

U.S. SECURITIES AND EXCHANGE COMMISSION

REPORT ON THE 40TH ANNUAL

**SMALL
BUSINESS**

FORUM

05.24.21–05.27.21

The U.S. Securities and Exchange Commission (SEC) annually hosts the Government-Business Forum on Small Business Capital Formation. The recommendations contained in this report were developed and drafted by the 2021 Forum participants. The recommendations are not endorsed or modified by the SEC and, as with the remarks of SEC Commissioners and staff published in this report, do not necessarily reflect the views of the SEC, its Commissioners, or any of the SEC's staff members.

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

»»» 2021 FORUM AT A GLANCE



4 DAYS

6

HOURS

of content



1,343

HOURS

live-streamed

20

POLICY

recommendations



40

tweets from

@SEC_News



1.6 million

TWITTER impressions



only

1 click to ENGAGE



LIVE

CHARLIE GURRY | SEC DIVISION OF CORPORATE FINANCE

MEGAN HOLSTON ALEXANDER | DR. BRUNDA LEADERSHIP FUND

MAX TUCHMAN | CARIBU

SHONDRA WASHINGTON | CROWDFUNDR

Finding Your First Dollars

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Monday, May 24

Finding Your First Dollars

Navigating Your Way to Raise Early Rounds

Tuesday, May 25

Doing Your Diligence

How Savvy Early-Stage Investors Build Diversified Portfolios

Wednesday, May 26

Diversifying Capital Allocators

Tools for Emerging and Smaller Funds and Their Managers

Thursday, May 27

Small Cap Insights

Perspectives on Smaller Public Companies

FORUM HIGHLIGHTS

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

This year marked the 40th Forum, which the SEC hosted virtually over four days from May 24 to 27, 2021. Each day featured a different topic, with speakers highlighting success stories, as well as areas for policy improvement.

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

POLICY RECOMMENDATIONS

A hallmark of the Forum is the opportunity for participants to develop policy recommendations to improve capital raising. Based on feedback from prior Forums, this year we invited participants to submit recommendations in advance using an online portal, as well as “chat” them in during the live event. Doing so fostered a more inclusive environment where all voices could be heard and cut back on lengthy deliberations to be more efficient with participants' time.

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

Alongside each recommendation is a response from the Commission, noting any corresponding policy initiatives that have been made public.² The Commission will consider Forum recommendations alongside other public comments for relevant policy initiatives.

»»» ENGAGING PUBLIC PARTICIPANTS

Participants in the Forum bring a breadth of perspective to the policy deliberations, approaching the capital raising ecosystem from a variety of backgrounds, geographies, and life cycle stages.³



5 SEC
COMMISSIONERS



11 guest
SPEAKERS

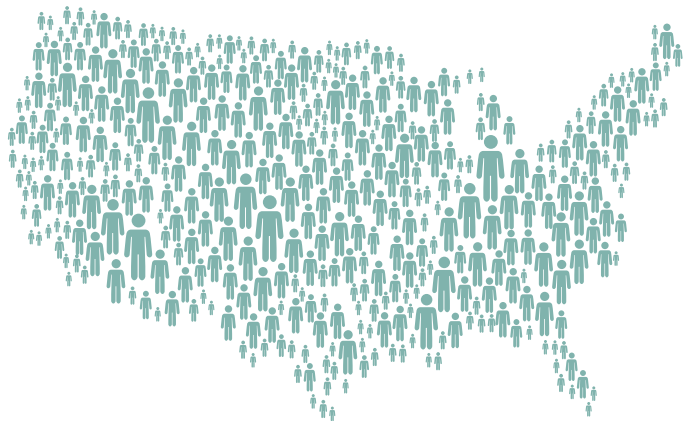


12
SEC SMALL
BUSINESS
ADVOCACY
team members

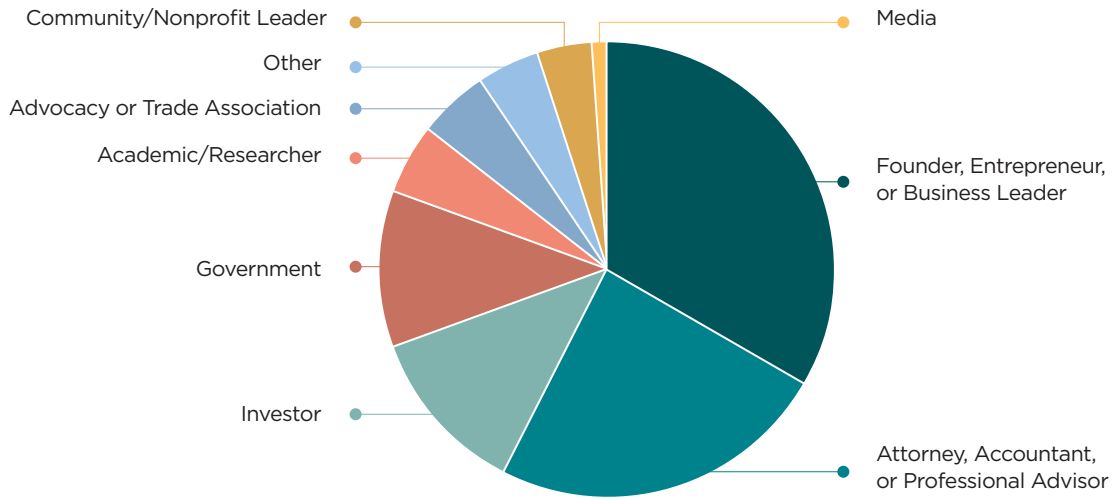


14
SEC STAFF
appearances

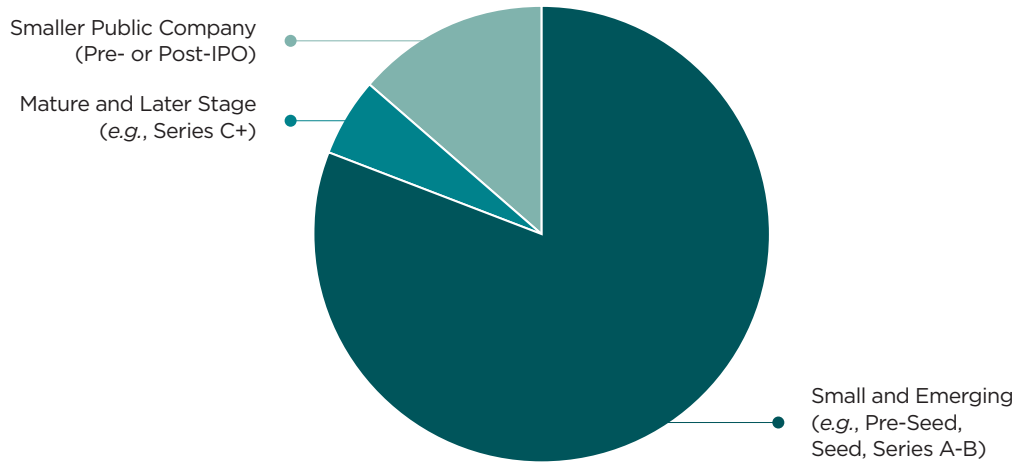
610
registered
participants *from*
40 STATES and
17 COUNTRIES



PRIMARY PROFESSIONAL ROLE



PRIMARY SEGMENT OF THE CAPITAL FORMATION LIFE CYCLE



230 first-time Forum participants

Participants brought diverse perspectives, self-identifying as:



Participants shared preferences for educational or informational resources on capital raising that the SEC can provide, prioritizing:

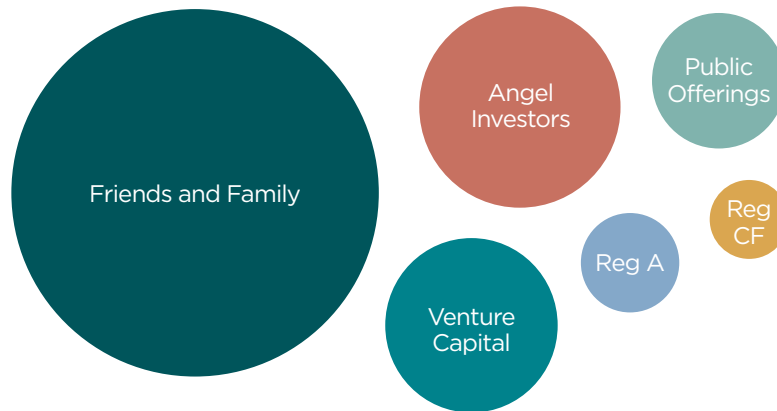


»»» TAKING THE PULSE OF THE PARTICIPANTS

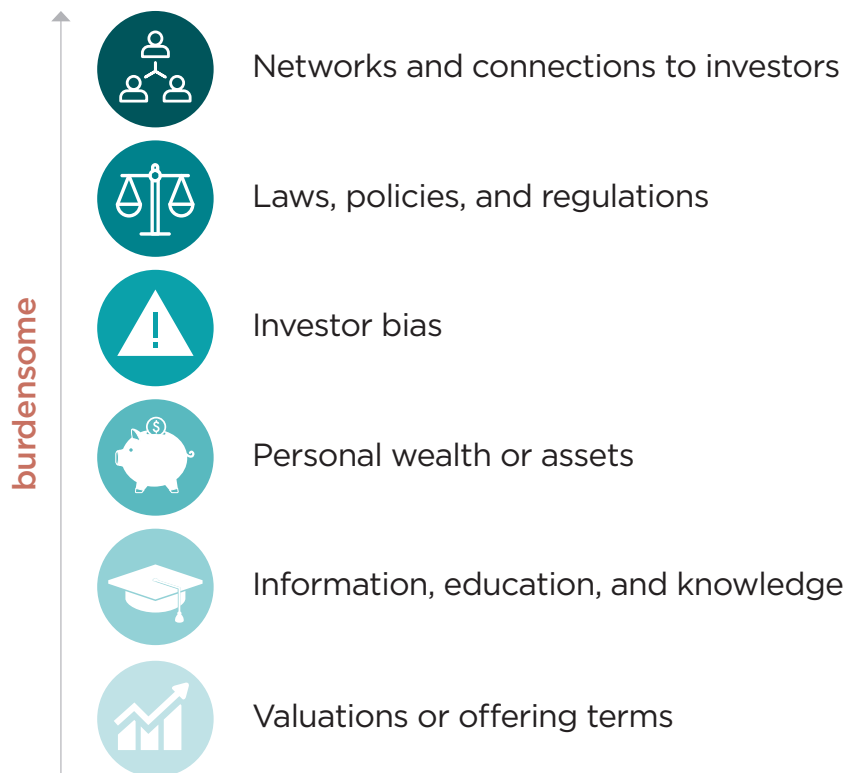
Each day at the start of the sessions, participants could voluntarily answer polling questions that provided context on their individual experiences, background, and ideas to better inform the discussion and contextualize the issues presented.

DAY 1: FINDING YOUR FIRST DOLLARS

Participants brought breadth of experience in raising capital from a variety of sources:



Participants also highlighted their perspectives on the greatest barriers to accessing capital:



DAY 2: DOING YOUR DILIGENCE

Participants shared feedback on where they find success in sourcing investment opportunities:



Participants expect to source investment opportunities from a variety of locations:



DAY 3: DIVERSIFYING CAPITAL ALLOCATORS

Participants highlighted the greatest challenges facing emerging and regional fund managers:



Participants generally found that emerging fund managers are more likely than other fund managers to invest in women- and minority-owned businesses.



DAY 4: SMALL CAP INSIGHTS

Participants weighed in with a variety of challenges facing smaller public companies seeking to access capital:



Participants also highlighted top priorities for public companies when it comes to their shareholders and investor relations:



MON
May 24

FINDING YOUR FIRST DOLLARS

Navigating Your Way to Raise Early Rounds

Agenda

- 1:00 P.M. Welcome Remarks from Martha Legg Miller, SEC Small Business Advocacy Team
- 1:05 P.M. Remarks from Chair Gary Gensler
- 1:10 P.M. Remarks from Commissioner Hester M. Peirce
- 1:15 P.M. Panel Discussion, moderated by Charlie Guidry, SEC Division of Corporation Finance's Office of Small Business Policy
- 2:00 P.M. Voting to Prioritize Submissions
- 2:10 P.M. Closing Remarks from Colin A. Caleb, SEC Small Business Advocacy Team

Panel Speakers



MEGAN HOLSTON-ALEXANDER

Partner
Cultural Leadership Fund
San Francisco, CA

Megan is a partner at Andreessen Horowitz's Cultural Leadership Fund. In this role, she connects cultural leaders to the best new technology companies and engages, empowers, and elevates Black talent, entrepreneurs, and investors across the technology industry. Prior to joining Andreessen Horowitz, Megan worked in consumer technology investing at the early-stage venture capital firm she helped launch during business school.



MAXEME TUCHMAN

CEO and Co-Founder
Caribu
Miami Beach, FL

Max co-founded Caribu, an interactive video-calling platform for children to host virtual playdates with friends and family when they cannot be physically together. She is the first Latinx founder, male or female, to raise \$1 million using investment crowdfunding, the 59th Latina in the U.S. to raise over \$1 million in venture funding, and the winner or finalist in over 30 pitch competitions.



SHONDRA WASHINGTON

President and Co-Founder

TBC-Capital
New York, NY

A veteran of the financial services world, Shondra founded TBC-Capital to democratize access to information to help underrepresented founders in tech and consumer products raise capital and access on-demand CFO, business development, and strategy services. She is the host of CrowdHouse, offering weekly pitch practice sessions to founders via the ClubHouse platform.

Highlights from Panel Discussion

- » Entrepreneurs and their businesses should be prepared in advance for capital raising, so that they can respond when opportunities arise.
- » Pitch competitions and crowdfunding can be lucrative alternatives for businesses too small for venture capital investment but too large for a friends and family round.
- » Founders should be educated about the various forms of capital raising.
- » A big barrier for women—especially Black women—getting capital is finding investors.
- » When making investment decisions, investors often look for things that materially change consumer behavior. Often that behavior is moved by culture, and a lot of times that is Black and Brown culture, so we should have those people in the room. Having that diversity around the table helps identify opportunities and not miss out on amazing founders.
- » Venues that enable founders to practice their pitches also help to expand the founders' networks.
- » In the early capital raising stages, finding the right investors means finding the right partners and advisors who have the right experience and founders' best interests at heart.

Participants' Policy Recommendations



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

COMMISSION RESPONSE

On November 2, 2020, the Commission adopted a set of rule amendments designed to facilitate capital formation and increase opportunities for investors by expanding access to capital for small and medium-sized businesses and entrepreneurs across the United States (Capital Formation Adopting Release).⁴ In that release, the Commission acknowledged concerns about how our capital markets are serving underrepresented founders and investors, encouraged further specific, tangible suggestions for action by the Commission, and expressed its commitment to continued engagement on this topic.

The Commission regularly evaluates ways to improve its capital raising rules and will consider this Forum recommendation in connection with this initiative.



Establish a micro-offering exemption with minimal disclosure requirements.

COMMISSION RESPONSE

On June 18, 2019, the Commission published for public comment a concept release on ways to simplify, harmonize, and improve the exempt offering framework to promote capital formation and expand investment opportunities while maintaining appropriate investor protections (Harmonization Concept Release).⁵ On March 4, 2020, the Commission proposed rule amendments to harmonize and streamline the Commission's rules for exempt offerings under the Securities Act of 1933 (Securities Act) in order to enhance their clarity and ease of use (Capital Formation Proposal), many of which were adopted in the Capital Formation Adopting Release.⁶ In connection with both the Harmonization Concept Release and the Capital Formation Proposal, the Commission sought and received public comment on whether it should consider creating a micro-offering exemption.

The Commission will continue to consider the comments received and this Forum recommendation in connection with ongoing initiatives.



Revise Regulation Crowdfunding to remove the GAAP financial statement requirement for businesses seeking to raise a small amount.

COMMISSION RESPONSE

In the Harmonization Concept Release, the Commission sought and received public comment on whether to consider revisions to the Regulation Crowdfunding financial statement requirements. Commenters on the Capital Formation Proposal also provided feedback on the Regulation Crowdfunding financial statement requirements.

The Commission will continue to consider the comments received and this Forum recommendation in connection with ongoing initiatives.



Provide state preemption for secondary transactions for shares issued under Regulation A and Regulation Crowdfunding.

COMMISSION RESPONSE

In the Harmonization Concept Release, the Commission sought public comment on whether federal preemption should be extended to additional offers and sales of securities. In addition, the Capital Formation Proposal requested comment on whether the Commission should extend federal preemption to secondary sales of Regulation A or Regulation Crowdfunding securities.

The Commission will continue to consider the comments received and this Forum recommendation in connection with ongoing initiatives.



Clarify the status of digital assets to make clear when it is a security.

COMMISSION RESPONSE

In determining the applicability of the U.S. federal securities laws to a digital asset, a threshold issue is whether the digital asset is a “security.”⁷ In the DAO Report published in 2017, the Commission explained how the *Howey* test applies to a digital asset issuance.⁸ In 2019, the staff of the SEC’s Strategic Hub for Innovation and Financial Technology (FinHub) published a framework for analyzing whether a digital asset is an investment contract and whether offers and sales of a digital asset are securities transactions.⁹

We encourage market participants looking to determine whether a digital asset is a security to seek the advice of securities counsel and engage with [FinHub staff](#).¹⁰

TUE
May 25

DOING YOUR DILIGENCE

How Savvy Early-Stage Investors Build Diversified Portfolios

Agenda

- 1:00 P.M. Welcome Remarks from Dean A. Brazier, Jr., SEC Small Business Advocacy Team
- 1:05 P.M. Remarks from Commissioner Elad L. Roisman
- 1:10 P.M. Introduction by Martha Legg Miller, SEC Small Business Advocacy Team
- 1:15 P.M. Panel Discussion, moderated by John Moses, SEC Office of Investor Education and Advocacy
- 2:00 P.M. Voting to Prioritize Submissions
- 2:10 P.M. Closing Remarks from Julie Zelman Davis, SEC Small Business Advocacy Team

Panel Speakers



GRACE RAINS
Executive Director
Ark Angel Alliance
Conway, AR

Grace leads an Arkansas-based angel investor group, which pursues active investment in local startups and fosters the entrepreneurial ecosystem in the state and broader region. She also serves as Director of Operations at the Conductor, a public-private partnership with the University of Central Arkansas focused on empowering entrepreneurs, innovators, and makers.



ELI VELASQUEZ
Co-Founder and Managing Partner
Investors of Color Network
Amherst, MA

Eli serves as an advisor, board member, and angel investor supporting science and technology ventures. As founder of the Investors of Color Network, Eli works to connect Black, Latinx, and Asian accredited investors and allies to close the racial funding gap in startup capital, build generational wealth, and cultivate investor networks. Eli also serves on the board of the Angel Capital Association.



ELIZABETH YIN
Co-Founder and General Partner
Hustle Fund
San Francisco, CA

Using her prior experience as an entrepreneur, Elizabeth co-founded Hustle Fund, a pre-seed fund with a goal of democratizing access to funding for extremely early-stage software start-ups that might otherwise not get noticed. Previously, Elizabeth was a partner at 500 Startups, where she invested in seed stage companies and ran the Mountain View accelerator.

Highlights from Panel Discussion

- » It is important to introduce minority accredited investors to startup investing, which expands the pool of capital available to underrepresented entrepreneurs.
- » Momentum is important. Pre-seed funding can help early-stage entrepreneurs build momentum where network gaps may create limited access to capital.
- » For investors looking to support underrepresented founders, they should take active approaches, such as social media statements that they are seeking investment opportunities.
- » When an investor starts to understand the story of the founder of color, then the investor starts to see the common ground with the founder.
- » When building a due diligence team for early-stage investments, identify potential gaps and gather the right people to engage in conversations and deal evaluations.
- » Develop and sharpen an investment thesis and an impact thesis. This can help ensure value alignment between the investment goals and the portfolio companies.
- » Providing feedback, even if an investment is not made, can benefit founders and help them grow their business or prepare for the next pitch.
- » Consider alternative ways for investors to help founders, such as advice or network introductions.
- » Do not be afraid to give blunt feedback. This enables founders to make changes and, potentially, receive an investment from investors that had previously passed on the founder.
- » Angel investing is high risk, high reward. The keys are building a diversified portfolio, cross-vertical, cross-stages, to mitigate that risk with the understanding, at the outset, that it will be a long-term investment.
- » An IPO is not a viable exit strategy for angel investors, so it is important to have conversations with founders about their potential for acquisition, which is often not a consideration for founders at the angel investment stage. Simultaneously, angel investors should keep in mind that the interest in private markets creates a liquidity opportunity for an exit during subsequent investment rounds.
- » Finders add another layer of due diligence to understand the relationship between the founder and the finder.

Participants' Policy Recommendations



Expand the accredited investor definition to include other measures of sophistication, such as specialized industry knowledge or professional credentials.

COMMISSION RESPONSE

On August 26, 2020, the Commission adopted amendments to the definition of “accredited investor” under Regulation D of the Securities Act that added new categories of qualifying natural persons and entities and made certain other modifications to the existing definition (Accredited Investor Adopting Release).¹¹ The amendments permit natural persons to qualify as accredited investors based on certain professional certifications, designations, or credentials. The amended rule includes a nonexclusive list of attributes that the Commission will consider in determining which professional certifications and designations or other credentials qualify a natural person for accredited investor status. In a related order, the Commission designated holders in good standing of the Series 7 (Licensed General Securities Representative), Series 65 (Licensed Investment Adviser Representative), and Series 82 (Licensed Private Securities Offerings Representative) licenses as accredited investors.¹²

The Commission may designate additional qualifying professional certifications, designations, and other credentials by order. Members of the public may propose to the Commission that additional certifications, designations, or credentials should be included in the accredited investor definition, such as a specific degree or program of study. As another example, an accredited educational institution, self-regulatory organization, or other industry body that believes that it has a program of study or credential that fulfills the attributes to be considered as a qualifying professional certification, designation, or credential may apply to the Commission for consideration. Any request for Commission consideration must address how a particular certification, designation, or credential satisfies the nonexclusive list of attributes set forth in the new rule, and may include additional information that the requestor believes the Commission may wish to consider. Such requests may be submitted to the staff at investorcredentials@sec.gov.



Expand retail investor access to funds that invest in private offerings and support underrepresented entrepreneurs.

COMMISSION RESPONSE

The Commission and its staff have heard from market participants interested in expanding retail investor access to funds seeking to invest in earlier-stage exempt offerings. In addition, the SEC's [Asset Management Advisory Committee](#) (including its Private Investments Subcommittee and Diversity and Inclusion Subcommittee) and the [Small Business Capital Formation Advisory Committee](#)¹³ have both weighed in on this topic. The Commission will consider the Forum Recommendation in connection with its various initiatives.



Expand the accredited investor definition to include an investor certification course or test whose curriculum has been approved by FINRA or the SEC.

COMMISSION RESPONSE

As described above, the Accredited Investor Adopting Release amended the definition of accredited investor to permit natural persons to qualify as accredited investors based on certain professional certifications, designations, or credentials, and includes a nonexclusive list of attributes that the Commission will consider in determining which professional certifications and designations or other credentials qualify a natural person for accredited investor status.

Members of the public may propose to the Commission that additional certifications, designations, or credentials should be included in the accredited investor definition, such as a specific degree or program of study. As another example, an accredited educational institution, self-regulatory organization, or other industry body that believes that it has a program of study or credential that fulfills the attributes to be considered as a qualifying professional certification, designation, or credential may apply to the Commission for consideration. Any request for Commission consideration must address how a particular certification, designation, or credential satisfies the nonexclusive list of attributes set forth in the new rule, and may include additional information that the requestor believes the Commission may wish to consider. Such requests may be submitted to the staff at investorcredentials@sec.gov.



Create more and better wealth-building opportunities for retail investors to build and support resilient and equitable local economies.

COMMISSION RESPONSE

In recent years, the Commission has made a number of changes to the federal securities laws to allow for greater direct access to capital opportunities for smaller companies and investors. For example, as described above, in the Accredited Investor Adopting Release the Commission adopted final rules that add additional ways for individuals to qualify as accredited investors and participate in private offerings. In addition, in the Capital Formation Adopting Release the Commission adopted a variety of rule amendments intended to promote capital formation and increase opportunities for investors. The Commission welcomes ideas for how our federal securities laws can support entrepreneurial ecosystems across the country while maintaining investor protection.

The Commission will consider this Forum recommendation and consult, as needed, with relevant stakeholders.



Adopt rules and coordinate with the states to allow community investment funds with sufficient regulatory oversight and flexibility to pursue community-based investments.

COMMISSION RESPONSE

As noted above, the Commission welcomes ideas for how our securities laws can empower investors to support their local economies. Through the SEC's work overseeing investment products and services available to investors, staff often receive proposals and comments from stakeholders and investors on ways to improve the available investment opportunities. The Commission welcomes ideas for improvements to community-based investing, while maintaining investor protection.

The Commission will consider this Forum recommendation related to community investment funds, and consult, as needed, with relevant stakeholders.

WED
May 26

DIVERSIFYING CAPITAL ALLOCATORS

Tools for Emerging and Smaller Funds and
Their Managers

Agenda

- 1:00 P.M. Welcome Remarks from Jessica McKinney, SEC Small Business Advocacy Team
- 1:05 P.M. Remarks from Commissioner Allison Herren Lee
- 1:10 P.M. Remarks from Pamela A. Gibbs, SEC Office of Minority and Women Inclusion
- 1:15 P.M. Panel Discussion, moderated by Martha Legg Miller, SEC Small Business Advocacy Team
- 2:00 P.M. Voting to Prioritize Submissions
- 2:10 P.M. Closing Remarks from Jenny J. Choi, SEC Small Business Advocacy Team

Panel Speakers



GAYLE JENNINGS-O'BYRNE

General Partner and Co-Founder
WOCstar Fund
New York, NY

Gayle leverages depth of financial markets experience as the founder of an early-stage investment fund. The WOCstar Fund is focused on empowering inclusive teams and women of color to bring tech innovation to market. Gayle is also the host of the VCs Off the Record podcast, where she and other investors engage in “real talk” about capital raising and the venture capital industry.



SAMIR KAJI

Founder and CEO
Allocate
Menlo Park, CA

Following a career in venture and private investing, Samir founded Allocate, a platform that makes private fund investing more accessible by providing investors discovery, analytics, and access to high quality institutional firms. Samir is a member of Kauffman Fellows Class 20 and the host of the podcast Venture Unlocked, aimed at opening the playbook for raising and operating a venture capital fund.



MICHAEL PIECIAK

Commissioner

Vermont Department of Financial Regulation
Winooski, VT

Mike is the chief regulator of Vermont’s financial services sector, including its Securities Division. A past president of the North American Securities Administrators Association (NASAA), Mike now serves as the chair of NASAA’s Corporation Finance Section. He is also a member of the SEC’s Small Business Capital Formation Advisory Committee.

Highlights from Panel Discussion

- » Emerging managers face challenges in scaling their fund size, particularly if they are trying to raise more than \$10 million.
- » Fund managers in areas beyond the traditional hubs for early-stage investment enable small businesses in those areas to grow and scale where they started.
- » Emerging managers are developing thriving entrepreneurial ecosystems, providing regional diversification, and investing in diverse founders.
- » Investors should be willing to meet founders where they are located, including in so-called “flyover” places.
- » Emerging manager evaluations should be tailored for the experience and circumstances of the managers. Successful managers in New York City will look different than successful managers in Kansas City.
- » Institutional investors should rethink the traditional diligence processes, which overweighs historical performance. Emerging managers starting new funds are building a new product, requiring prospective diligence processes.
- » Institutional funds should empower emerging managers to be successful. Non-traditional investment opportunities require non-traditional thinking.
- » Diversity among the decision makers at institutional funds enables those funds to see successful opportunities that they otherwise may miss.
- » Backing diverse managers provides a comparative advantage. They can bring strong track records, flexibility to the marketplace, and operational efficiencies.
- » New and prospective managers should start investing early to develop a track record of their investment methodology and purpose.

Participants' Policy Recommendations



Increase the number of investors allowed in 3(c)(1) funds above 99 investors.

COMMISSION RESPONSE

A 3(c)(1) fund is a type of pooled investment vehicle that is excluded from the definition of “investment company” under the Investment Company Act of 1940 (1940 Act) because it has no more than 100 beneficial owners and otherwise meets criteria outlined in Section 3(c)(1) of the 1940 Act. 3(c)(1) funds are often used by venture capital firms and other early-stage investors who pool capital for investment in startups.

Any amendments to Section 3(c)(1) to change the number of investors allowed would require Congressional action.



Increase the \$10 million cap for 3(c)(1) qualified venture capital funds to allow a larger number of investors in smaller funds.

COMMISSION RESPONSE

A “qualifying venture capital fund” is a type of private fund that is excluded from the definition of “investment company” under Section 3(c)(1) of the 1940 Act because it:

- (1) has not more than 250 beneficial owners;
- (2) has not more than \$10 million in aggregate capital contributions and uncalled capital commitments; and
- (3) qualifies as a venture capital fund.

The SEC’s Small Business Capital Formation Advisory Committee recently submitted recommendations to make changes to qualifying venture capital funds to improve opportunities for underrepresented founders and investors.¹⁴

Any amendments to Section 3(c)(1) to change the \$10 million cap would require Congressional action.¹⁵



Support underrepresented and emerging fund managers and their investors through targeted resources, in collaboration with other federal agencies.

COMMISSION RESPONSE

The Commission supports efforts to improve accessibility of educational and technical resources to improve diversity among fund managers and investors. This spring, the SEC’s Small Business Advocacy Office, in partnership with other SEC offices and divisions, launched a “[Cutting Through the Jargon](#)” glossary¹⁶ to reduce barriers to entry for underrepresented and emerging investors and entrepreneurs and to improve accessibility of compliance content. The glossary includes foundational terminology, along with small business investing terminology, and fund-specific terminology. The Office also contemporaneously launched an [Emerging Fund Manager virtual event series](#) exploring the role of emerging fund managers and their investors in funding underrepresented founders across the country and empowering a new generation of investment decision-makers. The Commission welcomes continued engagement and ideas to improve the resources available for underrepresented and emerging fund managers and their investors.

In addition, the SEC’s Asset Management Advisory Committee continues to explore opportunities to support underrepresented and emerging fund managers through its Diversity and Inclusion Subcommittee.

The Commission welcomes ideas from underrepresented and emerging fund managers and their investors for specific resources and programming that would be most impactful to improve diversity among investment decision-makers.



Expand venture capital funds’ qualifying investments to include fund-of-funds investment in another venture capital fund, secondary securities acquired from founders and early-stage investors, and follow-on investments in emerging growth companies.

COMMISSION RESPONSE

An investment adviser to venture capital funds may qualify as an exempt reporting adviser that is not required to register with the SEC if the fund invests at least 80 percent of its assets in “qualifying investments” under Rule 203(I)-1 under the Investment Advisers Act of 1940.¹⁷ A “qualifying investment” generally consists of any equity security issued by a qualifying portfolio company that is directly acquired by a qualifying fund and certain equity securities exchanged for the directly-acquired securities.

In the adopting release defining “qualifying investment,” the Commission discussed the possibility of expanding the definition to include secondary purchases and investments in other venture capital funds, but ultimately decided that such investments should be made pursuant to the 20 percent limit for assets that are not “qualifying investments.”¹⁸ Since then, the Division of Investment Management issued guidance relating to the definition of “venture capital fund” to clarify whether certain fund structures or actions could jeopardize a venture capital fund adviser’s ability to qualify as an exempt reporting adviser.¹⁹

The Commission will consider this Forum recommendation and will consult, as needed, with relevant stakeholders.



Support underrepresented emerging fund managers—specifically minorities and women—building funds that diversify capital allocators, engage sophisticated investors, and challenge pattern matching trends.

COMMISSION RESPONSE

The Commission supports efforts to improve diversity among fund managers and entrepreneurs who raise capital. As highlighted above, the SEC’s Small Business Advocacy Office recently launched a series of virtual events focused on emerging fund managers and released educational content to reduce barriers to entry for underrepresented entrepreneurs and their investors.

In addition, the SEC’s Small Business Capital Formation Advisory Committee recently submitted recommendations in 2020 and 2021 for the Commission to promote increased opportunities for diverse entrepreneurs and investors.²⁰ The SEC’s Investor Advisory Committee submitted recommendations in March 2021 to address systematic wealth gaps and ensure that minority organizations have greater investment opportunities.²¹

Most recently, the SEC’s Asset Management Advisory Committee and its Subcommittee on Diversity and Inclusion recommended that the Commission focus on transparency of business practices for consultants who recommend investment advisers and investment funds to improve diversity among asset managers.²²

The Commission will consider this Forum recommendation in connection with these and other initiatives.

THU
May 27

SMALL CAP INSIGHTS

Perspectives on Smaller Public Companies

Agenda

- 1:00 P.M. Welcome Remarks from Jenny Riegel, SEC Small Business Advocacy Team
- 1:05 P.M. Remarks from Commissioner Caroline A. Crenshaw
- 1:10 P.M. Introduction by Martha Legg Miller, SEC Small Business Advocacy Team
- 1:15 P.M. Panel Discussion, moderated by Sebastian Gomez Abero, SEC Small Business Advocacy Team
- 2:00 P.M. Voting to Prioritize Submissions
- 2:10 P.M. Forum Closing Remarks from Martha Legg Miller, SEC Small Business Advocacy Team

Panel Speakers



THOMAS HENSE
Chief Investment Officer, Equity
Fidelity Investments
Boston, MA

Tom serves as Chief Investment Officer in the Equity Division at Fidelity, where he leads the small cap, value, and income teams. Tom has held multiple roles in the organization, starting as a high yield analyst, subsequently co-directing equity research, and serving as portfolio manager for Fidelity Small Cap Value Fund and Fidelity Advisor Small Cap Value Fund.



SUE WASHER
President and CEO
Applied Genetic Technologies Corporation
Gainesville, FL

Sue was employee number two at AGTC, which uses a novel gene therapy platform to develop products designed to transform the lives of patients with severe genetic diseases. Sue built the company from a small academic spin-out to a leader in the field, leading the company through raising venture capital funding, an initial public offering on Nasdaq, multiple additional public offerings, and two major partnerships.

Highlights from Panel Discussion

- » Industry matters when planning capital raises. Entrepreneurs should consider their industry-specific capital raising challenges.
- » More companies are accessing the private markets and staying private longer.
- » Small boutique firms and internet communities have started to fill the research gap left by large, established banks.
- » Broadening the ability of a company to understand its shareholder base will make the public markets more attractive to young, innovative companies.
- » Not all small companies are created equal. Look beyond the market cap to determine the actual size and access to resources.
- » Constant communication is important, and technology has made it easier to do so. Companies should post corporate filings and answers to common investor questions.
- » Companies should layout their ESG principles, governance models, diversity, and other information to help analysts and investors make ESG evaluations.
- » It takes active work to build an inclusive environment.
 - Force recruiters to bring in diverse candidates.
 - Evaluate a candidate's character and breadth of experiences.
 - Network aggressively and beyond your comfort zone.
 - Be persistent, and never let someone dismiss you.
 - Develop diverse experiences and skills to increase company attractiveness.
 - Learn to make the “ask” from investors that may not look like you.
 - Stand up for yourself.
- » Hire people for where you want the company to be in the future.
- » Market volatility tends to affect small companies more than larger companies, particularly if capital raising occurs frequently.

Participants' Policy Recommendations



Improve research coverage of smaller public companies in light of challenges from the Global Research Settlement, FINRA 2241, MiFID II, and other obligations on broker-dealers.

COMMISSION RESPONSE

Staff in the Divisions of Trading and Markets and Investment Management have been actively engaged with market participants to better understand their concerns regarding the impact of MiFID II's provisions on research, including research coverage. To assist market participants in complying with MiFID II in a manner that is consistent with federal securities laws, SEC staff issued three no-action letters in 2017, one of which took a temporary no-action position with regard to broker-dealers that receive certain unbundled payments for research from MiFID-affected clients.²³ In November 2019, SEC staff extended the temporary no-action position until July 2023 and stated its view that the use of certain client commission arrangements does not affect whether the broker-dealer exclusion may be available in connection with the receipt of payments for research under Exchange Act section 28(e).²⁴

Commission staff have sought and received public feedback on the evolving research landscape, including the impact of MiFID II on research coverage of small issuers. Moreover, as required by the Consolidated Appropriations Act, 2021, the staff is conducting a study to evaluate issues concerning the provision of and reliance upon research into small issuers (*i.e.*, the demand for such research, the availability of such research, and other related topics). The Commission will consider this Forum recommendation in connection with these initiatives.



Increase the public float thresholds in the “smaller reporting company” and “accelerated filer” definitions.

COMMISSION RESPONSE

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

Specifically, in June 2018, the Commission adopted amendments that raised the thresholds in the smaller reporting company definition so that a company with less than \$250 million of public float is eligible to provide scaled disclosures. A company with less than \$100 million in annual revenues and either no public float or a public float that is less than \$700 million is also eligible to provide scaled disclosures. In March 2020, the Commission adopted amendments to the accelerated filer and large accelerated filer definitions that exclude from these definitions an issuer that is eligible to be a smaller reporting company under the revenue test of the “smaller reporting company” definition, including that the issuer had annual revenues of less than \$100 million and either no public float or a public float of less than \$700 million.²⁵

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



Increase the transparency of short selling and dark pool activities.

COMMISSION RESPONSE

In connection with short sale disclosure, self-regulatory organizations, including NYSE, Nasdaq, and FINRA, provide short selling information on their websites, and the Commission provides information on failures to deliver securities that may result from sales, including short sales. The Commission continues to monitor developments that have occurred since the completion of the 2014 SEC staff report on the benefits and costs of real-time short sale reporting.²⁶ The Commission will consider this Forum recommendation and consult, as needed, with relevant stakeholders.



Facilitate creation of venture markets that provide investors with a transparent and regulated environment for trading in stocks of smaller companies.

COMMISSION RESPONSE

The Commission has heard from issuers, exchanges, and other market participants that a one-size-fits-all approach to market structure does not work for many public issuers, particularly small and medium sized companies. To accommodate a venture market for smaller public companies, the Commission issued a statement on market structure innovation that invited exchanges and other market participants to submit proposals designed to improve the secondary market structure for exchange-listed equity securities that trade in lower volumes, commonly referred to as “thinly-traded securities,”²⁷ which are often also smaller-capitalization securities.

Low trading volumes may drive higher transaction costs for investors, present challenges for investors seeking to establish or unwind meaningful positions, and negatively impact issuers’ cost of capital. The Commission asked for proposals to address these issues by improving the secondary market structure for thinly-traded securities. The Commission’s statement lays out various considerations that may be helpful for a proposal to address, including whether and under what circumstances it would be appropriate to suspend unlisted trading privileges on multiple exchanges and whether exemptive relief from Regulation NMS and other rules under the Exchange Act would improve trading and liquidity. The Commission asked for proposals to enhance trading and liquidity for this segment of the market while maintaining or improving market integrity. The Commission will consider this Forum recommendation and consult, as needed, with relevant stakeholders.



In connection with any new environmental, social, or governance (ESG) disclosure requirements, provide exemptions or scaled requirements for small and medium-sized companies.

COMMISSION RESPONSE

As indicated on the Spring 2021 Unified Agenda,²⁸ the Division of Corporation Finance is considering recommending that the Commission propose rule amendments to enhance registrant disclosures regarding issuers’ climate-related risks and opportunities, human capital management, and diversity of board members and nominees.

The Commission will consider this Forum recommendation in connection with these initiatives.

OVERHEARD AT THE FORUM



“Taking the step to become a public company can be challenging, and we need to make our collective voices heard to mitigate those challenges. I hope that participants take away that with the right planning and an experienced team a small company can thrive in the public markets.”

SUE WASHER

President and CEO

Applied Genetic Technologies Corporation
Gainesville, FL

“Closing the racial funding gap ensures new innovations, founders and business models are supported so they can contribute to our economic recovery. For investors looking for new opportunities, the future is new majority entrepreneurs.”

ELI VELASQUEZ

Co-Founder and Managing Partner

Investors of Color Network
Amherst, MA



“[O]ne thing that I would really emphasize and recommend to people, especially if there are allocators listening here, is stop thinking of investing in diverse managers as some kind of tradeoff to returns. It’s not. In fact, these two things are absolutely congruent. And if you look at the statistics, having a diverse team member on your investment team allows you to see opportunities that you otherwise wouldn’t, and many of those opportunities are those outliers.”

SAMIR KAJI

Founder and CEO

Allocate
Menlo Park, CA

ADVISORY PLANNING GROUP

The SEC's Small Business Advocacy team convened an advisory planning group to provide strategic input on the Forum.²⁹ Planning group members brought additional perspectives to the Forum planning process, weighing in on improvement opportunities from prior Forums, emerging issues impacting access to capital, highlighting potential speakers, and promoting the event within their networks.

Chair **Martha Legg Miller**
Director, Office of the Advocate for Small Business Capital Formation
U.S. Securities and Exchange Commission

Government & Regulatory Representatives

Jeffrey Stout
Director, Office of Federal
Program Finance
U.S. Department of the Treasury

Gregory J. Dean, Jr.
Senior Vice President, Office of
Government Affairs
FINRA

Carmen West
Office of Business Development
U.S. Minority Business Development Agency

Michael Pieciak
Commissioner, Vermont Department of
Financial Regulation
*National Association of State Securities
Administrators*

Business & Professional Organization Representatives

Faith Bautista
President & CEO
National Diversity Coalition

Greg Brown
Professor of Finance and Executive Director
University of North Carolina
Keenan Institute of Private Enterprise

Nicole Cadman
General Counsel
Y Combinator

Jessica Chin Foo
Pride Economic Impact Index Manager
StartOut

Charles Crain
Director, Tax & Domestic Economic Policy
National Association of Manufacturers

John Dearie
Founder & President
Center for American Entrepreneurship

Erica Duignan Minnihan
Founder
1000 Angels

Patrick Gouhin
Executive Director
Angel Capital Association

Tiffany Henry
Director of Entrepreneurial Communities
The Arkansas Conductor

Victor Hwang
Founder/CEO
Right to Start

Joe Kapp
Founder
RuralRISE

Samara Mejia Hernandez
Founding Partner
Chingona Ventures

Ken Nguyen
CEO, Republic
Association of Online Investment Platforms

Carlo Passeri
Director, Capital Markets and Financial
Services Policy
Biotechnology Innovation Organization

Andre Perry, Fellow
Metropolitan Policy Program
The Brookings Institution

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

Rodney Sampson
Executive Chairman & CEO
Opportunity Hub and OHUB Foundation

Liz Sara
Chair
National Women's Business Council

Charlotte Savercool
Senior Director, Government Affairs
National Venture Capital Association

Jennifer J. Schulp
Director of Financial Regulation Studies
Center for Monetary and Financial Alternatives
Cato Institute

John Stanford
Co-Executive Director
Small Business Roundtable

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

Zoe Willingham
Research Associate
Center for American Progress

Sevetri Wilson
Founder and CEO
Resilia

»»» SEC OFFICIALS' REMARKS

OPENING REMARKS OF MARTHA LEGG MILLER

Director

Office of the Advocate for Small Business Capital Formation



Good afternoon, everyone. Whether this is your first Small Business Forum or fortieth, I want to thank you for joining us today and over the course of the week. Planning any 40th event—whether a birthday, anniversary, or work milestone—engenders an element of nostalgia. If this were a birthday party, we might have a slideshow of childhood pictures and play top hits from the year of birth. In planning for this year's 40th Small Business Forum, our team couldn't help but think about the original Forum in 1982 and the events that precipitated it.

So please humor me today as I paint the picture of then and now, photos and all. The good news for you: unlike a birthday party toast, this one will not trail on and on, leaving you wondering which cousin will take the mic from the loquacious uncle.³⁰

A POLAROID SNAPSHOT OF 1982

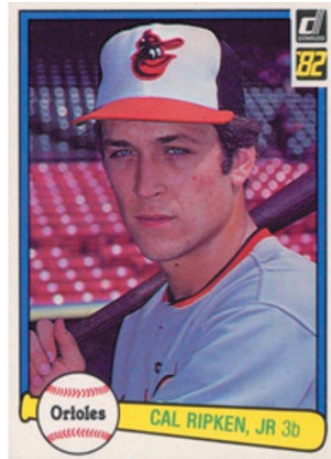


Image Credits: *The History Channel, Old Sports Cards, The Guardian*

In 1982, the country was in the difficult days of the Cold War, Cal Ripken, Jr. played the first of his record-breaking 2,632 consecutive game streak, and Michael Jackson released *Thriller*, which went on to become the best-selling album of all time.



Image Credits: *Time Magazine*, *Pinterest*, *CNET*, *University of Utah*

Technologically, the world was changing rapidly, epitomized by *Time* magazine naming the personal computer as its “Man of the Year.”³¹ This was the year that the market met technologies like the Commodore 64 home computer,³² compact discs (CDs),³³ and the world’s first artificial heart.³⁴



Image Credits: *Forbes*, *Stacker*, *Federal Reserve History*

Economically, the country was reeling from the 1980–82 recession, culminating in the Bear Market of 1982.³⁵ The S&P bottomed out on August 12, 1982 at 102.42, and the country was grappling with over 10 percent unemployment.

Demographically, entrepreneurship and business ownership were beginning to change following legislation passed in the '70s. The Equal Credit Opportunity Act of 1974 guaranteed women the right to get a credit card or obtain a loan separately from their spouse, opening the doors to women running their own businesses.³⁶ A few years later, the Community Reinvestment Act of 1977 required financial institutions to serve all segments of their communities, improving access to credit for minority entrepreneurs.³⁷

HITTING FAST FORWARD

Since 1982, quite a lot has changed. As the *Time* “Machine of the Year” awardee signaled, computer-based technology proliferated, fueled by the growth of venture capital in Silicon Valley.³⁸

Fast forward a few years, in 1996, Congress responded to increasing national capital raising activity with the National Securities Markets Improvement Act (NSMIA) to promote more efficient capital formation, simplifying many aspects of pre-IPO capital raising.³⁹

Six years later in 2002, as the public markets were reeling from corporate scandals, Congress passed the Sarbanes-Oxley Act to restore investor confidence in financial markets through increased requirements for independent auditors and public companies.⁴⁰

Following the Great Recession in the late 2000s, the 2010 Dodd-Frank Wall Street Reform and Consumer Protection Act brought with it a flurry of 67 SEC rulemakings, dozens of studies and reports, and five new offices within the agency.⁴¹

Just two years later in 2012, Congress responded to declining numbers of small businesses and public offerings with the Jumpstart Our Business Startups (JOBS) Act, creating a new crowdfunding exemption, carving a pathway for general solicitation offerings sold to verified accredited investors, and encouraging more companies to go public as emerging growth companies.⁴²

In between those landmark pieces of legislation, the Commission was busy responding to changes in our markets and updating our rules. And each year, you and other members of the public gathered to provide feedback to Congress and the Commission, helping us hone capital formation policy to meet the needs of entrepreneurs and their investors.

COMING FULL CIRCLE TO YEAR 40

Undeniably, a lot has changed in the 40 years since 1982. Our markets have grown, and “technology” has taken on a whole new meaning.

Yet, much remains the same. Albeit under different circumstances from the early '80s, today we are also looking at job losses and fundamental transformations of society, consumer behavior, and business operations in response to COVID-19. One thing remains constant: just as in 1982, we are again looking to entrepreneurs and their investors to lead the charge forward. Case in point: the technologies allowing us to meet virtually throughout this

“Entrepreneurs and their investors are building the future in which we want to live, pushing into new frontiers with solutions we need. It is our job—the public and private sectors working together—to make sure that capital is inclusive, accessible, and scalable for these visionaries.”

pandemic were built by entrepreneurs, and the vaccines allowing us to exit this pandemic were made possible by our capital markets. Entrepreneurs and their investors are building the future in which we want to live, pushing into new frontiers with solutions we need. It is our job—the public and private sectors working together—to make sure that capital is inclusive, accessible, and scalable for these visionaries. That requires access to capital for startups and angel investors honing their minimum viable product (MVP), for growth-oriented companies and venture investors scaling their business model, and for mature companies and public investors operating with a long-term vision.

Over the next four days of the Forum, we will hear from speakers on timely topics in capital raising, including:

- » Monday: Finding Your First Dollars: Navigating Your Way to Raise Early Rounds
- » Tuesday: Doing Your Diligence: How Savvy Early-Stage Investors Build Diversified Portfolios
- » Wednesday: Diversifying Capital Allocators: Tools for Emerging and Smaller Funds and Their Managers
- » Thursday: Small Cap Insights: Perspectives on Smaller Companies

Thank you to our team members for making this event happen: Amy Reischauer, Colin A. Caleb, Dean A. Brazier, Jr., Jenny J. Choi, Jenny Riegel, Jessica W. McKinney, Julie Zelman Davis, Kristene Blake, Malika Sullivan, Sebastian Gomez Abero, and Todd VanLaere, as well as our colleagues across the agency for bringing this virtual event to life, including the Office of Public Affairs, Office of Information Technology, Office of the General Counsel, Office of Minority and Women Inclusion, Office of Investor Education and Advocacy, and our colleagues in the different rulemaking divisions.

We are looking to you to help us shape the future of capital raising. Cheers to 40 years of using your voice to positively impact change, and to many more!

REMARKS OF SEC CHAIR GARY GENSLER



Thank you, Martha, for that kind introduction, and for inviting me to join you today. I'm glad to be here today to help kick off the 40th Annual Small Business Forum.

I'm always thinking about working families and the way that the SEC's three-part mission serves them. America's small businesses are a core part of America's economic foundation.

I think often about the important role small businesses play in our economy. As of 2019, small businesses accounted for two-thirds of new jobs and 44 percent of economic activity, according to the Small Business Administration.

Further, every large business was once a small business.

The capital markets that the SEC oversees also play an integral role to small businesses. Some access the capital markets directly when they go public or raise money from private funds. Others tap into the capital markets indirectly through their mortgages or borrowings that they take out through financial institutions that are accessing the capital markets.

One might say small businesses are in my blood as well. My grandparents ran small businesses. In other words, my mom grew up above her family's business—a quintessential corner grocery store—and my dad's parents had a bar.

My father, Sam, was the first of his parents' children to be born in America. Family lore has it that he was named after Uncle Sam.

When he was in high school, a shop teacher noticed that he was a good mechanic. To earn a little pocket change, he started working on pinball machines after school.

Today, I know you'll be discussing how small businesses find their first dollars. In my dad's case, he never went to college, but he used his mustering-out pay from World War II to buy used vending machines, fix them up, and build the family business.

My dad's company remained small—it never got to more than 35 people. Though he never directly accessed the capital markets, the banks he borrowed from probably did. The 400 locations where he had vending machines—those were small businesses too, mostly bars. The ownership of these places was as diverse as you can imagine.

That's why I've long believed that all business owners deserve access to our capital markets to fund their entrepreneurial ideas and innovations, regardless of their race, gender, geography, or any other factor. I know that's a key part of this Office's work.

“That's why I've long believed that all business owners deserve access to our capital markets to fund their entrepreneurial ideas and innovations, regardless of their race, gender, geography, or any other factor. I know that's a key part of this Office's work.”

I look forward to your recommendations on those issues and broader questions of how the SEC can facilitate capital formation for small businesses.

I thank you for representing the interests of small businesses in America and look forward to hearing more about that work going forward.

Thank you.

REMARKS OF SEC COMMISSIONER HESTER M. PEIRCE



Thank you, Martha [Miller]. I am pleased to be here on the first day of our fortieth annual Government-Business Forum on Small Business Capital Formation. These events are a wonderful opportunity to bring people together to discuss the nuts and bolts of capital formation, a topic of heightened importance this year as the economy begins the long transition back from virtual to in-person. With that transition, we hope that small businesses that have held on through the pandemic will regain momentum. We also look forward to seeing new businesses, the brainchildren of entrepreneurs stuck at home during the pandemic, get off to a strong start.

One of the few upsides of the past year was that people got a chance to spend time doing things they might not otherwise have done. I have been a bread baker for as long as I can remember, so I enjoyed watching others embrace my hobby during the pandemic. I particularly admire those who have taken on the challenge of making sourdough bread. My experience with sourdough starter was short-lived. In law school, I shared an apartment and a very small refrigerator with two roommates. Rather than studying the law, I focused on learning to make sourdough bread. I made my own starter, which I stored in a yogurt container in the fridge. One morning, a distressed call from one of my roommates alerted me to the unfortunate fact that the starter, overly alive, had popped the lid on the yogurt container and spread itself all over everything in the fridge. Bad for roommate relations, but probably good in the long-run: I ditched the sourdough experiment and turned back to my legal studies. A week ago, however, a friend gave me a new batch of sourdough starter, so the experiment is about to begin afresh.

Not surprisingly, in my mind and likely I am not the first to think of this, sourdough starter has parallels with capital formation. You have to find the first dollars—your starter money. Maybe you create it yourself from your own savings or personal borrowing. Often this early money comes from people you know. That initial capital breeds more capital, but, to keep the business alive, you have to feed it with fresh capital, much like an aspiring baker has to feed sourdough starter with flour on a regular basis. Just as my friend gave me some of her starter along with some advice about how to use it, a founder, over time, may be able to take some of the money she pulls out of the business and pass it along to other people, a chain that then continues. A successful business, appropriately fed with capital, can be the seed from which many other businesses in the founder's community grow and prosper.

“A successful business, appropriately fed with capital, can be the seed from which many other businesses in the founder’s community grow and prosper.”

Both new and existing businesses need capital, and the discussions over the next several days will help us to think about what we at the Commission can do to facilitate capital formation. I anticipate that some of these recommendations, having been discussed at the Forum or elsewhere, will not be new. I hope to hear the thoughts of Forum participants on the following and other ideas:

- » **Accredited Investors:** We laid the groundwork last year for allowing people to qualify as accredited investors based on sophistication proved not by wealth or income, but by education, examination, or experience.⁴³ We need to build on this foundation, so people should be coming to us with suggestions of educational credentials, examinations, or professional certifications and designations that should serve as the basis for accreditation.
- » **Finders:** A Forum favorite in many of its forty years, a regulatory framework for finders—people who periodically introduce investors to small businesses in need of capital—would establish some much-needed parameters for this activity. We proposed an exemption last year.⁴⁴ We should finalize it or, as Commissioner Lee suggested, propose a rule for finders.⁴⁵
- » **Micro-Offering Exemption:** To make it easier for small businesses to locate early money, we should create a streamlined exemption to allow small businesses to raise \$250,000 to \$500,000 subject to the antifraud provisions of the securities laws and a requirement to notify the SEC of reliance on the exemption.
- » **Crowdfunding:** Crowdfunding seems to have been relied upon more during the pandemic in part, perhaps, because of temporary relief we provided from certain crowdfunding requirements.⁴⁶ Recent permanent amendments to the crowdfunding rules also are now in effect, which should further spur the use of this capital raising tool.⁴⁷ We should consider whether any of the temporary relief should be made permanent and whether other changes would make crowdfunding more viable as a source of capital for small businesses.
- » **Modify Qualifying Venture Capital Fund Exemption under Section 3(c)(1):** We should evaluate increasing the cap from \$10 million to \$150 million and increasing the allowable number of investors from 250 to 600, as recommended by the SEC Small Business Capital Formation Advisory Committee last week.⁴⁸
- » **Expand the Scope of Qualifying Investments for Venture Capital Funds:** Again, the Small Business Capital Formation Advisory Committee made a recommendation along these lines last week, but revisiting what constitutes a qualifying investment could make it easier for venture capital funds to support small businesses.⁴⁹

Thank you to everyone who will participate in the Forum. As important as the upcoming days will be, small business capital formation deserves our continued attention. My door is always open for anyone who wants to talk about these issues throughout the year. Maybe I will even have some sourdough bread on hand for visitors to sample.

REMARKS OF SEC COMMISSIONER ELAD L. ROISMAN



I'm pleased to welcome you to Day 2 of the 40th Annual SEC Small Business Forum. While we are all looking forward to the day we can hold such events in person again, I hope that this format enables more people to attend without the cost or hassle of travel to us here in Washington.

Regardless of our location, I must still give my disclaimer which is that my remarks reflect my views alone and not necessarily the views of the Commission or my fellow commissioners.

The fact that this forum has convened now for four decades speaks to the evergreen nature of small issuer and investor concerns. Although we at the SEC have made some strides towards increasing our awareness of and focus on this important group, not least of which has been selecting our first advocate for small business capital formation, Martha Legg Miller, there is clearly still work to be done.

As an SEC commissioner, my duty is to promote and further the SEC's mission which includes facilitating capital formation. At an absolute minimum, this means that I must ensure that our rules do not unduly and unjustly prevent capital formation. I worry, however, that many of our existing rules do exactly that. At a recent meeting of the SEC's Small Business Capital Formal Advisory Committee, the committee members took up for the second time the concerns of underrepresented founders.

The message that comes through loud and clear is that founders get funded by their networks and regulatory barriers that prevent founders from obtaining capital from their existing networks may result in those ideas not getting off the ground. That is, if we are concerned, and I am, that the difference between a good idea getting funded or not getting funded is the difference between whether a person has friends who are wealthy are not, we need to look at how we can open up investment opportunities to more communities throughout our country.

“The fact that this forum has convened now for four decades speaks to the evergreen nature of small issuer and investor concerns.”

Capital raising is obviously of interest to founders and small business owners, but investment opportunity also effects would-be investors. For years, it has been clear that one of the greatest opportunities for wealth building has been in the private markets. Many nonpublic companies have been growing in value and are going public or have not gone public at all. When we look at underrepresented groups, we must also look at the networks of would-be investors and whether we are unjustly preventing many Americans from building the kind of wealth that establishes intergenerational stability and a firm footing in the middle and upper class.

I also have a duty to protect investors. And I have no interest in tearing down valuable protections. I do however have a strong interest in finding ways to ensure our markets are not only deep, liquid, and transparent, but also inclusive in the opportunities they provide. This may mean expanding the definition of accredited investor opening the way for the development of funds that would permit retail investors to invest alongside and on equal terms with institutional or accredited investors or other structures we have not yet considered.

I know many of you are in the trenches dealing with these questions of how to fund your businesses and how to reach more investors. My door, virtually for now, is open, and I welcome any insights you can provide.

Thank you for being with us today. I hope we can work together to solve some of these evergreen problems, especially as small businesses recover from the difficulties of the last year.

REMARKS OF SEC COMMISSIONER ALLISON HERREN LEE



Good afternoon. I'm pleased to join for you for the 40th Annual Small Business Forum. I want to begin by thanking the staff in the Office of the Advocate for Small Business Capital Formation for your efforts in putting this event together.

Martha, I believe this is the third time your office has hosted the forum, and we've had to contend with pandemic conditions now for two of those three forums. You and your staff have, not surprisingly, made sure that the quality of the event didn't suffer, and if anything, you've taken the opportunity to innovate and enhance the format. Thank you for your efforts.

Notwithstanding how successful this event has been in a virtual setting, I am hopeful that we can come together in person for next year's event. I would really welcome the opportunity to sit down and talk with all of you face to face.

In addition to the staff, I want to thank today's speakers and participants for contributing their time and expertise. I look forward to this event each year in part because of the emphasis on collaboration. For one thing, it provides us with an opportunity to deepen our engagement with the small business community. But our statutory mandate also requires that we invite other regulators. And this calls on the Commission to think about the broader regulatory landscape and how we can learn from one another and work together with our regulatory partners to promote capital formation and investment opportunity while protecting investors.

I also appreciate that the event furnishes an opportunity for us to reflect on our progress since the previous year's forum. Last year, we were in the early months of adjusting and responding to the pandemic and still evaluating its implications for small business. Now, one year later, we're beginning to emerge from the pandemic conditions, and we can look back on an ambitious year of regulatory changes, many of which were responsive to the recommendations coming out of last year's forum.

Among other things, last year, the Commission amended the accredited investor definition to provide for additional avenues to qualify. We raised offering limits for Regulation A and Regulation Crowdfunding offerings. We relaxed certain disclosure requirements under Regulation D, and we extended certain relief that was granted on a temporary basis to crowdfunding issuers for an additional 18 months. This is by no means a complete list either of our rulemaking in the last year or even our rulemaking affecting the exempt offering framework. But it's notable both for the sheer volume of policy work done by the Commission staff in challenging circumstances and also for the focus on the private markets.

So as we look ahead, having made a tremendous number of changes designed to open up access to private investment opportunities, I ask you to consider the corresponding investor protections that may be appropriate to help ensure that investors in the private markets can assess and bear the risks of those investments and to increase investor confidence in those markets.

For instance, now that we've opened the door to alternative methods for qualifying as an accredited investor, shouldn't we consider how to ensure that the financial thresholds in the accredited investor definition, which are still the principal investor protection in this space, don't continue to erode in effectiveness? Specifically, shouldn't we consider whether those thresholds, which have been unchanged since 1983, should be updated and indexed to inflation going forward. After all, what is the sense of having financial thresholds if there is no mechanism to make adjustments to account for the passage of time?

I also note that last year's forum included a particular focus on underrepresented founders. The emphasis on women- and minority-owned businesses has continued throughout this year and resulted in helpful recommendations from both the Small Business Capital Formation Advisory Committee and the Investor Advisory Committee. These recommendations are focused on increasing investment and capital formation opportunities for diverse founders and investors. But we still need your insight to better understand how to translate those broad recommendations into action and how we can tailor policy changes to address the specific challenges faced by underrepresented communities.

I hope that you'll keep that in mind as you think through your recommendations during the course of the forum. And again, I want to thank you all for your time, and I look forward to your recommendations.

“So as we look ahead having made a tremendous number of changes designed to open up access to private investment opportunities, I ask you to consider the corresponding investor protections that may be appropriate to help ensure that investors in the private markets can assess and bear the risks of those investments and to increase investor confidence in those markets.”

REMARKS OF SEC COMMISSIONER CAROLINE A. CRENSHAW



Good afternoon! Thank you, Martha [Miller], for the warm introduction. It is wonderful to be here. I have truly enjoyed hearing from all of the panelists over the last several days. And I am particularly interested in today's discussion focused on smaller public companies.

You may not know this about me, but I am the proud sister of an entrepreneur. My brother started his own business before the pandemic—and he is everything from the chief executive and chief financial officer to the IT and customer service departments to the expert on intellectual property issues. I know how challenging it is to start and run your own business. I also know successful small businesses are critical to our economy. In 2019, the Small Business Administration noted that small businesses were responsible for over 40 percent of U.S. economic activity.⁵⁰ Small businesses accounted for more than 60 percent of new private sector jobs from 2005 to 2019.⁵¹

Because small businesses are so important to the health of our economy, it is critical that the Commission and its staff hear from small business owners, investors, and advisers about their experiences. We need your input on what is working and what is not. We need your ideas about regulatory changes that could promote greater equity in capital access. We need your feedback about the process for initial public offerings. And we need you to tell us about any other issues facing smaller public companies today, and the potential regulatory changes that could help them continue to grow and succeed.

“Because small businesses are so important to the health of our economy, it is critical that the Commission and its staff hear from small business owners, investors, and advisers about their experiences. We need your input on what is working and what is not. We need your ideas about regulatory changes that could promote greater equity in capital access.”

In past forums and discussions on this topic, we have heard that there is a need to promote greater liquidity in secondary trading markets for securities of smaller public companies. I'm very interested in hearing whether market structure changes could help address liquidity issues and encourage greater investment in these companies. In 2019, the Commission issued a statement noting that concurrent trading of securities on multiple exchanges may be limiting liquidity for smaller public company stocks.⁵² Would suspending unlisted trading privileges for these companies facilitate greater liquidity?

Prior small business forums have also addressed the 40-year-old regulatory framework for transfer agents—the entities that facilitate the transfer, issuance, and cancellation of securities. Would a modernized regulatory framework allow smaller public companies, other issuers, and investors to work with transfer agents more effectively? If so, what disclosure requirements and internal controls are needed in today’s markets?

Finally, are there proxy process improvements that could create efficiencies for smaller public companies and their investors? I could continue to pose questions but you have a lot on the agenda today and I don’t want to stand in the way. Thank you all for being here and for allowing me to give opening remarks. I’m looking forward to today’s discussion.

»»» ABOUT THE OFFICE OF THE ADVOCATE FOR SMALL BUSINESS CAPITAL FORMATION

The SEC's Small Business Advocacy Office advocates for solutions to address challenges faced by small businesses and their investors raising and deploying capital. "Small business" for the Office spans from early-stage start-ups raising seed capital, to later-stage private companies whose founders and investors are seeking liquidity in the public markets, all the way to smaller public companies. Congress established the Office via the bipartisan [SEC Small Business Advocate Act of 2016](#) as an independent office within the SEC that reports to the entire Commission as well as to multiple committees of Congress.

Meet the Team



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»»» ENDNOTES

- 1 The SEC conducts the Forum annually and prepares this report in accordance with the Small Business Investment Incentive Act of 1980 [15 U.S.C. 80c-1 (codifying section 503 of Pub. L. No. 96-477, 94 Stat. 2275 (1980))].
- 2 The SEC responds to the Forum recommendations pursuant to the Small Business Investment Incentive Act of 1980, as amended by the Economic Growth, Regulatory Relief and Consumer Protection Act of 2018. 15 U.S.C. 80c-1. Section 503 of the Economic Growth, Regulatory Relief and Consumer Protection Act of 2018 [Pub. L. 115- 174, 132 Stat. 1296 (2018)] amended Section 503 of the Small Business Investment Incentive Act of 1980 to add this requirement in new paragraph (e). The responses do not include any Commission initiatives that are not yet public. Where a Forum recommendation relates to an initiative as to which the Commission has solicited or expects to solicit public comment, the recommendation will be considered as part of that initiative, along with other comments received.
- 3 Participants voluntarily submitted the presented information in connection with their registration online. The report solely includes submitted data, without inclusion of non-responses.
- 4 See Facilitating Capital Formation and Expanding Investment Opportunities by Improving Access to Capital in Private Markets, Release No. 33-10884 ; 34-90300; IC-34082 (Nov. 2, 2020), at <https://www.sec.gov/rules/final/2020/33-10884.pdf>.
- 5 See Concept Release on Harmonization of Securities Offering Exemptions, Release Nos. 33-10649; 34-86129; IA-5256; IC-33512 (Jun. 18, 2019), at <https://www.sec.gov/rules/concept/2019/33-10649.pdf>.
- 6 See Facilitating Capital Formation and Expanding Investment Opportunities by Improving Access to Capital in Private Markets, Release Nos. 33-10763; 34-88321 (Mar. 4, 2020), at <https://www.sec.gov/rules/proposed/2020/33-10763.pdf>.
- 7 The term “security” is defined in Section 2(a)(1) of the Securities Act, Section 3(a)(10) of the Securities Exchange Act of 1934 (Exchange Act), Section 2(a)(36) of the Investment Company Act of 1940 (1940 Act), and Section 202(a)(18) of the Investment Advisers Act of 1940 (Advisers Act). The term “security” includes an “investment contract,” as well as other instruments such as stocks, bonds, and transferable shares. A digital asset should be analyzed to determine whether it has the characteristics of any product that meets the definition of “security” under the federal securities laws. The fact that the instrument or investment is represented in digital form, or that a particular technology is used to effectuate its offer or sale, does not change that analysis.
- 8 Both the Commission and the federal courts frequently use the “investment contract” analysis to determine whether unique or novel instruments or arrangements, such as digital assets, are securities subject to the federal securities laws. Whether offers and sales of a digital asset are securities transactions depends on the specific facts and circumstances. The U.S. Supreme Court’s *Howey* case and subsequent case law have found that an “investment contract” exists when there is the investment of money in a common enterprise with a reasonable expectation of profits to be derived from the efforts of others. SEC v. W.J. Howey Co., 328 U.S. 293 (1946) (*Howey*). See also *United Housing Found., Inc. v. Forman*, 421 U.S. 837 (1975); *Tcherepnin v. Knight*, 389 U.S. 332 (1967); *SEC v. C. M. Joiner Leasing Corp.*, 320 U.S. 344 (1943). The so-called “Howey test” applies to any contract, scheme, or transaction, regardless of whether it has any of the characteristics of typical securities such as equity or debt securities. The focus of the Howey analysis is not only on the form and terms of the instrument itself (in this case, the digital asset) but also on the circumstances surrounding the digital asset and the manner in which it is offered, sold, or resold (which includes secondary market sales). See, e.g., *Gary Plastic Packaging Corp. v. Merrill Lynch, Pierce Fenner & Smith*, 756 F.2d 230 (2d Cir. 1985).
- 9 See <https://www.sec.gov/corpfin/framework-investment-contract-analysis-digital-assets>.
- 10 Engage with SEC’s FinHub staff by visiting <http://www.sec.gov/finhub>.
- 11 See Amending the “Accredited Investor” Definition, Release No. 33-10824; 34-89669 (Aug. 26, 2020), at <https://www.sec.gov/rules/final/2020/33-10824.pdf>.
- 12 See Order Designating Certain Professional Licenses as Qualifying Natural Persons for Accredited Investor Status, Release No. 33-10823 (Aug. 26 2020), at <https://www.sec.gov/rules/other/2020/33-10823.pdf>.

- 13 See, e.g., Recommendations of the Diversity and Inclusion Subcommittee of the Asset Management Advisory Committee (Jul. 7, 2021), at <https://www.sec.gov/files/amac-recommendations-di-subcommittee-070721.pdf> and Recommendations of the SEC's Small Business Capital Formation Advisory Committee regarding Retail Investor Access to Registered Closed-End Funds Investing in Private Funds (Nov. 12, 2019), at <https://www.sec.gov/spotlight/sbcfac/recommendation-closed-end-fund-of-funds.pdf>.
- 14 See Recommendations of the SEC's Small Business Capital Formation Advisory Committee regarding Encouraging Small, Regional Funds (Apr. 30, 2021), at <https://www.sec.gov/spotlight/sbcfac/encouraging-small-regional-funds-043021.pdf>.
- 15 The 1940 Act generally requires the Commission to index the \$10 million cap for inflation, rounded to the nearest \$1 million, every five years. See 1940 Act, Section 3(c)(1)(C).
- 16 See Cutting Through the Jargon (updated May 25, 2021), at <https://www.sec.gov/cutting-through-the-jargon>.
- 17 See Advisers Act, Section 203(l).
- 18 See Exemptions for Advisers to Venture Capital Funds, Private Fund Advisers With Less Than \$150 Million in Assets Under Management, and Foreign Private Advisers, IA-3222 (Jul. 6, 2011), at pp. 23-27.
- 19 See Guidance on the Exemption for Advisers to Venture Capital Funds, No. 2013-13 (Dec. 2013), at <https://www.sec.gov/divisions/investment/guidance/im-guidance-2013-13.pdf>.
- 20 See Recommendations of the SEC's Small Business Capital Formation Advisory Committee regarding Underrepresented Founders and Investors (Aug. 4, 2020), at <https://www.sec.gov/spotlight/sbcfac/underrepresented-founders-recommendation.pdf>, and Encouraging Small, Regional Funds (Apr. 30, 2021), at <https://www.sec.gov/spotlight/sbcfac/encouraging-small-regional-funds-043021.pdf>.
- 21 See Recommendations of the SEC's Investor Advisory Committee regarding Minority and Underserved Inclusion in Investment and Financial Services (Mar. 11, 2021), at <https://www.sec.gov/spotlight/investor-advisory-committee-2012/20210311-minority-and-underserved-inclusion-recommendation.pdf>.
- 22 See Asset Management Advisory Committee Spotlight page, at <https://www.sec.gov/page/asset-management-advisory-committee>.
- 23 See Securities Industry and Financial Markets Association (SIFMA), SEC Staff No-Action Letter (Oct. 26, 2017), at <https://www.sec.gov/divisions/investment/noaction/2017/sifma-102617-202a.htm>; Investment Company Institute, SEC Staff No-Action Letter (Oct. 26, 2017), at <https://www.sec.gov/divisions/investment/noaction/2017/ici-102617-17d1.htm>; SIFMA Asset Management Group, SEC Staff No-Action Letter (Oct. 26, 2017), at <https://www.sec.gov/divisions/marketreg/mr-noaction/2017/sifma-amg-102617-28e.pdf>.
- 24 See SIFMA, SEC Staff No-Action Letter (Nov. 4, 2019), at <https://www.sec.gov/investment/SIFMA-110419>.
- 25 See Rule 12b-2.
- 26 See, e.g., Division of Economic and Risk Analysis Staff Report Short Sale Position and Transaction Reporting, (Jun. 5, 2014), at <https://www.sec.gov/files/short-sale-position-and-transaction-reporting%20C0.pdf>.
- 27 See Commission Statement on Market Structure Innovation for Thinly Traded Securities, Release No. 34-87327 (Oct. 17, 2019), at <https://www.sec.gov/rules/policy/2019/34-87327.pdf>.
- 28 See Office of Information and Regulatory Affairs, Office of Management and Budget, U.S. Securities and Exchange Commission Agency Rule List (Spring 2021), at https://www.reginfo.gov/public/do/eAgendaMain?operation=OPERATION_GET_AGENCY_RULE_LIST¤tPub=true&agencyCode=&showStage=active&agencyCd=3235.
- 29 The SEC's Small Business Advocacy team convenes the advisory planning group to participate in Forum planning pursuant to 15 U.S.C. 80c-1(b).
- 30 The Securities and Exchange Commission disclaims responsibility for any private publication or statement by any of its employees. This speech expresses the author's views and does not necessarily reflect those of the Commission, the Commissioners, or other members of the staff.
- 31 This edition marked the first time the magazine awarded "Man of the Year" (which it later changed to "Person of the Year") to a non-human. See <http://content.time.com/time/covers/0,16641,19830103,00.html>.
- 32 See Commodore 64, Wikipedia, (May 17, 2021), at https://en.wikipedia.org/wiki/Commodore_64.
- 33 See Ryan Waniata, The Life and Times of the Late, Great CD. Remembering the rise (and final fall) of the late, great Compact Disc, digitaltrends, (Feb. 7, 2018), at <https://www.digitaltrends.com/features/the-history-of-the-cds-rise-and-fall/>.

- 34 Robert Jarvik, MD on the Jarvik-7, Jarvik Heart, (2018), at <https://www.jarvikheart.com/history/robert-jarvik-on-the-jarvik-7/>.
- 35 See David John Marotta, Volker's Bear: The Bear Market Of 1982, Forbes, (Oct. 11, 2017), at <https://www.forbes.com/sites/davidmarotta/2017/10/11/volkers-bear-the-bear-market-of-1982/>.
- 36 See Carol Tice, The American Business Revolution, Entrepreneur, (Apr. 18, 2007), at <https://www.entrepreneur.com/article/177302>.
- 37 *Id.*
- 38 Venture capital, Wikipedia, (May 19, 2021), at https://en.wikipedia.org/wiki/Venture_capital#1980s.
- 39 See ABA Business Law Section, National Securities Markets Improvement Act of 1996, American Bar Association, (May 14, 2020), at https://www.americanbar.org/groups/business_law/publications/the_business_lawyer/find_by_subject/buslaw_tbl_mci_nsmia/.
- 40 The Laws That Govern the Securities Industry, U.S. Securities & Exchange Commission, Investor.gov, (May 19, 2021), at <https://www.investor.gov/introduction-investing/investing-basics/role-sec/laws-govern-securities-industry>.
- 41 Implementing the Dodd-Frank Wall Street Reform and Consumer Protection Act, U.S. Securities & Exchange Commission, (Dec. 23, 2020), at <https://www.sec.gov/spotlight/dodd-frank.shtml>.
- 42 See *supra* note 11.
- 43 See Accredited Investor Definition, Release Nos. 33-10824; 34-89669 (Oct. 9, 2020), at <https://www.sec.gov/rules/final/2020/33-10824.pdf>. Requests for Commission consideration, which must address how a particular certification, designation, or credential satisfies the nonexclusive list of attributes set forth in the new rule, may be submitted at investorcredentials@sec.gov.
- 44 See Notice of Proposed Exemptive Order Granting Conditional Exemption from the Broker Registration Requirements of Section 15(a) of the Securities Exchange Act of 1934 for Certain Activities of Finders, Release No. 34-90112 (Oct. 13, 2020), at <https://www.sec.gov/rules/exorders/2020/34-90112.pdf>.
- 45 Public Statement, Commissioner Allison Herren Lee, Regulating in the Dark: What We Don't Know About Finders Can Hurt Us, (Oct. 7, 2020), at <https://www.sec.gov/news/public-statement/lee-proposed-finders-exemption-2020-10-07>.
- 46 See Temporary Amendments to Regulation Crowdfunding, Release No. 33-10781 (May 7, 2020), at <https://www.sec.gov/rules/interim/2020/33-10781.pdf>; Temporary Amendments to Regulation Crowdfunding; Extension, Release No. 33-10829 (Sep. 2, 2020), at <https://www.sec.gov/rules/interim/2020/33-10829.pdf>.
- 47 See Facilitating Capital Formation and Expanding Investment Opportunities by Improving Access to Capital in Private Markets, Release Nos. 33-10884; 34-90300; IC-34082 (Jan. 14, 2021), at <https://www.sec.gov/rules/final/2020/33-10884.pdf>.
- 48 See Recommendations from SEC Small Business Capital Formation Advisory Committee (Apr. 30, 2021), at <https://www.sec.gov/spotlight/sbcfac/encouraging-small-regional-funds-043021.pdf>.
- 49 *Id.*
- 50 See Press Release, Small Businesses Generate 44 Percent of U.S. Economic Activity, U.S. Small Business Administration Office of Advocacy (Jan. 30, 2019), at <https://advocacy.sba.gov/2019/01/30/small-businesses-generate-44-percent-of-u-s-economic-activity/>.
- 51 See Report, Small Business Administration and Job Creation, Congressional Research Service, at 8 (Jun. 15, 2020), at <https://fas.org/sgp/crs/misc/R41523.pdf>.
- 52 The 2019 statement was issued with the intention of encouraging market innovations that could improve liquidity for securities traded in lower volume. The Commission expressed interest in potential market structure innovations that included “the potential suspension or termination of UTP and/or the possibility of exemptive relief from Regulation NMS and other rules under the Exchange Act.” See Commission Statement on Market Structure Innovation for Thinly Traded Securities, Rel. No. 34-87327, at 5 (Oct. 17, 2019), at <https://www.sec.gov/rules/policy/2019/34-87327.pdf>; see also Division of Trading and Markets: Background Paper on the Market Structure for Thinly Traded Securities (Oct. 17, 2019), at <https://www.sec.gov/rules/policy/2019/thinly-traded-securities-tm-background-paper.pdf>.



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