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Shumaker, Loop & Kendrick, LLP

**2013 SEC Government-Business  
Forum on  
Small Business Capital Formation  
November 21, 2013**

**EVOLVING PRACTICES  
IN THE NEW WORLD OF REGULATION D**

*Moderators:*

***Keith Higgins, Director***

SEC Division of Corporation Finance

***Gregory C. Yadley, Partner***

Shumaker, Loop & Kendrick LLP

## ***Panelists***

- **Keith Higgins**, Director, SEC Division of Corporation Finance
- **Gregory C. Yadley**, Partner, Shumaker, Loop & Kendrick, LLP
- **Christopher Mirabile**, Co-Managing Director, LaunchPad Venture Group, LLC; Board, Angel Capital Association
- **John H. Chory**, Partner, Latham & Watkins, LLP, Boston, MA
- **Troy Foster**, Partner, Wilson, Sonsini, Goodrich & Rosati, LLP,
- **Rick A. Fleming**, Deputy General Counsel, North American Securities Administrators Association, Inc.

# ***SEC Advisory Committee on Small and Emerging Companies***

- SEC mission to facilitate capital formation
- Charter renewed on September 24, 2013
- To focus on interests and priorities of emerging businesses and smaller public companies
- To provide advice and recommendations to SEC on its rules, regulations and policies

# ***Primary Areas of Advisory Committee Focus***

- Restrictions on general solicitation in unregistered offerings
- Triggers for public reporting, including considering the thresholds at which a company should begin and should be able to stop public reporting
- New capital raising strategies that are designed to make it easier for smaller companies to raise capital, including the regulatory issues posed by them
- Possible modifications to existing rules affecting public offerings to make it easier for smaller public companies to access the public capital markets

## ***JOB Act Mandates***

- Streamlined IPO Process for “Emerging Growth Companies”:
  - Relaxed gun-jumping restrictions
  - Confidential filing of registration statement
  - Scaled back disclosure requirements (financial and executive compensation)
  - Increased availability of research
- Private Offerings:
  - General solicitation permitted in certain Reg D offerings
  - General solicitation permitted in Rule 144A transactions
  - New exemption expands Reg A to allow offerings up to \$50M million
  - New Crowdfunding exemptions
- 12(g) Threshold Raised: from 500 shareholders to 2,000 holders of record or 500 holders of record who are not accredited investors

## ***Panel Discussion***

- Role of angel investors; important for capital formation and job creation
- Counseling clients on the new rules; selection of the appropriate exemption from registration
- Revised documentation and due diligence practices for in Regulation D offerings
- Investor protection and enforcement concerns of the states