent. Fifteen percent of SBIR grantees become sustainable ongoing private companies. Now, the 85 percent that don't, do satisfy the need of an agency in our government. So effectively, they're all successful, but 15 percent spinout and become sustainable companies. By the way, in the venture capital business, that's actually a very good batting average. You'll see a VC [unintelligible] five to 10 percent of successful investments can cover the entire return of the fund. And you asked about dollar

figure. Phase one can be anywhere from \$100,000 to \$200,000. Phase two can be anywhere from \$1 million to \$2 million, and these are cash grants. Phase three, as we call it, is really effectively we introduce them to their customer, which is the agency, and that customer then starts to use the product or service at the SBIR grant has funded.

Greg Yardley: Thank you very much.

Catherine Mott: This is Catherine Mott from Blue Tree in Pittsburgh. I had the good fortune, Michele and Mark, to be at the announcement for the ONBOARD program, which I think is terrific and it sends a great message that the government is taking, particularly the small business administration, is taking leadership stance here on promoting diversity. My one -- I think I expressed this at the meeting -- is that I'd like to see this successful and I think it would be important for the group to create a template of some kind to help people become good board members, be knowledgeable board members, understand what it's like. It's not the same as serving as a nonprofit board. Their fiduciary [inaudible] things like that. It just would promote something that could even be placed on your website that would provide guidance on how to be an effective board member.

Michele Schimpp:

Catherine, thank you so much for coming, and I remember this conversation. We're acting upon it now as a matter of fact. We're launching our first webinar, a series of webinars for the membership of ONBOARD, a series of three webinars on being a qualified and capable and productive board member, and what's really interesting is we just put out the news. We required people to join the group in order to attend the webinar, and subscriptions to the groups surged and we got an additional 60 or so people. So now we're at about 460 in the past day. So it was a great recommendation and we really are looking to build not just the numbers, but the capacity, per your recommendation.

Catherine Mott: Excellent. Thank you so much.

Michele Schimpp: Thank you.

Xavier Gutierrez: Hi, this is Xavier Gutierrez. Mark and Michele, first of all, thank you so much for the presentation and for all the work that you do through these programs, which I know quite well we are actually an investor in a couple of SBIC funds through a bank in our portfolio. I have three questions. The first was do you guys do an annual report on the SBIC program that shows sort of where they put the money out, in terms of all of the licensees? Is there like an annual report that kind of walks through, this is their activity, this is how many deals they looked at, this is how many deals they funded, here's the size of the deals that they're doing, here's sort of a structure? Is there something out there that sort of summarizes it on an annual basis?

Michele Schimpp: Thanks, Xavier, yes. We do an annual report. Given the proprietary nature of the investments of each fund, the annual report does not go fund by fund by fund. What it does do is it covers our overall portfolio in aggregate. Where the financing [inaudible] are? What the performance is? Twenty-fourteen is up on our website. Twenty-fifteen I expect to go up before the end of the year.

Xavier Gutierrez: Perfect.

Mark Walsh: I also have a list Xavier. They're also, as you probably know, we do list all 305 or 310 licensees, so it's public record who is an SBIC licensee. And thank you for engaging in the program with your -- are you an LP?

Xavier Gutierrez: Yes, we're an LP in a couple of [unintelligible].

Mark Walsh: Thank you.

Xavier Gutierrez: Yeah. The second question is, you talked about this study, Mark, that you and I talked about briefly, where you commissioned the Library of Congress. Is that also public at this point or have you guys released it yet or will you be releasing it?

Michele Schimpp: It is released publicly. We did it on December 13th, the same date that we launched ONBOARD. You can search minority representation in SBICs and the PDF will come up, unless the Library of Congress decided well it's SBAs. I should also note that we are doing a second study that will come out over the course of the next month and a half on the job creation results of the SBIC program, and so stay tuned on that. It's also a very, very interesting and positive message.

Xavier Gutierrez: Perfect. And then my final question, if you don't mind. So the ONBOARD program, how do we get individuals to be part of it, right, that may or may not be part of the organizations that you two mentioned, so how do we individually encourage "hey, you know, you'd probably be a great candidate, there's this great program." Just go on to LinkedIn and sign up? Is there somewhere to sign up for it?

Michele Schimpp: Great. Yes, all you need to do is it's ONBOARD and then diversity, and then you search for a group and they can request to be a member.

Mark Walsh: It's an open platform. We don't discriminate.

Xavier Gutierrez: Okay. Well, again, thank you for the presentation and thanks for all the work you do with this. I think this is a great program.

Michele Schimpp: Thank you, very much, and to others on the call as well, we really do encourage you to encourage people you know who are current board members, candidate board members, to join the group, because the larger it is the more diverse in terms of capabilities, ethnicity, gender, race, the more we are going to get usage of it.

Male Speaker: Any more questions, comments?

Robert Aguilar: Good morning, Mark and Michele. This is Robert Aguilar. Kind of adding on to Xavier's question related to the ONBOARD, you say that you have 17 official partner organizations, how do you market to the partnership organizations?

Michele Schimpp: Now that's a great question. What we did was we looked at the must have kind of organizations. We wanted a number of organizations that represented a strong membership base of the kinds of candidates we thought we would need for the SBIC portfolio company boards, so we were looking at people who might bring CEO experience, who might bring legal experience, who might bring in prior investment experience, who had specialized in the diversity realm, and we launched the organization with the initial 17, of what I would call sort of the most motivated of partners, that we contacted who were very easy to work with, who came in and said they had to be part of this. So we've got both private companies like The Boardlist that exists to do matchmaking. We've got membership organizations like the National Association Investment Council, PEWIN, as Mark was mentioning, et cetera. But that we recognize that these were the 17 that we started with this is version 1.0. Every IT solution web-based platform is iterative in its sort of agile design, so we're working out the kinks right now with the initial group of 17. We've got a range of the capacities that we need represented in that group of 17, and we anticipate by February or March inviting in a number of other organizations that we feel like we need in order to help ONBOARD grow to its broader capacity and over time, we'll grow it as much as we can to become the kind of self-sustaining platform that this can be.

So if you know of different organizations that you think would be interested in being part of ONBOARD, we are in constant dialogue and outreach to great candidate organizations.

Mark Walsh: Hoping to add engineering, MBA, marketing PR messaging as Michele mentioned. So the main expertise and the kinds of things that the boardroom probably needs.

Robert Aguilar: Okay, thank you.

Stephen Graham: Okay, again, thank you, Mark and Michele. Let's move on to the next topic now. But, obviously everyone should understand that, you know, feel free to continue to, you know, think of questions and seek out Mark and Michele for assistance. The next item on the agenda, of course, is the consideration of the recommendation relating to Corporate Board Diversity, and you should all have a copy of the draft recommendation letter from this committee to the commission and for those listening on the webcast, the draft is available on sec.gov on the advisory committee's webpage. We prepared this draft based on the discussion we had about Corporate Board Diversity during our October 5 meeting. As those who were there will recall, there was support for making a recommendation to the commission as it considers whether to amend its current rule that requires companies to disclose in their proxy statements whether a nominating committee considers diversity in identifying nominees for the company's board of directors and if diversity is considered, how? The rule also requires that if a company has a policy with regard to the consideration of diversity in identifying director nominees, how that policy is implemented and how its effectiveness is the staff. Again, everyone should have a copy of the draft recommendation and, you know, Sara and Julie and Sebastian and I felt that that reflected the new [unintelligible] at the last meeting and so now, I would like to open it up for comment.

Annemarie Tierney: Stephen, it's Annemarie Tierney, one of the things that I thought when I read the wording of the recommendation was it concerned me a little bit that it would use words like self-identify, that we're requiring companies to provide disclosure on diversity to the extent that board members self-identify. I think that, from a disclosure point of view, it might appear problematic if you had a list of board members, some of whom were identified and some of whom were not. That felt uncomfortable to me and I think that we might want to come at that in a slightly different way.

Stephen Graham: Okay, do you have a suggestion because one of the things that we're trying to avoid is forcing people to self-identify if they didn't want to.

Annemarie Tierney: I agree. Maybe we just need to add language in that it's, you know, acceptable to the extent someone does not identify, not to include disclosure on all board members. I think that if you're requiring disclosure or your recommending requiring disclosure and then disclosure's not provided, it begs the question, I think, especially with the staff if they were reviewing these things, to raise a comment to say why were these people not identified. I just don't feel like that's comfortable from a disclosure point of view. I don't have an easy fix, but I just thought the wording felt as though it was going to compel disclosure regardless of a board member's private preference.

Stephen Graham: I appreciate the concern. It's kind of difficult though to address I think, because we're setting up a system that or at least we suggest that we have a system that it is, you know, pretty much voluntary. That, from a standpoint of you have a situation and you, you know, disclosure is required, but disclosure is required only to the extent that you have that information. So if you have people on the board who basically are silent as to, you know, what category they might fit into, you just don't have any information with respect to, you know, diversity as to that individual. And I'm not sure what we can do about that. I'm open for suggestions.

Mark Walsh: This is Mark Walsh. I might toss in an idea. You know, when I apply for a driver's license, which is a government issued license, I am asked to provide data on my gender and my race. Now, they all have a box now called "other" and that's fine, both in gender and in race and in the background, but you might have, if that's true for a government issued license called a driver's license, the SEC is a government agency issuing the ability for a company to be public and issue equity, you might consider having those choices and including "other" if you were to mandate an answer, "other" I think can cover just like it does when I apply for a driver's license.

Stephen Graham: I think that that's exactly right, Mark. I mean you said it much better. I mean essentially that's what I was thinking that you have an opportunity to identify and if you choose not to identify, then, as you describe it, check the "other" box and move on.

Sara Hanks: This is Sara. I think I would be uncomfortable with that actually and from the genius point of view, I don't think I have to identify as anything other than, you know, being old enough to drive. The mandating checking a box, I think goes a little further than this committee might want to go. I'd be interested to know what other people thought.

Greg Yadley: This is Greg. I have similar discomfort, good with everything down to our recommendation and I've tried to sort of do some online research about issues that have arisen where people feel pressure to check a particular box regarding race particularly. Most of the information I came across and it was not scientific research on my part, but surveys and studies by professors, there's a lot of anxiety apparently created as individuals have to determine for themselves whether this will be an advantage or a disadvantage particularly in a job situation. I'm wondering, because I think everybody agreed in our discussion in Washington that diversity is not only relevant but quite important for companies to be able to carry out a business plan, understanding whoever their market for their goods or services are, as well as societally a good thing, but I'm wondering whether the recommendation might be more directed to requiring companies to, to the extent individual directors self-identify to provide information regarding the diversity of their board and not put touchstones for race, gender, ethnicity, or any other criteria, and let's let individual companies determine whether in their situation this is something their board wants to do and they're comfortable with those general characteristics or there may be others. You know, I think the thrust of this was to get away from some of the boiler plate disclosure that exists today, which is we have a diversity of age and experience and background, and try and focus it a little more. I'm not really comfortable with picking the big three here and having that be part of our explicit recommendation.

Annemarie Tierney: I agree with you, Greg. It's Annemarie again. You know, the word ethnicity to me, I don't even know what that means. Would I self-identify as a white female, Irish, German, French. Like, I don't even know what ethnicity means in every situation. The wording I just think that this is specific, and I think it really should be up to a director to decide whether or not they want disclosure of this magnitude. And I also think that your right company should have the flexibility to provide disclosure in the way that their board, you know, works for the company and the board. The goal's important. I just think this wording is far too specific.

Stephen Graham: So how would -- let me take a couple steps back then. Right now we have item 407(c)(2)(xi), which essentially says if you consider, tell us about your policy if you have one, and then tell us how you factor in diversity. We all know what it says. We also know that in terms of generating information that is meaningful to shareholders, to employees, to customers, that that rule does not certainly generate that kind of information. How would you suggest that we amend that rule, if at all, to, you know, essentially generate that information?

Greg Yadley: I'm Greg, again, and just as a suggestion, after self-identify, to replace the existing language with provide additional disclosure as to the diversity on their board.

Stephen Graham: I'm sorry, what is that again, Greg?

Greg Yadley: Provide additional disclosure as to the diversity on the board or their board, depending on how we end up changing the section.

Stephen Graham: Go ahead, Greg.

Greg Yadley: Yeah, so I think that's it. I think the discussion can and would, in a release, talk about why diversity is important, what it is, you know, just discuss these groupings and others. Annemarie's comment about ethnicity, again, a definition I found -- the fact or state of belonging to a social group that has a common national or cultural tradition; that gets broken down quite a bit. Again, in some circumstances, a board that is very focused on environment, for example, which may have great membership or a great audience among Native Americans, diversity there would likely mean tribal. It wouldn't just be Native American, and so on.

Stephen Graham: And that's one reason why if we do something, that we can't pretend to be able to come up a definition that is all inclusive. But, you know, again, the idea is to come up with a mechanism that will result in disclosure that is meaningful. And if we just say, "Tell us about whatever you want to tell us about," then we're going to basically be where we are right now I think.

Catherine Mott: This is Catherine Mott. I agree Stephen. I'm sorry, I wasn't there for the last meeting to engage in discussion, but I agree, if we don't state something differently, then we will get just what we have. And I think ethnicity is just an option. It's just one of the options, as I think Mark was mentioning. So I think perhaps we're over-thinking it. I'm comfortable saying ethnicity, just saying, you know, providing a parameter by which they describe it.

Jonathan Nelson: Hi, this is Jonathan Nelson. What about have we thought about just having people include pictures of the board directors? Would that solve the problem? And question two is, instead of race, gender, and ethnicity, could we say race, gender, and age?

Stephen Graham: Age is part of the disclosure in any event. Pictures turn out to be, often they are not revealing. I think we have to satisfy ourselves initially as to, you know, what it is we're trying to accomplish here, and I keep going back to the fact that board diversity is important in terms of economic performance. Board diversity is important to shareholders, it's important to customers, it's important to employees, and so meaningful disclosure with this [unintelligible] to diversity and should be required. And assuming that we can all agree on that, then the issue is how do we actually promote meaningful disclosure. And I think if we come up with a recommendation, because, I mean, the devil's always in the details. This is a recommendation that, you know, for the commission to go back and amend something to achieve a certain objective. One of the objectives I thought that we had an agreement on was that it's important to people who see diversity as important to, at a minimum, understand, you know, to what extent a board is diverse from the standpoint of gender and race. And beyond that, diversity is basically what you make it and we all know that it covers any number of things and what kind of diversity is important is going to depend in context. So where I think -- what I think is that we need to come up with a recommendation that essentially conforms to that idea.

Brian Hahn: This is Brian Hahn. I'm sorry, I joined shortly after roll call. But I think what I heard basically, what I heard from, I think it was Annemarie that said what you don't like about this wording where it says, "to the extent the individual will direct or self-identify." I think the concern was is that you would be getting filings that have, you know, some of the board members that do identify and some don't. Would you take it a step further and push it back onto the board, saying that it will be the board's decision to self-identify either all or nothing?

Annemarie Tierney: Well, I think, you know, Brian, that is my concern is [unintelligible] reviewed registration statements and offerings. I think if I saw board description that included

only identification for certain members, I would raise a comment on why are the other ones not disclosed, and I wonder if it will start impacting things like, you know, ratings if entire boards are not fully described from a diversity point of view. Whether it'll start, you know, becoming an issue in other context if it's not fully disclosed. You know, I think I'm just going to my own background.

Male Speaker: Well could you put it --

Annemarie Tierney: I think it's very important.

Male Speaker: Have the board say, "Look we're either all going to do it or we're not going to do it all, you know, 100 percent or zero percent, and you know, push the burden back on them.

Male Speaker: Maybe we just delete the self-identify clause?

Patrick Reardon: Well, this is Patrick. I'm going to ask a real world situation and that is this: What race is current President? His father was from Africa and his mother, by most standards -- all standards that I've heard -- would be deemed white. Okay, is he black or is he white? Now, self-identifies as African American, but I don't know, who am I to say that he's not predominantly white. I think self-identity, anything other than self-identity is an incredibly slippery slope. I once met a woman who had skin color roughly the same as mine, but she had an accent. I said, "Where are you from?" She said, "I emigrate here from Zimbabwe. I'm an African American." Her ancestry was totally European. I mean, those are the kinds of things that you get into. The only thing that you can do -- unless you want to order a DNA report -- is self-select and just leave it at that. And if the person says I'm not playing that game, that's, you know, I think that's what the census people do. You mark down what you think you are, and leave it at that. I don't mean to be a disinter and everything else, but ask yourself about the Barack Obama. I mean we call him African American because that's half of the way he identifies himself. But he's as much white as he is African, so those are my two cents.

Stephen Graham: Well, I think you're exactly right, Patrick. When you first -- at the beginning of your comment, when you were leading up to whether we think in terms of the President as African American. I immediately jump to well, it's whatever he says he is. I mean, as you say, his mother was white and his father was from Africa and black, and what he is, is up to him. If he wants to call himself white, I think he has the right to do so. We know historically why that's not the case in this country, but that's the different issue. But I take your point.

[inaudible]

Annemarie Tierney: Steven, we have talked about that. He has a biracial issue at the last meeting. I think that's a very important point Patrick, so I agree with you.

Jonathan Nelson: This is Jonathan. Could we change the wording of the last two phrases? Each Issuer should be required to include each board member self-identify, race, gender, and ethnicity. Would that help Annemarie in your initial concerns about the wording?

Annemarie Tierney: Yeah, I think that does help, but I would like [unintelligible] to the extent that a director chooses not to self-identify, you know. I just want to make sure that if somebody chooses not to be identified in this manner, that that's not going to raise an issue for the company or for the director. I mean this is requiring disclosure, which means there will be a box and a disclosure statement that says not just, you know, age and background and experience, it'll say race, gender, and potentially ethnicity. And again, how many people will self-identify as American. Like ethnicity to me, I mean, I'm an American, that's my ethnicity, but are you asking for hereditary ethnicity. I don't understand the question.

Stephen Graham: Yeah, I take your point. There shouldn't be -- I take your point about the potential -- about being careful not to set up a system whereby it would be problematic from a regulatory point of view for a director or for an issuer not, you know, be sufficiently candid about this point. On the other hand, this is the kind of information that is important to stakeholders, and so it seems to me that, you know, kind of where we are is that this kind of information should be strongly encouraged and what we are talking about here should be made clear. But, if an issuer chooses notwithstanding the encouragement and notwithstanding the fact that potentially this information is important and that stakeholders are finding it important, that if an issuer chooses to be silent, if a director be silent, then it's up to the stakeholders to do what they will with that lack of information. But in terms of any kind of, you know, punishment or anything along those lines for failing to have complete disclosure, then perhaps we should make it clear that there should not be.

Greg Yadley:

Yeah, this is Greg again. I think you definitely would have to do that. I mean there are other issues here. I think Annemarie is right. Most people that live in America consider themselves Americans. On the other hand, Hindustani, should you put that if, in fact, you are Hindu. If you're Jewish, do you want to distinguish yourself as Jewish, because that's more than a religion in terms of ethnicity and --

Stephen Graham: I think that relates to self-identification in context again. I mean it's -- I think, just broadly speaking, as you say, all Americans tend to think of themselves as American. It's also very clear that there are significant issues that are presented by -- that certain individuals face due to their race, due to their gender. And in response to confronting some of the issues that those individuals have to confront, the response that "well, I think of myself as an American" really isn't helpful, because that's not the answer to resolving issues that involve gender and race. This is real and we can't just kind of dismiss it by saying "well, I think of myself as an American." That's a nice concept. I think we all do. But it doesn't stop there.

Greg Yadley: This is a difficult discussion because -- this is Greg again. Fully supportive of the idea. It's important for all kinds of reasons, but there's also some social policy here. Maybe the way to say this would be to provide additional disclosure as to the diversity on their board, including with respect to race and gender and other characteristics. I think if ethnicity -- sorry -- I think that is different than race and gender and there are so many categories. Again, most of them have to do with country of origin, but some have to do with religion to the extent people are from places where historically there was only one religion and I frankly don't think that it is all that helpful to the investors or, again, depending on the board. I'm joint going through some A's here on a list that I fold. How important is it that we have so many Albanians, [unintelligible], Arabs, Armenians, Assyrians, Azerbaijanis -- those weren't all the A's but they were just some, you know. And if these are identifiable groups and a company wants to say, we have so many middle-eastern directors, I think it's a little descriptive and I think ethnicity is different than race and gender. Or clearly there's been discrimination in our country and the numbers bear out that even if there is less discrimination than there used to be, it's a fact that women who are on public company boards are extreme minority not related at all to their number in their populations and they same with self-identified Afro Americans.

Stephen Graham: I take your point and I think it's good when -- and I think that we should strike ethnicity. It sounds like -- I'll just throw this out -- I'm sure that maybe you'll have a different view, but it sounds to me like where we might ending up is that we're all in agreement that we should have a rule that results in meaningful disclosure with respect to diversity, and that diversity should be up to each issuer. But a minimum, there should be disclosure with respect to board member's race and gender. That being said, there shouldn't be any adverse ramifications for failing to make that disclosure. I don't know exactly how we put words to that, but the idea that we're furnishing this information because we think it's important, but if you really think it's that important than I guess we're not going to get into social politics to that

extent. We are going to say that we think that this is important -- that we believe that it's important from the standpoint of stockholders, customers, and employees. If the issuer chooses to go in a different direction, then I'm not sure if there is much that we can or should do about that.

Jonathan Nelson: Stephen, this is Jonathan again. Could we maybe change the wording of the last three phrases then to say, "Each issuer should be default include each board members self-identified race and gender or explicitly opt out." So the default is that they provide the information, but they also explicitly opt out saying, "I do not wish to choose. I do not choose to provide this information." So the default is you do it and explicitly you opt out, at least [inaudible] reelections in companies if you allow people to opt in and the default if they're not involved. They have a 15 percent adoption rate. If the default is that an employee is enrolled in a 401K that they explicitly opt out. The default enrollment rate is about 85 percent. And so asking for a default behavior will strongly encourage that behavior and they will explicitly opt out of whatever they opt out for. So I would argue that we could probably get the data that we want to get on diversity just by default having them include that information, or say this board member chooses to opt out, which I think we're fine with.

Stephen Graham: I think that's a good idea. How do others feel?

Annemarie Tierney: It's Annemarie, again. I like that idea. I think that most members of boards who are diverse are going to be really proud to provide any, you know, information on their diversity and I know you said something about photographs, Steven, and we had talked about that at the last meeting and Patrick raised it again. But I honestly think photographs would go a long way to providing immediate, you know, information on board diversity. Is there something specific you didn't like about the idea of photographs?

Stephen Graham: Well, only that they don't necessarily give you that much information. I think photographs are fine, but just not as a substitute.

Annemarie Tierney: They're going to give you generally an idea of race and gender, depending on the nature of the individual and coupled with the written disclosure that gives you more than we're getting now, and I think it gives you pretty important information.

Stephen Graham: [affirmative]

Annemarie Tierney: It also gives you a sense of ethnicity that you may not get in a written response.

Stephen Graham: Yeah.

Robert Aguilar: Hi, this is Robert Aguilar. So one of the things that I wanted to kind of point out is that the related to ethnicity is that it can be confused sometimes the Latino issue with ethnicity, because I think the United States Census identifies Latino as an ethnicity versus a race. So if we use the definition that the Census Bureau uses for race and ethnicity, then that should be sufficient for the change in the rule and therefore, we would keep the three main points. To the extent that somebody doesn't want to self-identify, I think that they should have that right and maybe we change that part before to include each board member's race, gender, and ethnicity to the extent individual directors voluntarily do not self-identify or something to that extent. So it gives an individual board member the right not to self-identify and if it becomes, I mean, one of the points of not self-identifying is, okay, this might have some effects on the corporation and it may effect their rating. And if the rating agencies view that as an important issue and it effects their rating, then they need to take it as serious as that, and they should be you know encouraging their individual directors to self-identify.

Stephen Graham: You make yet another point of how complicated this set of issues is. But I think that if we talk in terms of due to the extent that people choose to self-identify and then in this context I think that going ahead and including ethnicity may work, but make it clear that that's the default and you can opt out. Does that solve our problem?

Male Speaker: They have to voluntarily be able to opt out. I mean the one thing that you don't want to happen is to have these corporations just say that their [coughing] -- excuse me -- directors opted out and not report. And we have to have that language in their that it's a voluntary opt out by the individual directors not to self-identify.

Stephen Graham: But aren't we saying the same thing. We're saying that here is disclosure that is strongly encouraged, but you can opt out. Doesn't that pretty much do it?

Male Speaker: I think it could be a little stronger.

Male Speaker: I liked the way Jonathan worded out. Like he was saying, like as it is with the 401K, you're automatically in, but you got to opt out. I mean just play with the wording a little bit more, but I think the concept's great.

Catherine Mott: I agree. This is Catherine.

Stephen Graham: It looks like where we're headed is that we are not doing a lot to the existing wording of the proposal, but we are saying that this is something that is strongly encouraged and this will be the default, but issuer is without the opportunity to opt out.

Jenny Kassan: This is Jenny. I think it's not totally --

Male Speaker: Not issuers, but director.

Jenny Kassan: -- exactly.

[inaudible]

Stephen Graham: This is issuer disclosure.

Jenny Kassan: But who has the right to opt out, the issuer or the director?

Stephen Graham: The issuer would have the right to opt out.

Male Speaker: Well I think the opt out is about self-identifying not about reporting.

Female Speaker: I agree. I think the opt out is on the part of the director, not on the part of the issuer.

Stephen Graham: Yeah, I agree, Greg.

Greg Yardley: Okay, so how is that going to work if this is not disclosure that's required of the directors, a part of the issuer?

Stephen Graham: So I think it would read to the extent individual directors voluntarily opt out of self-identifying?

Male Speaker: Are we sure about that?

[inaudible]

Male Speaker: I mean the problem I think [unintelligible] is that the company disclosure is going to say of our 18 member board we have five women, five self-identified women, three identified African Americans, and two directors who did not wish to be identified at all, you know? That is a little weird. I mean, but it gets the positive information out there, which is that this board in fact does have racial and gender diversity. It might have even more, but this is what they got.

Stephen Graham: Yeah, I think this is -- to some extent these companies are going to have to manage these situations, and again, we're talking about, you know, the company's disclosure. I would like to think that when companies put their boards together and when the directors meet and interact, they reach consensus as far as these kinds of issues are concerned. And there is a decision that either a bunch of people sitting around the table that don't want to do this, so the company opts out, or everyone thinks it's a good idea and the company opts in. I do think it's an issuer issue.

Brian Hahn: This is Brian, again. You can say it's an issuer's issue, but directed by the board, as I was saying. As I was talking about earlier, ultimately if you word it this way, it's going to put the responsibility back on the board, and just thinking about from a practical standpoint, I think you are going to have these conversations in the board meeting. The board of directors are going to get together and talk about it, and they're going to either come to consensus of all or nothing. I just, you know, just from the optics of it, they'll say either all in or all out. But I think leaving the wording the way this is and putting the burden back on the board is where it should be.

Stephen Graham: Right, which is the same thing as putting it back in the company, because that's how the company acts.

Male Speaker: If the board approves the filings.

Stephen Graham: Right.

Male Speaker: Well at least the audit committee does and the board also may own the 10Ks.

Patrick Reardon: This is Patrick, I am, as a lawyer, when I don't know you, you sometimes obfuscate, Julie and Sebastian, do you know if ISS or these other shareholder advocate groups provide any detail about what they're looking for? And regardless of what your answer is, it may be that the answer here is just to put race/ethnicity consistent with the desires of shareholder advocacy groups and just let the commission deal with the trees here and we just address the forest. Pass it back. I hate to do that, but I think at the end of the day if the customer, for example the stockholder wants it a particular way, then it ought to be written a way the stockholder or customer wants it.

Stephen Graham: Yeah, I think we want to be careful about just being a slave to what an advocacy group might want. I think this is, you know, again, the board's going to have to do its work and make its own decisions. And you can opt out if you decide that this is not important. If you decide that it is important, then you opt in. As decisions go at the board level, this is likely to be one of the least contentious discussions, but as we all know, nine times out of 10, when you're dealing with the most contentious issues, boards end up with the a unanimous decision, and I think the same thing is going to happen here. What are we going to do about disclosure? Are we in or we out and so then the rest flows from that.

Male Speaker: I think that's the way it's going to work as a practical matter.

Male Speaker: Stephen, I actually really agree. I think in terms of the fine green details of how they eventually end up reporting this, I think it's actually okay to leave that a little vague. I mean, our purpose -- we opened the goal -- is to get boards to talk about and think about diversity. And if we just say by default you report this information or you explicitly opt out, none of the board has to have that discussion and they have to talk about it, and if they don't want to do it, they can just say, okay, we're not going to do it, but the intent of a recommendation is that boards consider this, because we think it essentially adds to shareholder value when boards are diverse.

Stephen Graham: Right. I will agree with all that.

Male Speaker: And so what Patrick said is, you know, if we can recommend that by default the boards include this information, it's how the directors want to self-identify, but explicitly they can opt out, then we don't have to get into the weeds of well, you know, I'm white, but I was raised in Latin America and do I identify as Hispanic or not. We don't have to deal with that. We can essentially kick that discussion to the board members and they can make the decision about how they wanted self-describe as all. And how the board itself is an organization and as a company, they actually want to deal with that issue. But the whole point of this is that we want boards to talk about it.

Stephen Graham: Right, right. And, you know, as you point out, the point here is not to get into the weeds, but to encourage the conversation and give minimal information that's useful. So are we essentially back to the existing language with the addition of words to the fact that this is an opt in or opt out?

Male Speaker: Are you leaving ethnicity in there?

Stephen Graham: In light of Robert's comment, yeah. Again, that's complex and we don't have to put in there and it's something that as part of the discussion that if boards choose to put in they certainly can. It would simplify things for the lay reader if you will, [unintelligible] race and gender. I'm hoping.

Jenny Kassin: Do you think it is important to include ethnicity -- this is Jenny -- because of that issue of many people not considering Hispanic to be a race?

Stephen Graham: Again, that works for me. How does the group feel.

Male Speaker: Greg, I would prefer to have the language say after self-identify, to provide additional disclosure as to diversity, for example, with respect each board member's race, gender, and ethnicity.

Stephen Graham: Did you get that Julie?

Julie Davis: So the language is the same as it is now with the addition -- after self-identify, provide additional disclosure as to the diversity --

Male Speaker: And I would say for example, rather than including with respect to, and let's let companies decide what they think is important and what their shareholder base thinks is important.

Julie Davis: For example, with respect to each board member's race, gender, and ethnicity?

Male Speaker: Yeah.

Julie Davis:

And where does the opt in/opt out clause go?

[inaudible]

Male Speaker: Maybe before the while, maybe there should be language to the fact that disclosure is strongly encouraged.

Male Speaker: But it's the opt in or opt out. I can give you some specific language.

Robert Aguilar: This is Robert. If we have the opt out at the company level, issuer level, I mean, I don't think it changes what we essentially have now. Basically, this conversation came because nobody is reporting. So if we allow them to opt out, how does that change where we currently are with getting this information that we all think is important information to have? Well, I guess the way I see is that right now we have something that says tell us if you have a policy or not, and if you have it, you know, how's it working? As opposed to we're maybe taking it up to the next level and strongly encouraging this disclosure and this is the default forms, if it is going to be required, and that's going to give us information with respect to diversity and, you know, for example race, gender, and ethnicity. So give us that information then and if you choose not to, then disclose that you have made that decision not to.

Stephen Graham: I hear your, Robert. I'm not sure if we can go much stronger than that.

Male Speaker: It's got to be a measured approach. I mean, it's got to come to happen in steps. I mean if you go too far too fast, you may get a lot more push back.

Stephen Graham: I think we might be right. We think this is important. We are going to say that it's important, and we're going to strongly encourage that this sort of disclosure is made. So we're not going to mandate it.

Annemarie Tierney: Stephen, it's Annemarie. Do we have the ability to recommend that the rule be amended so that companies are required to adopt a diversity policy? I mean, right now they just have to disclose that they have one or not? I mean, is there a downside to requiring that companies adopt a diversity policy?

Stephen Graham: No, but I think you're going to have a very standard boiling point. Again, it might be a good next step, but I don't think -- you may not get exactly out of it what you want unless [unintelligible] on it.

Male Speaker: I'm sure we could suggest it and I think, you know, by making a recommendation along the lines we were discussing, I think maybe a result of that could very well be that companies without a diversity policy have a conversation and then, you know, you end up developing something that they otherwise wouldn't have. Maybe that's wishful thinking.

Male Speaker: I think that's very wishful thinking. I think that if we give most people the ability to opt out of the disclosure, they're going to do what they're currently doing and opt out of the disclosure. I mean, personally I'd much rather see a company disclose that their individual directors all opted out of self-identifying versus seeing them opt out of disclosing the information.

Female Speaker: I agree.

Male Speaker: Okay.

Stephen Graham: Okay, so where does that leave us? I think that there is -- it sounds to me like we are in the process of developing consensus, but there a couple of tweaks that are still

pretty important and I think that before I would ask anyone to vote on anything, I would want this redrafted and recirculated. So my suggesting then would be that and that is that we redraft, recirculate, and pick this up at our next meeting. I think our next meeting is in -- is it the beginning of February, Julie?

Julie Davis: Yes, February 15.

Stephen Graham: We got the holidays coming. Not sure if it makes sense to try to pick this up until we plan on meeting in January. How do people feel? Do we want to have redraft, recirculated, and then we have another conversation in January or pick it up on February 15?

Female Speaker: I wonder if we could decide on how we feel about the question of requiring each individual board member to disclose versus declining to state, as opposed to just asking the issuer, you know, the company to either opt in or opt out? It seems like that's kind of a big point of note -- a big decision that people are discussing and if we could [inaudible] if there is a consensus on that issue, we might be able to resolve this.

Stephen Graham: Yeah. Then it kind of gets -- let's spend a couple minutes and talk about that. The rules already require certain information with respect to each director. You know, the age, expertise, and all the rest. I think that kind of stands on its own and I think to start saying that in addition to that, tell us something about race and gender, but only if you want to, I think that might start being kind of complicated and I think that what we're talking about is the company's diversity policy and say if it seems appropriate for either the board to figure things out that it's important and, like anything else, whether it's community service or you name it, and encourage their directors to behave in a certain way, the board thinks it's important and when recruiting directors, you know, that's part of the conversation. And at the end of the day, the board makes the decision as to whether or not certain disclosure is important to its stakeholders or not. And, you know, while it's not perfect, I still feel that, you know, this is something, you know, it would be important for the board to deliberate like it deliberates in most important things and to come up with an approach that either is a rather robust disclosure that we'd like to see or opting out or something in between.

Female Speaker: But this issue really is more about the individual directors and their actual of diversity. It's not so much about board policy. You know, we're already asking them if they do have a policy, but to then try to find out is there actual diversity, it may be better to ask that at the individual level than board level -- the company level.

Male Speaker: No, then you get into a deeper issue that says, look, maybe if it's more disclosure on what their policy is on diversity when their attracting new board members. Let's just say a board, you know, let's say it doesn't match up to what the policy is, then they're going to have to get into a whole process of what they did and the specifics and all the blocking and tackling of maybe why it didn't work out for them.

Male Speaker: I think you're if your starting to go down a rabbit hole all the way, you know, it just opens up a whole can of worms. And as far as individual board members, I think I agree with Stephen. You know, when the board of directors meet, it's more of a consensus there as, you know, the board is a hole and one as is governance, you know, all these filings are approved by the board. It's a board discussion, so that, you know, I think what Robert was saying he wanted more teeth around it, saying look you automatically have to be in here. If you opt out, then maybe there's specific verbiage on, you know, maybe in bold somewhere saying we are choosing to opt out of and not disclose this. You know, I think that might be the middle ground there.

Jonathan Nelson: Or Stephen, maybe tactically to answer your question, maybe there is, you know, version one of a copy to show the opt out at the individual board member level. Version

two is the actual board cannot opt to self-disclose this, because right now everything is really kind of muddy for me. It would be nice just to be able to kind of say, "You know, okay, we either like A or B or we need to trash it, you know, or other, and we need to trash it and start over again." But in terms of continuing the discussion, it would help me to have maybe a bit of a rework of the copy and I'd be happy to help on that or whatever. Impose one or two versions that we could pick up either in January on another phone call or in February. I don't necessarily think that we need to spend another hour or two discussing it. I think everybody has pretty much weighed in, but if we could have a short call I think that would be helpful.

Stephen Graham: Okay, then the suggestion is that we come up with a new draft that includes alternative language and we get that circulated, so people have some words in front of them to think about, and then we'll see where that takes us in terms of timing or if we're getting together again. Does that sound like an approach?

[yes]

Female Speaker: Yes, that sounds good to me.

Male Speaker: I'd just like to add one thing as we are considering the two versions. Do we feel that diversity in corporation is important? And if it is, is it important enough that should have the issuers report that information to the public?

Male Speaker: Can I leave a kind of a [unintelligible] thought back on this? Over the last several years, all of our board meetings, you know most recently, the board meetings have gotten longer and longer and a lot of it is just to deal with these governance issues. I mean PCOD has put some, you know, pressure on the auditing firms related to party transactions, so I think just try to keep this as simple as possible and not to make it cumbersome. So you know the small company boards, you want them focusing on the business and making them successful. More and more times their thinking about governance and regulations and all these extra processes. I think it's important to add diversity on there and to think about all these different areas and aspects of it. But again, to make it efficient and easier for the companies and the boards. So just kind of a high level thought there.

Stephen Graham: Well, I think this whole discussion was premised on what I think was agreement and we would all feel diversity disclosure is important. I think we've all seen the information in the studies that suggest that diversity leads to better economic performance and, you know, for that and other reasons, this is something that is important to shareholders, important to customers, and important to employees, and if it's important to customers and employees, it's important to shareholders. And so therefore, it's appropriate to encourage this kind of disclosure. We all know that this area is just [unintelligible] with the number of the sensitive issues that plague us today and have plagued this country for quite some time. So when you're dealing with this set of issues, there are no easy answers, but I do think that what our limited job is, I think, is to recognize that diversity is important when it comes to it affecting the capital raise and capital preservation on the part of smaller companies. And so therefore, without social engineering and without any kind of mandate, you know, encouraging is a system that results in meaningful disclosure in this regard. And I think that's where we are. I think we have agreement in that. If anyone doesn't agree with that, then it's okay, just let us know. But I think then the issue becomes how do we do that, and that's what we have been spending the last hour talking about.

Jenny Kassin: This is Jenny, I have a really quick --

Mark Walsh: 1) I was just going to say a quick weigh in, this is Mark Walsh. You know, it's a fact that boards that are gender diverse do better -- companies see better with gender diverse boards than those without. 2) I think this issue is not going to go away, so addressing it now is

probably better than not. 3) As far as the comment about this is sort of another layer that might add to the length of complexity of a board meeting and lack of -- take away from the ability for a board to focus on the business with the management. My sense was, at least in the public boards I've been on, that, you know, this is a committee issue, and it's a board develop committee that's trying to find new board members, and you just sort of put it on them. And once you've assessed, the picture, the gender, or whatever the reporting requirement is, I don't think it's like every meeting you would have to go back and, you know, ask the room have you self-identified yet or whatever. I think it's kind of a one-timer, but I do believe if you think a company -- if the SEC or folks on this call believe that a company should be transparent in how it's operating and that if the shareholders should know that they can buy a share of stock in a company that has a diverse board and have the ability to do that, knowing that diversely lead boards do better than those without, I mean, I think that's a fair piece of data that his shareholders should know.

Brian Hahn: Hey Mark, this is Brian. I'm the one that was talking about that standpoint. Yeah, so our governance and nominating committee is the ones that would handle this, but, you know, they meet, you know, four to six times a year and it would be in their subcommittee, but they do give reports to the full board at every board meeting. And as far as you're saying one time, you know, the same thing with [unintelligible] they used to do once a year and now it's quarterly. It's, you know, every board meeting every quarter we've got to you know, that's just another layer there. And again, back to the point, you know, I agree that it is diversity from that standpoint, but just from being in the trenches here, you know being public about three years now, how we have watched just layer upon layer on that, so I'm just coming from the standpoint of saying make sure we do something, but that it doesn't become too, too cumbersome and it ends up, you know, just putting all this layer of governance on top of everything.

Stephen Graham: Yeah, my guess is that there will be discussion, just like we're having discussion and then there will be resolution, but it's not something that's going to be discussed repeatedly. I think it's going to be resolved, there'll be a policy, and the company will go forward on that basis.

Greg Yadley: I think we should do the drafting and people want to have a meeting to discuss it in January, I don't think it will need to be a very long meeting. The discussion today was quite constructive. Everybody believes this is important. I think the discussion is centered around some of the difficulties and how to implement it and also to be very respectful of individuals desires to not be put in a box if they don't want to and not to adopt a rule that where the company pretty much makes that the requirement for somebody to come on the board is that they have to do something that is personal.

Stephen Graham: Thanks, Greg. Any more comments?

Jenny Kassin: This is Jenny and I wanted to bring something up that's totally unrelated, which is that I think Chair White is moving on and I'm wondering if there are any plans for having a final goodbye from our group to her?

Stephen Graham: Not yet. Haven't thought about that?

Jenny Kassin: I would love to see that happen before it's too late.

Stephen Graham: I think we all would. Any other comments? Don't hesitate if you have them. Okay, well good discussion. I appreciate everyone's participation. What we'll do is pull together another draft and get that circulated and my guess is we'll pick it up in February, but who knows, something might happen and we can address it earlier. So with that, I will entertain a motion to adjourn.

Male Speaker: Moved.

Female Speaker: Second.

All those in favor?

[Aye by group]

I think we're going to adjourn. Thank you, all.

[end of transcript]