TWENTY-NINTH ANNUAL

SEC Government-Business

Forum on Small Business Capital Formation

FINAL REPORT

November 18, 2010
Washington, DC

2010 Annual SEC Government-Business Forum
on Small Business Capital Formation

FINAL REPORT

Published June 2011

The SEC hosts the annual Government-Business Forum on Small Business Capital Formation, but does not seek to endorse or modify any of the recommendations arising from the forum. The recommendations are solely the responsibility of forum participants from outside the SEC, who were responsible for developing them. The recommendations do not necessarily reflect the views of the SEC, its Commissioners or any of the SEC's staff members.

TABLE OF CONTENTS

SUMMARY OF PROCEEDINGS

Background

As mandated by the Small Business Investment Incentive Act of 1980, the U.S. Securities and Exchange Commission hosts an annual forum that focuses on small business capital formation.[1] Called the "SEC Government-Business Forum on Small Business Capital Formation," this gathering has assembled every year since 1982. A major purpose of the forum is to provide a platform to highlight perceived unnecessary impediments to small business capital formation and address whether they can be eliminated or reduced. Each forum seeks to develop recommendations for government and private action to improve the environment for small business capital formation, consistent with other public policy goals, including investor protection. Prior forums have published numerous recommendations in the areas of securities and financial services regulation, taxation and state and federal assistance, many of which have been implemented.

The 2010 forum, the 29th, convened at the SEC's headquarters at 100 F Street, N.E., Washington, D.C., on Thursday, November 18, 2010. All forum panel discussions and breakout groups were accessible both to those who attended the sessions in person in Washington, D.C. and to those who chose to participate through the Internet and telephone conference calls. This enabled participation in the forum by a broad and diverse group of people.

Planning and Organization

Consistent with the SEC's statutory mandate in the Small Business Investment Incentive Act of 1980, the SEC's Office of Small Business Policy (in the Division of Corporation Finance) invited other federal and state government agencies and leading small business and professional organizations concerned with small business capital formation to participate in planning the 2010 forum. The individuals who participated in planning the forum, and their professional affiliations, are listed on pages 4 through 6.

The planning group recommended that the forum include two panel presentations, one on provisions of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (the "Dodd-Frank Act") that particularly impact small business capital formation, and another featuring representatives of organizations concerned with small business capital formation on improving government regulation in the area. The members of the planning group assisted in preparing the agenda and in recruiting speakers and moderators. The planning group also recommended that this year's forum again be held at SEC headquarters in Washington, D.C.

---

[1] The SEC is required to conduct the forum annually and to prepare this report under 15 U.S.C. 80c-1 (codifying section 503 of Pub. L. No. 96-477, 94 Stat. 2275 (1980)).

Participants

The SEC's Office of Small Business Policy worked with members of the planning group to identify potential organizational and panel participants for the 2010 forum. The office mailed out invitations to a number of leading organizations concerned with small business capital formation, inviting them to present their views either orally and/or in a written statement submitted to the forum. The invitation requested specific recommendations for government or private action to improve the environment for small business capital formation, focusing on improvements in securities regulation. Ten organizations accepted the invitation to send a representative to present the organization's views at a forum panel discussion. Six of these organizations and four other organizations submitted written statements to the forum. The written statements are included in the Appendix to this report.

Invitations to attend the forum were sent to participants in previous forums and to members of various business and professional organizations concerned with small business capital formation through the web sites and electronic and paper newsletters of these organizations. The SEC issued two press releases to inform the public about the time, date and location of the forum. The press releases publicized that the forum would be webcast live over the Internet and accessible to those who chose to participate through the Internet and telephone conference calls.

The morning panel discussions were video webcast live on the SEC's web site. The afternoon breakout group sessions were not webcast, but those who pre-registered for the forum could choose to participate through a telephone conference call.

Approximately 100 participants attended this year's forum in person, including 20 panelists, moderators and SEC staff. The webcast of the forum was accessed through approximately 76 video streams during the forum. Since the live webcast of the forum on November 18, 2010 through February 28, 2011, the archived webcast of the forum was accessed 542 times through the SEC's website. The written transcript of the forum was posted publicly on the SEC website on February 23, 2011 and received 731 hits in the first five days of its posting.

Proceedings

The agenda for the 2010 forum is reprinted starting at page 8. The forum began with opening remarks from SEC Commissioner Troy A. Paredes, which are reproduced starting on page 11. Commissioner Paredes' remarks were followed by a panel discussion on selected Dodd-Frank Act provisions relating to securities regulation impacting small business. This panel was followed by a second panel of ten representatives presenting the views of organizations concerned with small business capital formation. SEC Chairman Mary L. Schapiro then addressed the forum. Her remarks are reproduced starting on page 14.

The afternoon proceedings included breakout group meetings open to all pre-registered participants, taking part either in person or by telephone conference call. Three breakout groups met, one on securities offerings by private companies, another on securities regulation of smaller public companies, and a third on private placement and M&A brokers.

The discussions of the three breakout groups resulted in draft recommendations on securities regulation. The moderators of the three breakout groups presented their draft recommendations at a final assembly of all the forum participants as the last matter of business on November 18, 2010.

After the forum, the moderators of the three breakout groups continued to work further with their group participants to refine each group's recommendations. A final list of 36 recommendations on securities regulation resulting from these discussions was circulated by e-mail to all participants in the three breakout groups asking them to specify whether, in their view, the SEC should give high, lower or no priority to each recommendation. This poll resulted in the prioritized list of 36 recommendations on securities regulation presented starting at page 17.

The second set of recommendations is from 14 leading small business and professional organizations concerned with small business capital formation presented starting at page 23.

Records of Proceedings and Previous Forum Materials

The video recording of the forum's morning proceedings, including the remarks of Chairman Schapiro and Commissioner Paredes and of the panel discussions, is available for viewing on the SEC's website at http://www.sec.gov/news/otherwebcasts/2010/gbforum111810.shtml. A written transcript of the proceedings is also available in the official *Record of Proceedings* of the forum, which can be found on the SEC's website at http://www.sec.gov/info/smallbus/sbforumtrans-111810.pdf.

The forum program, including the biographies of the forum panelists, is available on the SEC's website at http://www.sec.gov/info/smallbus/2010gbforumprogram.pdf.

The final reports and other materials relating to previous forums since June 1993 may be found on the SEC's website at http://www.sec.gov/info/smallbus/sbforum.shtml.

PLANNING GROUP

Moderator
Gerald J. Laporte
Chief, Office of Small Business Policy
Division of Corporation Finance
U.S. Securities and Exchange Commission
Washington, DC

Government/Regulatory Representatives

Gabriela Aguero
Coordinating Analyst
Public Offering Review
Corporate Financing Department
Financial Industry Regulatory Authority
Rockville, MD

Anthony G. Barone
Special Counsel
Office of Small Business Policy
Division of Corporation Finance
U.S. Securities and Exchange Commission
Washington, DC

Dan Covitz
Assistant Director, Division of Research and Statistics
Chief, Capital Markets Section
Board of Governors of the Federal Reserve System
Washington, DC

A. Heath Abshure
Securities Commissioner
Securities Department
Little Rock, AR
Corporate Finance Committee Chair, North American Securities Administrators Association, Inc.

Mauri L. Osheroff
Associate Director
Division of Corporation Finance
U.S. Securities and Exchange Commission
Washington, DC

Bill Reeves
Community Development Manager
U.S. Office of the Comptroller of the Currency
New York, NY

Mary J. Sjoquist, Esq.
Director
Office of Communications
Public Company Accounting Oversight Board
Washington, DC

Dillon J. Taylor
Assistant Chief Counsel
Office of Advocacy
U.S. Small Business Administration
Washington, DC

Representatives of Business and Professional Organizations

Brian T. Borders, Esq.
Borders Law Group
Washington, DC
Representing National Venture Capital Association

Gregory Giammittorio, Esq.
Morrison & Foerster
McLean, VA
Representing Am. Bar Ass'n Business Law Section Committee on Middle Market and Small Business

Kevin M. Hogan
Executive Director
Investment Program Association
New York, NY

John J. Huntz
Executive Director
Head of Venture Capital
Arcapita, Inc.
Atlanta, GA
Chairman and Founder of Atlanta Venture Forum

Jonathan L. Jachym
Legal and Regulatory Counsel
Center for Capital Markets Competitiveness
U.S. Chamber of Commerce
Washington, DC

Karen Kerrigan
President & CEO
Small Business & Entrepreneurship Council, and
Founder
WE Inc. (Women Entrepreneurs)
Oakton, VA

Kelly Lewis
President & CEO
TechQuest Pennsylvania
The Technology Council of Central Pennsylvania
Harrisburg, PA

Shelly Mui-Lipnik
Director of Capital Formation & Financial Services Policy
Emerging Companies & Business Development
Biotechnology Industry Organization
Washington, DC

A. John Murphy, Esq.
Wickersham & Murphy
Palo Alto, CA
Representing Am. Bar Ass'n Business Law Section Committee on Middle Market and Small Business

Cady North
Manager, Government Affairs
Financial Executives International
Washington, DC

Brett T. Palmer
President
National Association of Small Business Investment Companies
Washington, DC

Alicia Robb
Senior Research Fellow
Kauffman Foundation, and
Senior Economist
Beacon Economics
San Rafael, CA

Andrew J. Sherman
Partner, M&A and Corporate
Jones Day
Washington, DC, and
Adjunct Professor of Business and
Capital Formation Strategy,
Smith School of Business,
University of Maryland
General Counsel to Entrepreneurs' Organization and Small and Emerging Contractors Advisory Forum

Ann Yvonne Walker, Esq.
Wilson Sonsini Goodrich & Rosati
Palo Alto, CA
Representing Am. Bar Ass'n Federal Regulation of Securities Committee Small Business Issuer Subcommittee

Carolyn Walsh
Vice President and Senior Counsel
Center for Securities, Trust & Investment
American Bankers Association, and
Deputy General Counsel
ABA Securities Association
Washington, DC

FORUM SEC STAFF

Mauri L. Osheroff
Associate Director (Regulatory Policy)
Division of Corporation Finance

Office of Small Business Policy
Division of Corporation Finance

Gerald J. Laporte, Chief

Anthony G. Barone

Johanna Vega Losert

Kevin M. O'Neill

Karen C. Wiedemann

Simmenetta R. Williams

Michael G. Poelman, Student Intern

AGENDA

2010 SEC Government-Business Forum
on Small Business Capital Formation
Washington, D.C.
November 18, 2010

9:00 a.m. **Call to Order**
Gerald J. Laporte, Chief, Office of Small Business Policy,
SEC Division of Corporation Finance

Introduction of Commissioner
Meredith B. Cross, Director
SEC Division of Corporation Finance

Opening Remarks
SEC Commissioner Troy A. Paredes

9:15 a.m. **Panel Discussion: Selected Dodd-Frank Act Provisions Relating to Securities Regulation Impacting Small Business**

Moderator:

Meredith B. Cross, Director, SEC Division of Corporation Finance

Topics and Panelists:

- ***Regulation D Changes: Accredited Investor Standards and "Bad Actor" Disqualification Rules***
  - Gerald J. Laporte, Chief, Office of Small Business Policy, SEC Division of Corporation Finance
  - Alan J. Berkeley, K&L Gates, Washington, D.C.

- ***"Say-on-Pay" Rules, Stock Exchange Listing Standards for Compensation Committees, and Other Provisions of Dodd-Frank Act Referencing Potential "Scaling" for Smaller Companies***
  - Thomas J. Kim, Chief Counsel, SEC Division of Corporation Finance
  - Gregory C. Yadley, Partner, Shumaker, Loop & Kendrick, LLP, Tampa, Florida

- ***Smaller Companies and Sarbanes-Oxley Section 404(b), Including Upcoming Section 404(b) Studies***
  - Brian T. Croteau, Deputy Chief Accountant, Professional Practice Group, SEC Office of the Chief Accountant

- Gregory C. Yadley, Partner, Shumaker, Loop & Kendrick, LLP, Tampa, Florida

- ***Exemptions of Advisers to Venture Capital Funds and SBICs from Fund Investment Adviser Registration Requirement***
  - David A. Vaughan, Attorney-Fellow and Team Leader—Private Funds, SEC Division of Investment Management
  - Brian T. Borders, Borders Law Group, Washington, D.C.

10:15 a.m. **Break**

10:25 a.m. **Presentations by Organizations Concerned with Small Business Capital Formation**[2]

American Bar Association, Business Law Section
Represented by Ann Yvonne Walker, Partner, Wilson Sonsini Goodrich & Rosati

Angel Capital Association
Marianne Hudson, Executive Director

Biotechnology Industry Organization
Shelly Mui-Lipnik, Director, Emerging Companies & Business Development

Center for Capital Markets Competitiveness, U.S. Chamber of Commerce
David T. Hirschmann, President and CEO

Investment Program Association
Kevin M. Hogan, Executive Director

National Association of Seed and Venture Funds
James A. Jaffe, President and CEO

National Association of Small Business Investment Companies
Brett T. Palmer, President

National Venture Capital Association
Mark G. Heesen, President

Real Estate Investment Securities Association
Represented by Deborah S. Froling, Partner, Arent Fox, LLP

[2] SEC staff was present to receive the presentations and ask questions.

Small- & Mid-Cap Companies Committee, Society of Corporate Secretaries & Governance Professionals
Steven H. Shapiro, Co-Chair of the Small- & Mid-Cap Companies Committee and General Counsel of Cole Taylor Bank

12:15 **Introduction of Chairman**
Meredith B. Cross, Director
SEC Division of Corporation Finance

Remarks
SEC Chairman Mary L. Schapiro

12:30 p.m. **Lunch Break**

2:00 p.m. **Reassembly to Divide into Breakout Groups to Develop Recommendations**

- **Private Placement and M&A Brokers Breakout Group**
- **Private Securities Offerings Breakout Group**
- **Securities Regulation of Smaller Public Companies Breakout Group**

3:30 p.m. **Break**

3:45 p.m. **Continuation of Breakout Group Discussions**

4:45 p.m. **Plenary Session to Develop Next Steps**

Moderator:

Gregory C. Yadley, Partner, Shumaker, Loop & Kendrick, LLP, Tampa, Florida

5:30 p.m. **Networking Reception**

OPENING REMARKS OF
SEC COMMISSIONER TROY A. PAREDES

SEC Government-Business Forum on Small Business Capital Formation

November 18, 2010

Thank you for the kind introduction. I am very pleased to welcome you — whether you are with us in Washington or participating by Webcast — to the “2010 SEC Government-Business Forum on Small Business Capital Formation.” This Forum provides an important opportunity for the private sector and government to examine how best to promote small business. The stakes are considerable. For we all stand to gain from the new jobs, innovative ideas, and vigorous competition that enhance our standard of living when entrepreneurism flourishes and smaller enterprises thrive.

It is gratifying to see that, once again, we have been fortunate enough to bring together an impressive group of individuals to share their ideas, perspectives, and experiences on this topic, which is of such great significance to our economy. I want to thank all of those at the SEC — most notably, Gerald Laporte and Meredith Cross — for their efforts in organizing this event. I also want to thank our distinguished panelists for making time in their busy schedules to participate today.

Before this gathering gets underway, I would like to take a few moments to offer some personal thoughts — thoughts that I hope complement what you will hear from the panelists and that provide a further glimpse into why I think we need to place greater emphasis on encouraging small business. I should underscore that my personal views do not necessarily reflect those of the SEC or any of my colleagues on the Commission.

Small business fuels economic growth, generating valuable opportunities for investors, entrepreneurs, employees, and consumers. Startups and maturing enterprises drive innovation, provide opportunities for investors to earn higher returns and accumulate wealth, and spur job creation. Companies that today are household names can trace their origins to entrepreneurs and innovators of earlier periods who had the wherewithal and backing to start and grow a business.

In providing our economy with cutting-edge goods and services, new and smaller companies in turn pressure more established firms to run themselves more effectively. The market discipline of competition, in other words, holds larger incumbent enterprises accountable. Not only do we benefit from the range of innovative products, productivity gains, and new jobs that small businesses offer, but we benefit because larger firms must be even more responsive to the demands of stakeholders to remain competitive.

This is only part of the picture, however. Smaller companies also face distinct challenges and hurdles, some of which are rooted in regulatory requirements that can unduly burden small business. The out-of-pocket financial cost of complying with regulatory obligations can be difficult to bear. In addition, regulatory compliance requires a commitment of time and effort that otherwise could be dedicated to running the business; smaller enterprises may not have excess human resources to distract from day-to-day operations. Put simply, the disproportionate strain of regulation on small business can create a barrier to entry or expansion. It is important to keep this in mind during our rulemakings because more established firms might not resist regulatory demands that they can bear but that the larger firms' smaller competitors cannot similarly shoulder. Hearing from small business during the rulemaking process, therefore, can be very instructive.

The practical challenge for securities regulators is to strike a balance that avoids unduly stifling the formation and fostering of new and smaller businesses. Drawing appropriate regulatory distinctions — such as between smaller and larger firms — and scaling regulatory demands accordingly helps strikes this balance by guarding against overburdening enterprises that do not present the kinds of concerns that, on balance, may warrant more costly regulation and for which the costs of regulation may prove to be disproportionate. Put differently, rejecting a one-size-fits-all regulatory approach when possible in favor of calibrating the securities law regime to account for different cost-benefit tradeoffs under different circumstances is prudent.

This basic intuition undergirds the following counsel that I take as a member of this agency — namely, that the SEC should actively consider ideas for tailoring securities regulation to ensure a measured approach is taken with respect to smaller enterprises so that we do not lose out on the benefits their activities offer us. When it comes to capital formation in particular, investors can benefit when the regulatory regime is tailored to provide smaller companies prudent relief from undue regulatory demands. Efficient capital formation, for example, not only benefits the companies raising funds, but can provide investors with more attractive investment opportunities.

Fortunately, the federal securities laws have long recognized the need to be measured, as there is a tradition of scaling federal securities regulation in important respects to provide small businesses relief from select burdens that may be especially onerous for them. But more can and should be done to refine the regulatory framework to better fit the regime to firms of different sizes and at different stages in their lifecycles.

It is in the advancement of this effort that the Commission has convened this Forum annually since 1982. Today's panels and discussions promise to be informative and dynamic — just as they are every year. The morning's first panel will discuss how certain provisions of Dodd-Frank could impact small business. From the second panel, you will hear a range of insights and observations on small business capital formation from a host of interested parties. This afternoon, breakout groups will engage such topics as private placement and M&A brokers, private offerings, and the regulation of smaller public companies — all important topics of discussion.

Discussing these and other topics is a good start. My hope, however, is that as an agency, the Commission will move beyond talking about small business capital formation and will take additional concrete steps that actually foster it.

Again, thank you for participating in the 2010 Forum. I look forward to reviewing your recommendations and to reading the report that the SEC staff will prepare on the day's proceedings.

REMARKS OF
SEC CHAIRMAN MARY L. SCHAPIRO

SEC Government-Business Forum on Small Business Capital Formation

November 18, 2010

Thank you very much, Meredith.

And thank you to everyone for participating in this year's SEC Forum on Small Business Capital Formation. I know you have had a productive morning, and I look forward to hearing about the constructive discussions you'll be engaging in this afternoon.

As the daughter of a small businessperson, I am familiar with the unique challenges small businesses face. And, at the SEC, we appreciate how much small business is a driving force in our economy. Reliable data suggests that small businesses have created 60-to-80 percent of net new American jobs over the last ten years.

And it's not just the number of jobs created that are important; it's the kind of jobs. At a time when improving our global trade position is a top priority, small businesses produce almost a third of America's exports. And, at a time when expanding those exports — while increasing domestic market share — often means producing at technology's cutting edge, small business employees earn patents at 13 times the rate of those in larger firms.

Making sure small businesses can attract the investments they need to grow and thrive is vital to America's economic recovery.

And so, it is only natural that we would want *you* to be a part of the ongoing dialog about how best to harmonize our obligation to protect investors, the markets and our economy from another financial crisis, with our important responsibility to facilitate access that growing companies have to America's investment capital.

While, we won't make any final decisions here today, this event is important to the decisions that the Commission, as we move forward to implement the Dodd-Frank Act, will eventually make. And it is part of a process designed to ensure that that those decision are informed by detailed and intelligent discussion — from a variety of market participants, including especially smaller companies.

When Dodd-Frank was signed into law, we were determined that the SEC would seek out input from the widest range of market participants.

And it's that determination to hear all voices that shaped this year's Small Business Forum.

We started the day with a panel devoted to sections of Dodd-Frank that will have a particular impact on small business. After that, we heard from a number of organizations with suggestions about how to maintain important investor protections while improving small business capital formation.

This afternoon’s breakout groups will carry on from there, continuing the exchange of ideas and the formulation of recommendations in areas such as private placements, securities regulation of smaller public companies and the regulation of M&A brokers and placement agents.

The thoughtful contributions of this morning's panelists, and the recommendations that result from this afternoon's breakout groups, are giving the SEC direct access to a unique and important perspective.

Your input will be especially meaningful as we seek ways to ensure that the new accredited investor and "bad actor" disqualification rules — required for private placements by Dodd-Frank — are workable in practice and do not impose undue regulatory burdens on small business capital formation.

We will need your help as we look for ways to help private companies access capital more cost-effectively.

And we’ll need your ideas, as well, as we consider how to continue scaling disclosure and other rules for smaller public companies to reflect the benefits and costs to those companies — and, eventually — to their investors.

Rarely has there been a more important time for us to hear your views — as we work to implement major reform, while keeping America's small business engine running smoothly.

But, as beneficial as it is for Gerry and Meredith and other senior SEC officials to hear directly from you about your needs and concerns, this is just one channel of communications. The SEC has structured the Dodd-Frank rulemaking process to create broad opportunity for public comment, with maximum transparency.

We have a dedicated area on the SEC’s website on which anyone with views on Dodd-Frank implementation can post comments, even before rules are formally proposed and the official comment period begins. We encourage all of you familiar with the interests of small business to take advantage of this medium.

We are also making an effort to meet face-to-face with as many stakeholders as possible, and hope that you or other representatives of the small business community will sit down to meet with us on initiatives of particular interest.

And you will be able to monitor the discussion and continue to contribute to it as we move forward. All public comments we receive will be available on our website. Memos describing face-to-face meetings, including participants, issues and handout materials, will be posted, as well. And, we’ll also be posting relevant portions of the transcript from this morning’s Forum sessions on our website, so that they become a matter of written public record, as well.

We know that our decisions will be better decisions if they are made with input from you.

Before closing, I’d like to acknowledge the state regulators and congressional and federal agency staff who are here today or listening online. We look forward to working with you on the many issues facing small business in this challenging economic environment.

We appreciate all of your support and we look forward to benefitting from your views and expertise and appreciate your willingness to share the perspective of small businesses from across our country.

Thank you.

FORUM RECOMMENDATIONS[3]

Recommendations from Forum Breakout Groups

Set forth below are the recommendations of the participants in the three breakout groups of the 2010 SEC Government-Business Forum on Small Business Capital Formation. These recommendations were developed initially in the three breakout groups of the forum on the afternoon of November 18, 2010. After that date, the moderators of the breakout groups continued to work with their group participants to refine each group's recommendations.

The final list of 36 securities law recommendations set forth below is presented in the order of priority established as the result of a poll of all participants in the three breakout groups.[4] *The priority ranking is intended to provide guidance to the SEC as to the importance and urgency the breakout group participants assign to the recommendation. The number of points secured by each recommendation in the poll is given in brackets at the end of the recommendation in the list.*

Priority Rank	***Recommendation***
1	The SEC should specifically consider the impact of rulemaking on small business investing when implementing the Dodd-Frank Act. [83 points; avg. ranking 3.77]
2	The Commission should adopt a new private offering exemption from the registration requirements of the Securities Act that does not prohibit general solicitation and advertising for transactions with purchasers who do not need all the protections of the Securities Act's registration requirements. [70 points; avg. ranking 3.18]

[3] The SEC hosts the annual Government-Business Forum on Small Business Capital Formation, but does not seek to endorse or modify any of the forum's recommendations. The recommendations are solely the responsibility of the forum participants, excluding SEC staff, who were responsible for developing these recommendations. The recommendations do not necessarily reflect the views of the SEC, its Commissioners or any of the SEC's staff members.

[4] In the poll, each of the 60 forum participants who attended the three breakout groups, either in person or by telephone conference call (not including SEC staff), was asked to respond whether the SEC should give "high," "lower" or "no" priority to each of the 36 recommendations. We received 22 responses, a 37% response rate. Each "high priority" response was awarded five points, each "lower priority" response was given three points, each "no priority" was given one point and each blank response was not awarded any points, to arrive at the number of points following each recommendation in the list. The total number of points for each recommendation was divided by the number of responses we received to determine the average ranking.

Priority Rank	***Recommendation***
3A	Provide better scaling of reporting requirements for publicly traded companies at the lower end of the spectrum. [69 points; avg. ranking 3.14]
3B	In response to the study required by the Dodd-Frank Act, the exemption from the application of SOX Section 404(b) should be extended to companies with a public float of less than $250 million. [69 points; avg. ranking 3.14]
4A	The Regulation A $5 million ceiling should be increased along with the 500 shareholders of record threshold in Section 12(g) of the Securities Exchange Act of 1934 in order to allow issuers to engage in general solicitation for larger aggregate amounts of capital without registration under either the Securities Act of 1933 or Securities Exchange Act of 1934. [68 points; avg. ranking 3.09]
4B	Increase the amount of public float in the definition of "smaller reporting company" from $75 million to $250 million. [68 points; avg. ranking 3.09]
5	Add an alternative to Regulation A (call it Regulation A+), pursuant to which an issuer can raise more than $5 million (up to a maximum of $30 million) if it undertakes to file voluntarily all periodic reports under Exchange Act Section 13 for a period of one year from the date of the first sale of securities under the Regulation A+ offering. At the end of the year, the issuer would be permitted to use a Form 8-A short-form registration statement under the Exchange Act to register the class of equity securities that were offered under the Regulation A+ offering under Exchange Act Section 12(g). [67 points; avg. ranking 3.05]
6	Add an alternative test for smaller reporting company status, such that a company can qualify either if its public float is less than the specified amount (currently $75 million) or if it had less than $100 million in revenues for its last fiscal year. [65 points; avg. ranking 2.95]
7A	The Commission should allow "private placement brokers" to assist issuers in raising capital through private placements of their securities offered solely to "accredited investors" in amounts per issuer of up to 10% of the investor's net worth (excluding his or her primary residence), with full written disclosure of the broker's compensation and any relationship that would require disclosure under Item 404 of Regulation S-K, in aggregate amounts of up to $20 million per issuer. [62 points; avg. ranking 2.82]

Priority Rank	*Recommendation*
7B	Preempt state laws that require state registration or qualification of Regulation A offerings by defining purchasers of securities in Regulation A offerings as "qualified purchasers" under Section 18 of the Securities Act. [62 points; avg. ranking 2.82]
8	The Commission should, by rule, adopt an exemption from federal broker-dealer registration and FINRA membership for merger and acquisition (M&A) intermediaries and business brokers involved in the purchase, sale, exchange or transfer of the ownership of privately-owned businesses, subject to the states exercising primary regulatory supervision over these activities under state securities laws. [59 points; avg. ranking 2.68]
9A	Increase Section 12(g) asset threshold from $10 million to $100 million. [57 points; avg. ranking 2.59]
9B	Raise deregistration threshold from 300 to 1,000 record holders. [57 points; avg. ranking 2.59]
9C	Eliminate the 1/3 cap (or increase the cap) for the use of Form S-3 for primary offerings by companies with less than $75 million in public float. [57 points; avg. ranking 2.59]
10	The S-3 eligibility requirements for primary offerings by companies with a public float of less than $75 million currently exclude non-exchange traded companies. This requirement should be eliminated. [56 points; avg. ranking 2.55]
11A	The SEC should not increase the accredited investor standards for either income or net worth. [55 points; avg. ranking 2.50]
11B	With respect to the corporate governance rules required to be promulgated by exchanges (and approved by the SEC) under the Dodd-Frank Act, non-management affiliates (i.e., persons who are affiliates by virtue of their status as large shareholders and not due to their status as an officer or director of the company) should not be disqualified from being "independent" for purposes of sitting on the compensation committee of smaller reporting companies. [55 points; avg. ranking 2.50]

Priority Rank	*Recommendation*
12A	The Commission should allow "private placement brokers" to assist non-accelerated filers or other smaller reporting companies in raising capital through private placements of their securities offered solely to "accredited investors" in amounts per issuer of up to 10% of the investor's net worth (excluding his or her primary residence), with full written disclosure of the broker's compensation and any relationship that would require disclosure under Item 404 of Regulation S-K, in aggregate amounts of up to $5 million per issuer. [54 points; avg. ranking 2.45]
12B	Increase Section 12(g) threshold from 500 to 2,000 record holders. [54 points; avg. ranking 2.45]
13A	Exempt smaller reporting companies from new Exchange Act Section 14A which mandates shareholder votes on (i) Say on Pay, (ii) Say on Frequency and (iii) Golden Parachutes. [53 points; avg. ranking 2.41]
13B	Implement the rulemaking proposal on Rule 144(i) (dealing with the ability to use Rule 144 for securities of companies that were previously shell companies) requested in the petition for rulemaking letter dated October 1, 2008. [53 points; avg. ranking 2.41]
13C	The SEC Division of Corporation Finance and its Division of Trading and Markets should immediately require from The Depository Trust Company (DTC) understandable rules and standards with strict timeframes for applications for trading eligibility with DTC. Similar rules and standards should be adopted by DTC with respect to providing electronic book-entry transfer services for smaller public companies. [53 points; avg. ranking 2.41]
14A	The Commission should, by rule, codify the SEC staff's no-action letters to *Country Business, Inc.* (Nov. 8, 2006) and *International Business Exchange Corp.* (December 12, 1986), in a "small business sale" exemption from federal broker-dealer registration and FINRA membership, thereby clearly articulating to merger and acquisition (M&A) intermediaries, business brokers and the public when broker-dealer registration is not required under federal securities law. [52 points; avg. ranking 2.36]
14B	The SEC should clarify in its current guidance that non-recourse debt on the primary residence in excess of the value of the primary residence should not be deducted from the accredited investor net worth calculation. Current guidance is available from the SEC web site at *http://www.sec.gov/divisions/corpfin/guidance/securitiesactrules-interps.htm#255.47*. [52 points; avg. ranking 2.36]

Priority Rank	***Recommendation***
15A	A New *De Minimis* Exemption. Exempt from 1933 Act registration aggregate offerings of up to $100,000, where each individual may invest no more than a certain maximum amount, say $100 per individual. [51 points; avg. ranking 2.32]
15B	Encourage states to accept reviewed unaudited financials for Regulation A offerings. [51 points; avg. ranking 2.32]
15C	Reduce the holding periods for securities of reporting companies under Rule 144 from 6 to 4 months (with current public information) and 12 to 8 months (with no information requirement). [51 points; avg. ranking 2.32]
16	Increase the limit on the amount that can be raised in a Regulation A offering from $5 million to $30 million. [50 points; avg. ranking 2.27]
17	In implementing the Dodd-Frank Act regarding bad actor disqualification, the SEC should recognize that a simple technical violation does not rise to the level of bad actor disqualification. The SEC should provide a waiver mechanism. [48 points; avg. ranking 2.18]
18A	For at-the-market offerings, officially recognize the pink sheet quotation system as an "established public market." [47 points; avg. ranking 2.14]
18B	The SEC should study the impact of credit ratings on the availability and the cost of capital to smaller public companies, considering those market segments that include sub-investment grade issuers in emerging growth markets. [47 points; avg. ranking 2.14]
19	Exclude accredited investors from the number of record holders. [45 points; avg. ranking 2.05]
20	For the purpose of calculating the mid-sized private fund adviser exemption, assets under management of small business investment companies and venture capital funds should be excluded. [44 points; avg. ranking 2.00]
21A	The SEC should exempt from the definition of investment adviser those entities that do minimal or incidental advice related to securities. See Section 202(a)(11)(F) of the Investment Advisers Act. [43 points; avg. ranking 1.95]
21B	Make conflict minerals disclosure compliance more realistic and viable for all companies and significantly scale it back for smaller reporting companies. [43 points; avg. ranking 1.95]

Priority Rank	***Recommendation***
22	The SEC should conduct education for entrepreneurs and practitioners on raising capital and addressing securities regulation in addition to the guidance provided on the SEC web site. [37 points; avg. ranking 1.68]

Recommendations from Organizations Concerned With Small Business Capital Formation[5]

The recommendations below came from 14 leading small business and professional organizations concerned with capital formation. Some recommendations were made during a panel presentation featuring representatives of these organizations at the small business forum on November 18, 2010. Others were made in written statements submitted to the forum by the organizations.

The organizations were invited to designate representatives to participate in the panel and to submit written statements. They were asked to make specific recommendations for government and private action to improve the environment for small business capital formation, focusing on improvements in securities regulation.

The SEC staff compiled the recommendations below from the organizations' panel presentations at the forum and their written submissions. Each of the organizations then authorized us to set forth their recommendations in this report as they appear below. To assure yourself of a detailed and complete presentation of the views of these organizations, you should consult the written transcript of the panel presentations available in the Record of Proceedings of the forum[6] or the written submissions of the organizations included in the Appendix to this report.

American Bankers Association (Written Submission)

1. Update the shareholder threshold under Section 12(g) of the Exchange Act from 500 security holders to 2,000 security holders.
2. Amend the threshold under Sections 15(d) and 12(g)(4) of the Exchange Act permitting de-registration from 300 to 1,200 security holders to relieve the regulatory burden placed upon smaller public companies, in particular community banks and savings associations.

American Bar Association, Section of Business Law (Panel Presentation by Ann Yvonne Walker, Chair, Small Business Issuer Subcommittee of Federal Regulation of Securities Committee)[7]

---

[5] Unlike the recommendations developed by the participants in the forum breakout groups, the recommendations from organizations are set forth in the alphabetical order of the name of the organization, and not in any particular order of priority or importance.

[6] Available at http://www.sec.gov/info/smallbus/sbforumtrans-111810.pdf.

[7] Ms. Walker explained in her presentation that she was not authorized to comment on behalf of the American Bar Association or its Section on Business Law. She participated in the panel presentation as Chair of the Small Business Issuer Subcommittee of the Federal Regulation of Securities Committee of the Section of Business Law, after consulting with the Chair of the Middle Market and Small Business Committee, the Chair of that Committee's Task Force on Small Business Securities, and the Co-Chair of the Private Placement Broker-Dealer Task Force, all of which are within the Section of Business Law.

1. Phase in all new disclosure obligations for smaller reporting companies, since it is difficult for smaller companies to "muster the troops" to respond to new disclosure obligations.
2. Create an exemption for private placement broker-dealers, as recommended by the ABA Private Placement Broker-Dealer Task Force Report from 2005.
3. Expand the eligibility rules for Form S-3 to include companies that are current in their filings, but that do not have a class of securities registered on an exchange.
4. Exempt smaller reporting companies from the golden parachute vote provisions and, in particular, the chart in Item 402(t).
5. Require a say-on-pay vote every three years for smaller reporting companies and do not require a say-on-frequency vote by such companies until 2013.
6. Permit general solicitation for private placements, so long as the people who end up actually purchasing securities are accredited investors.
7. Regulate sales of securities but not offers.

Angel Capital Association (Written Submission and Panel Presentation by Marianne Hudson, Executive Director)

1. Maximize the number of accredited investors in the angel investor market by developing clear rules that do not punish individuals for negative value in their homes. In other words, do not debit non-recourse deficiencies of underwater mortgages from the calculation of net worth exclusive of the principal residence. Keep in mind that, under the laws of many states, mortgage debtors are often not liable for such deficiencies.
2. Make no adjustments to the annual income standard in Regulation D, including inflation adjustments.
3. In reviewing the accredited investor definition every four years, as required by the Dodd-Frank Act, consider not only the protection of investors, but also the importance to the economy of companies' access to capital.
4. Consider lowering the standards for net worth and annual income in the definition of "accredited investor" in light of the current economy, as more is learned about the companies that receive angel investment, the jobs that are created as a result, and the relative lack of fraud in angel investment.
5. Permit general solicitation under a basic concept that no communication is a general solicitation if reasonable means or a screening process is used to ensure that such communication is directed only to accredited investors.
6. Do not develop new securities regulations that crimp the ability of private companies to help arrange liquidity for angel investors by listing their shares on private securities exchanges.

Biotechnology Industry Organization (Panel Presentation by Shelly Mui-Lipnik, Director of Emerging Companies and Business Development)

1. Make the R&D tax credit permanent.
2. Extend and expand the Therapeutic Discovery Project Credit program.
3. Raise the $75 million dollar public float exemption for Sarbanes-Oxley Section 404(b) to $250 million.

Center for Capital Market Competitiveness, U.S. Chamber of Commerce (Panel Presentation by David T. Hirschmann, President and CEO)

1. In exercising the discretion that the Dodd-Frank Act provides to regulators in determining whether to exempt or delay the applicability of new regulations to smaller public companies, consider whether the new regulation is essential, particularly in light of the cumulative effect of regulation on small business.
2. Increase the disclosure threshold for smaller public companies from the current $75 million, and index that threshold going forward.
3. Consider other metrics that might be useful to determine appropriate regulation for smaller companies rather than relying solely on market capitalization.
4. Consider increasing the $5 million offering limit under Regulation A that allows for simplified registration, since this ceiling has never been indexed or increased since 1992.
5. Ensure the diversity and robustness of capital formation options for start-ups and smaller growth companies through regulators' avoidance of selecting winners and losers among capital providers.

Financial Executives International (Written Submission)

1. Lower the corporate tax rate in the United States.
2. Make permanent the extension of all current individual tax rates, and index the alternative minimum tax to inflation.
3. Revise the estate tax to avoid unduly penalizing going concerns that wish to survive the death of an owner.
4. Protect the Interest Charge Domestic International Sales Corporation (IC-DISC) in any future tax reform efforts.
5. Make permanent the research and development tax credit, and increase the alternative simplified credit.
6. Preserve the last-in, first-out (LIFO) inventory accounting method for American businesses that maintain inventories.
7. Provide companies tax credits or a tax holiday over a specified length of time to businesses that make capital investments in the U.S. by building or expanding a new facility.

8. Simplify rules pertaining to S corporations, and provide greater flexibility to their owners.
9. Fully repeal the 1099 reporting requirement found in the Patient Protection and Affordable Care Act.
10. Adopt the proposals as recommended by the ABA in its Report and Recommendations of the Task Force on Private Placement Broker-Dealers, dated June 20, 2005, and subsequently adopted/recommended by the SEC Government-Business Forums on Small Business Capital Formation of 2006, 2007, 2008 and 2009.

Independent Community Bankers of America (Written Submission)

1. Reconsider the Commission proposal not to exempt smaller reporting companies from the say-on-pay or golden parachute votes.
2. Do not require smaller reporting companies to comply with the requirements of Section 953 of the Dodd-Frank Act found in Item 402 of Regulation S-K.
3. Exempt smaller reporting companies from the new claw back policies (Section 954 of Dodd-Frank) because this provision will make it more difficult to find qualified officers and directors for publicly traded small banks.
4. Exempt smaller reporting companies from the proxy access rule because of the disproportionate burden it places on small community banks and other smaller issuers.
5. Utilize the discretion that Congress has explicitly delegated to the Commission to minimize the regulatory burden on small issuers from the corporate governance provisions of the Dodd-Frank Act that disproportionately burden publicly-traded community banks.
6. Update the shareholder threshold above which companies must register a class of securities under Section 12(g) of the Exchange Act from the current 500 to 2,000, and increase the shareholder threshold below which companies may de-register a class of securities under Section 12(g) of the Exchange Act to 1,700.

Investment Program Association (Panel Presentation by Kevin M. Hogan, Executive Director)

1. Work with the state securities regulators to reduce the redundancies in federal and state regulation of offerings by the investment program industry which result in an estimated 9 to 12 months for some products ultimately to be approved.
2. Adopt a more effective technology centered electronic order entry system for the investment program industry similar to that in the mutual fund and annuity industries.

National Association of Seed and Venture Funds (Written Submission and Panel Presentation by James A. Jaffe, President and CEO)

1. Adopt a comprehensive legislative initiative regarding angel investor tax credits, with specific attention to the areas of immediate behavioral reward, venture eligibility, and investment eligibility, similar to what has been enacted in 21 states to facilitate capital to early-stage companies.

National Association of Small Business Investment Companies (Written Submission and Panel Presentation by Brett T. Palmer, President)

1. Raise the asset threshold for registration from $150 million (Regulation E) to enable small business funds to raise more capital for investing in small businesses.
2. Establish a venture definition, and therefore registration exclusion, that protects all funds that invest directly in "small businesses." Small business is clearly defined in the Small Business Investment Act. This should not be the only option for qualifying for the venture exemption, but it should be at least one of the available options for exemption.
3. Define "Private Equity Fund" as one that makes equity, debt, and/or debt with equity featured investments.
4. Apply the registration triggering threshold exclusively to funds that are otherwise non-exempt. For example, a $75 million small business fund would be forced to register if it also had a $90 million SBIC. For fund managers that have both an SBIC fund and a non-SBIC fund, the capital under management from the SBIC should not be included in the registration trigger.
5. Minimize the record keeping burden for exempt funds. If exempt from registration, offer these funds a true exemption from the burden. The SEC should recognize the SBA as the functional regulator of SBICs.
6. Create a "Registration Light" system for funds that invest primarily in small business. The middle-market funds that have more than $150 million in assets under management but are still below the $500 million level should not be required to register with the SEC in the same manner as a fund with billions of dollars of assets under management.
7. Minimize the negative impact of the Volcker Rule on small investment funds, and consider the following specific recommendations:

- While SBIC investments are explicitly permitted, do not pose any additional restrictions on investments in SBICs.
- Do not limit independent limited partners in bank-sponsored funds to existing trust, fiduciary, or investment advisory clients of the banking entity.

- When implementing the Volcker Rule, raise the 3% Tier-1 capital limit on bank investments in a small investment fund.
- Allow a bank to be a sponsor of an SBIC or other small business fund while still being permitted to provide custodial services to the fund.
- Define "Private Equity Fund" as one that makes equity, debt, and/or debt with equity featured investments.
- Do not force the divestiture of illiquid assets by small investment funds all at one time.

National Venture Capital Association (Written Submission and Panel Presentation by Mark G. Heesen, President)

1. Raise the $75 million dollar public float exemption for [Sarbanes-Oxley] Section 404(b) to $250 million.

Real Estate Investment Securities Association (Written Submission and Panel Presentation by Deborah S. Froling, REISA Legislative/Regulatory Task Force)

1. Do not apply a fiduciary standard to the independent broker-dealer community, including REISA members who are brokers, because it would reduce small business capital formation and reduce or eliminate a large portion of their traditional day-to-day business. Because private placements under Regulation D would likely be considered "illiquid" investments under a fiduciary standard of care, small businesses and real estate investments packaged as Regulation D offerings could be eliminated from the alternatives that could be recommended by REISA member broker-dealers to their clients, who are sophisticated, accredited investors.
2. With respect to disqualification rules for felons and other bad actors as required by the Dodd-Frank Act:

- Clearly identify the persons who would disqualify an issuer or broker-dealer from taking advantage of Regulation D for capital raising activities. For example, would "persons" subject to this disqualification include officers or directors or just owners, and, if owners would it be 10%, 20% or more beneficial owners or would it include only "control persons."
- Clearly define what is meant by a "final order," especially in a case where an order has been issued by a state regulator but such order is in the process of being challenged or otherwise appealed through judicial or administrative proceedings.
- Address the potential for misapplication of the standard of "any law or regulation that prohibits fraudulent, manipulative or deceptive conduct." There are states where minor and technical violations of rules or regulations, such as recordkeeping requirements or filing notices, are deemed to be fraudulent

conduct and would therefore disqualify issuers from making use of Rule 506 for acts that would not normally fit within the definition of fraudulent or deceptive acts.

- Preclude the adoption of rules that would deem minor rule violations as "fraudulent, manipulative or deceptive conduct" in order to reduce or eliminate the use of Rule 506 for offerings in their state.
- Provide a mechanism by which an issuer may request a waiver from disqualification "upon a showing of good cause," particularly in light of the 10-year look back whereby a person may have entered into a settlement agreement with a state regulator prior to the enactment of the Dodd-Frank Act which would otherwise provide the basis for a disqualification now.

3. Exclude both the value of the primary residence and the mortgage debt from the calculation of net worth to qualify as an accredited investor, including underwater mortgage debt.
4. If the Commission is inclined to add an "invested assets" test for accredited investor status, as suggested by the North American Securities Administrators Association, Inc., then require that only one qualification be met of the following: (1) net worth, (2) income or (3) invested assets.
5. Do not require investment adviser registration for REISA members who are sponsors and advisors to non-traded REIT clients, if their advice includes incidental advice regarding securities.
6. Reject efforts to raise capital gains taxes on the commercial real estate sector by treating the carried interest earned by partners in partnerships as ordinary income rather than long-term capital gains income.
7. Establish a federally backed credit facility for originating new commercial real estate loans, possibly by expanding the FDIC's existing public-private investment fund program (the "PPIP Legacy Loans Program") or through a new privately funded guarantee program.
8. Encourage non-U.S. debt and equity investment in U.S. real estate by amending or repealing the outdated Foreign Investment in Real Property Tax Act (FIRPTA), which applies to equity investments.
9. Continue to apply pressure upon banks and loan servicers to extend performing loans, based on cash-flow analysis.

Small Business & Entrepreneurship Council (Written Submission)

1. Create an exemption for small business offerings (debt or equity) of less than $1,000,000, that:

- Limits the maximum contribution by any one individual to no more than 10% of their prior year's stated income or up to $10,000/ individual.

- Requires a set of standardized and automated procedures for these financing offerings (debt or equity) to reduce time and expense for all parties while maintaining transparency. Use a modified SCOR form, especially for those companies that are just ideas and do not have financials yet.
- Have investors take an online "test" on the risks involved in private offerings before being allowed to invest.
- Allow the creation of channels/sites where ideas, individuals, companies and investors can meet, be vetted by the organization hosting those channels and entrepreneurial funding may take place. Consider requiring registration of these channel/sites for transparency purposes.

Society of Corporate Secretaries & Governance Professionals (Written Submission and Panel Presentation by Stephen H. Shapiro, Co-Chair, Small and Mid-Cap Companies Committee)

1. Increase the public equity float threshold for being a smaller reporting company from having a public float of less than $75 million to at least less than $250 million.
2. Exempt companies with a public float of less than $250 million from Section 404(b) of the Sarbanes Oxley Act.
3. Adopt a new private offering exemption from the registration requirements of the Securities Act that does not prohibit general solicitation and advertising for transactions with purchasers who do not need all the protections of the Securities Act registration requirements.
4. Eliminate the one-third of market capitalization limit for primary offerings by smaller public companies in General Instruction I.B.6(a) of Form S-3 and General Instruction I.B.5(a) of Form F-3.
5. Shorten the integration safe harbor in Regulation D from six months to 90 days, and further consider shortening such period to 30 days, as recommended by the April 2006 Final Report of the SEC Advisory Committee on Smaller Public Companies.
6. Apply scaled regulation to Section 1502 "Conflict Minerals" disclosure that requires all reporting companies to disclose annually whether "conflict minerals" (including gold) in products manufactured by their companies originated in the Democratic Republic of the Congo or an adjoining country.
7. Exempt smaller reporting companies from the requirements of Section 14A of the Exchange Act, notwithstanding the instruction to new Rule 14a-21, for the reason that such companies would nevertheless be compelled to include CD&A disclosure or risk an unfavorable shareholder vote.

REGISTERED FORUM PARTICIPANTS

Registered to Participate in Person

Martin Abo
Abo and Company, LLC
307 Fellowship Road, Suite 202
Mount Laurel, NJ 08054
(856) 222-4723

Reagan Anderson
NYSE Euronext
801 Pennsylvania Ave., NW, Suite 630
Washington, DC 20004
(202) 347-4300

Paula Argento
Argento International Law Firm, PC
(202) 538-2473

Lev Bagramian
United States Senate
Banking Committee
534 Dirksen Senate Office Building
Washington, DC 20510
(202) 224-1256

Robert Bailey
National Coalition for Capital
1010 Wisconsin Avenue, NW, Suite 205
Washington, DC 20007
(202) 337-1661

Steve Behar
Behar Law Group, PLLC
10 Division Street
Farmingdale, NY 11735
(212) 809-2550

Barry Berkowitz
Berkowitz Acquisitions
6615 W. Boynton Beach Blvd.
Suite 350
Boynton Beach, FL 33437
(561) 241-2412

Lilah Blackstone
Office of the Attorney General for the District of Columbia
810 First Street, NE, Suite 701
Washington, DC 20002
(202) 442-7750

Eric Blackledge
National Small Business Network
P.O. Box 639
233 SW 2nd Street
Corvallis, OR 97339
(541) 829-0033

Thomas Brennan
Posternak Blankstein Lund, LLP
The Prudential Tower
800 Boylston Street, 33rd Floor
Boston, MA 02199
(617) 973-6197

Francisca Brodrick
d/b/a BONF International Enterprises
1964 First Avenue, # 2-Z
New York, NY 10029-6436
(212) 534-6586

Karl Chen
301 Fortress Court
Upper Marlboro, MD 20774
(202) 345-0429

Peter Chepucavage
Plexus Consulting
1620 L Street, NW
Washington, DC 20006
(202) 785-8940

Faith Colish
Carter Ledyard & Milburn, LLP
2 Wall Street
New York, NY 10005
(212) 238-8873

James Cornell
Praxiis, LLC
5266 Seneca Street
West Seneca, NY 14224
(716) 675-6001

Leonard DeFranco
Law Firm of Leonard S. DeFranco
340 Shore Drive
Burr Ridge, IL 60527
(630) 887-0900

Mark Devine
Strategy & Intel Solutions, LLC
43880 Chloe Terrace
Ashburn, VA 20147
(703) 915-7404

James Durward
(403) 689-3901

Robert L. Edd, Jr., CPA
U.S. Small Business Administration
740 15th Street, 3rd Floor
Washington, DC 20005
(202) 272-0346

David Feldman
Richardson & Patel, LLP
420 Lexington Avenue, Suite 2620
New York, NY 10170
(212) 931-8700

Spencer Feldman
Greenberg Traurig, LLP
MetLife Building
200 Park Avenue, 15th Floor
New York, NY 10166
(212) 801-9221

Edward H. Fleischman
Linklaters, LLP
1345 6th Avenue, Suite 1900
New York, NY 10105
(917) 940-7012

Ladd Ford
DiMuroGinsberg
908 King Street, Suite 200
Alexandria, VA 22314
(703) 684-4333

Richard Friedman
Sichenzia Ross Friedman Ference, LLP
61 Broadway
New York, NY 10006
(212) 930-9700

Deborah Froling
Real Estate Investment Securities
Association (REISA)
10401 N. Meridian Street, Suite 202
Indianapolis, IN 46290
(202) 857-6075

Robert Goehring
Robert W. Goehring & Associates
The Grant Building
310 Grant Street, Suite 1402
Pittsburgh, PA 15219
(412) 281-6525

Shane Hansen
Warner Norcross & Judd, LLP
111 Lyon Street, NW, Suite 900
Grand Rapids, MI 49503
(616) 752-2145

Timothy Harden
Krieg DeVault, LLP
2800 One Indiana Square
Indianapolis, IN 46204-2079
(317) 238-6213

Jean Harris
Greenberg Traurig, LLP
2375 E. Camelback Road, Suite 700
Phoenix, AZ 85016
(602) 445-8310

William Haseltine
1629 K Street, NW, Suite 300
Washington, DC 20006
(703) 627-2652

Scott Hatfield
S. W. Hatfield, CPA
9002 Green Oaks Circle
Dallas, TX 75243
(214) 342-9635

Lisabeth Heese
Pink OTC Markets
725 8th Street, SE
Washington, DC 20003
(212) 896-4426

Eric Hess
Direct Edge
545 Washington Boulevard
Jersey City, NJ 07090
(201) 942-8239

Kamran Heydari
(914) 275-5061

Michael Hill
Baker Botts, LLP
The Warner Building
1299 Pennsylvania Ave., NW
Washington, DC 20004
(202) 639-7784

Kevin Hogan
Investment Program Association
P.O. Box 480
Ellicott City, MD 21041
(212) 812-9799

Andrew Huff
National Association of Small Business Investment Companies
1100 H Street, NW, Suite 610
Washington, DC 20005
(202) 628-5055

Gregg Johnson
Summit Capital USA, Inc.
605 W. Park Ave., Suite 102
Tempe, AZ 85284
(480) 588-3333

Harvey Kesner
Sichenzia Ross Friedman Ference, LLP
61 Broadway, 32nd Floor
New York, NY 10006
(646) 678-2543

Deborrah Klis
Shulman, Rogers, Gandal, Pordy & Ecker, P.A.
12505 Park Potomac Avenue, 6th Floor
Potomac, MD 20854
(301) 230-5200

Michele Kulerman
Hogan Lovells US, LLP
555 13th Street, NW
Washington, DC 20004
(202) 302-5791

Wayne Lee
Greenberg Traurig, LLP
1750 Tysons Blvd.
McLean, VA 22102
(703) 749-1394

Lee Liebolt
Attorney at Law
420 Lexington Avenue, Suite 2620
New York, NY 10170
(212) 286-1384

Dan Loague
Capital Formation Institute
11673-202 Charter Oak Court
Reston, VA 20190
(405) 824-5549

Hugh H. Makens
Warner Norcross & Judd, LLP
111 Lyon Street, NW, Suite 900
Grand Rapids, MI 49503-2487
(616) 752-2117

Jones Mark
Ecinema Networks, Inc.
810 Red Ash Court
Seffner, FL 33584
(813) 436-6988

J. Mike McManus
DC Department of Insurance
Securities & Banking
810 First Street, NE
Washington, DC 20002
(202) 829-5259

Jelena McWilliams
U.S. Senate
Committee on Small Business and
Entrepreneurship
428A Russell Senate Office Building
Washington, DC 20510
(202) 224-7884

Theodore Miles
DC Department of Insurance
Securities and Banking
810 First Street, NE
Washington, DC 20002
(202) 442-7800

Scott Museles
Shulman, Rogers, Gandal, Pordy &
Ecker, P.A.
12505 Park Potomac Avenue, 6th Floor
Potomac, MD 20854
(301) 230-5200

Michael Nall
Alliance of MA Advisors
200 E. Randolph Street, 24th Floor
Chicago, IL 60601
(877) 844-2535

John Nelson
Wall Street Without Walls
2031 Turtle Pond Drive
Reston, VA 20191
(703) 648-9544

R. Nick Niehoff
United States OTC Markets, Inc.
Suite 450
622 Pelhamdale Avenue
Pelham Manor, NY 10803
(914) 552-6889

James Oakley
Oakley Company
P.O. Box 1947
Porterville, CA 93258
(559) 781-9262

Brett Palmer
National Association of Small Business
Investment Companies
1100 H Street, NW, Suite 610
Washington, DC 20005
(202) 628-5055

Brian Parkinson
(410) 409-9068

Kenneth Priore
Priore Law Group
1025 Minna, #6
San Francisco, CA 94103
(415) 669-4323

Alfred Reeves
Affiliated Funding Corp.
3801 E. Florida Avenue, Suite 400
Denver, CO 80210
(954) 258-5341

Ines Reyes
Communications Industry Skills Center
1100 Valley Road
Melrose Park, PA 19027
(215) 740-1624

Jeffrey Rubin
Hogan Lovells US LLP
875 Third Avenue
32nd Floor
New York, NY 10022
(212) 918-8224

Thala Taperman Rolnick
National Small Business Network
PMB 589
5025 N. Central Avenue
Phoenix, AZ 85012
(602) 391-3593

John Romano
International Open Finance Association, Inc.
14629 S.W. 104th Street, Suite 429
Miami, FL 33186
(305) 773-7663

Zachary Rosenberg
Jacko Law Group
321 Walnut Street, #234
Newton, MA 02460
(617) 527-1707

Al Rusch
Securities Bureau of the District of Columbia
(202) 442-7850

Brad Rush
Ascensic, PLC
44084 Riverside Parkway, Suite 120
Lansdowne, VA 20176
(703) 679-7874

Mark Saltzburg
Abu Dhabi Investment Company
National Bank of Abu Dhabi Building
Al Khalidiya
Tarik Bin Zayed Street
Abu Dhabi, United Arab Emirates
(917) 287-0378

Michael Sauvante
Commonwealth Group
1308 Jason Drive
Lompoc, CA 93436
(805) 757-1085

Mary Sjoquist
Public Company Accounting Oversight Board
1666 K Street, NW
Washington, DC 20006
(202) 207-9084

Paul Spinrad
Sustainable Economies Law Center
233 Rivoli Street
San Francisco, CA 94117
(415) 564-7054

Darold Stagner
ClearMarket Advisors
13901 Mackey
Overland Park, KS 66223
(913) 681-5746

Eric Stein
Anslow & Jaclin, LLP
195 Route 9 South
Manalapan, NJ 7726
(732) 409-1212

Robert Stevens
Technology Partners, LLC
535 16th Street, Suite 820
Denver, CO 80202
(303) 459-2485

Stephen Stine
DiMuroGinsberg, P.C.
908 King Street, Suite 200
Alexandria, VA 22314
(703) 684-4333

Eduardo Ugarte, II
6112 Greeley Blvd.
Springfield, VA 22152
(703) 451-1481

Mike Vasilios
Pink OTC Markets
(212) 896-4486

Philip Verges
Small Equity Initiative
(972) 693-5981

Daniel G. Viola
Sadis & Goldberg LLP
551 Fifth Avenue, 21st Floor
New York, NY 10176
(212) 573-8038

Kelly Wilcox
United States Congress
House Appropriations (Financial
Services and General Government)
Rayburn B-300
Washington, DC
(202) 407-1400

Kwesi Wood
Kwesi E. Wood & Associates
8701 Georgia Avenue, Suite 705
Silver Spring, MD 20910
(301) 272-5315

Ann Yvonne Walker
Wilson Sonsini Goodrich & Rosati
650 Page Mill Road
Palo Alto, CA 94304
(650) 320-4643

Brendon Weiss
NYSE Euronext
(202) 661-8979

David Wenbert
6034 Richmond Hwy., Suite 619
Alexandria, VA 22303
(703) 899-1631

Jillien Williams
Porterfield, Lowenthal & Fettig, LLC
415 Second Street, NE, Suite 200
Washington, DC 20002
(202) 715-0840

Gregory Yadley
Shumaker, Loop & Kendrick, LLP
101 E. Kennedy Blvd., Suite 2800
Tampa, FL 33602
(813) 227-2238

John Zayac
IBG Business Services, Inc.
6455 S. Yosemite Street, PH Floor
Greenwood Village, CO 80111
(303) 785-0500

Registered to Participate by Webcast and Telephone Conference Call

Mike Adhikari
Illinois Corporate Investments, Inc.
175 Olde Half Day Road, Suite 100-17
Lincolnshire, IL 60069
(847) 438-1657

Joan Adler
Ellenoff Grossman & Schole, LLP
150 East 42nd Street
New York, NY 10017
(212) 370-1300

Karl Ahlm
Gould & Ratner, LLP
(312) 899-1661

Francisco Almanzar
DWMA Properties, LLC
3666 Varian Avenue
Bronx, NY 10466
(718) 644-1048

Sam R. Asmah
Volta Tax Center
1821 Summit Road, Suite 312
Mid City Executive Building
Cincinnati, OH 45237-2820
(513) 362-2711

Hicken Barrett
AMAA
6440 South Wasatch Blvd.
Suite 300
Salt Lake City, UT 84121
(801) 993-5011

Douglas Baumwall
(786) 991-2223

John Beale
Accord Development Corporation
One Accord Pond Drive
Hingham, MA 02043
(617) 990-2208

Lloyd Bell
Meaden & Moore, Ltd.
1100 Superior Avenue, Suite 1100
Cleveland, OH 44114
(216) 241-3272

George Bickerstaff
GWB Capital LLC
133 Stanwich Road
Greenwich, CT 6830
(203) 570-0478

William Billeaud
Lombard Global, Inc.
101 E. Park Blvd., Suite 600
Plano, TX 75074
(214) 675-5539

Elizabeth Bleakley
Kopecky, Schumacher & Bleakley, P.C.
203 N. LaSalle Street, Suite 1620
Chicago, IL 60601
(312) 380-6630

Chris Blees
BiggsKofford PC
630 Southpointe Court, Suite 200
Colorado Springs, CO 80906
(719) 579-9090

Lisa Brice
Brice Law
244 Fifth Avenue, L291
New York, NY 10001
(646) 764-9632

James Burk
Burk & Reedy, LLP
1818 N. Street, NW, Suite 400
Washington, DC 20036
(202) 205-5002

Andrew Cagnetta
Transworld Business Advisors
5101 NW 21st Ave., Suite 300
Fort Lauderdale, FL 333009
(754) 224-3109

Michael Cassata
(508) 769-5445

Janae Chamblee
(214) 207-8765

Peter Christman
The Christman Group
200 East Randolph, 24th Floor
Chicago, IL 60601
(847) 303-6554

Patrick Clawson
P.O. Box 470
Flint, MI 48501-0470
(810) 730-5110

Susan Cohen
Bingham
399 Park Avenue
New York, NY 10022-07410
(212) 705-7625

Christopher Cole
Independent Community Bankers of America
1615 L Street, Suite 900
Washington, DC 20036
(202) 659-8111

Amy Cortese
Freelance Journalist/Author
New York
(718) 246-8091

Lee Dahmer
B2B, CFO
501 W. Peterson Road, Suite 100
Libertyville, IL 60048
(847) 918-9281

Kevin Dempsey
Summa Financial Group, LLC
2033 Gateway Place, Suite 500
San Jose, CA 95110
(408) 454-2600

Mark Devine
Alliance of Merger & Acquisition Advisors (AM&AA)
43880 Chloe Terrace
Ashburn, VA 20147
(703) 915-7404

Neal Dina
Candidate for Nevada State Assembly
3217 Brautigan Court
North Las Vegas, NV 89032
(702) 738-5870

Frederick Dolliver
Frederick Capital Corporation
West Tower
5000 Birch Street, Suite 3000
Newport Beach, CA 92660
(949) 476-3720

Patrick Donohue
8950 Gould Road
Eden Prairie, MN 55347
(612) 868-4001

Jim Dunmire
Murphy Business & Financial Services
513 N. Belcher Road
Clearwater, FL 33765
(727) 460-9719

Gregory Dupuis
Bridge Ventures, LLC
534 Cypress Bend
Oldsmar, FL 34677
(813) 343-2214

Steven Egna
Teal Becker & Chiaramonte, CPAs, P.C.
7 Washington Square
Albany, NY 12205
(518) 456-6663

Dan Elliott
Southwest M&A, LLC
3648 FM 1960 W, Suite 105
Houston, TX 77068
(281) 440-5153

Martin Eng
Western Technology Investment
2010 N. 1st Street, Suite 310
San Jose, CA 95131
(408) 436-8577

James Ertel
Legacy M&A Advisors, LLC
1101 Channelside Drive, Suite 290
Tampa, FL 33602-3611
(813) 864-6600

Neil Garth
Habanero Ventures
45 Creek Road
Fairfax, CA 94930
(415) 497-9409

Cathryn Gawne
Hopkins & Carley
70 S. 1st Street
San Jose, CA 95113
(408) 286-9800

Jim Gettel
Schenck M&A Solutions
11414 West Park Place, Suite 200
Milwaukee, WI 53224
(414) 465-5578

Hank Gracin
Gracin & Marlow, LLP
405 Lexington Avenue
26th Floor
New York, NY 10174
(212) 907-6457

Derrick Grava
(843) 768-2519

Robert Gurrola
Summa Financial Group, LLC
2033 Gateway Place, Suite 500
San Jose, CA 95110
(408) 454-2600

Erol Guvenoz
4700 N. Kolb Road, #10111
Tucson, AZ 85750
(520) 777-9262

Stephanie Hanayik
SFI Investments, LLC
1350 Euclid Avenue, Suite 800
Cleveland, OH 44115
(216) 774-1120

Paul Hansrote
Keller Williams Realty of Jupiter
4455 Military Trail, Suite 100
Jupiter, FL 33458
(561) 248-8727

Michael Hauser
M.L. Hauser Real Estate, LLC
P.O. Box 17229
Clearwater, FL 33762
(727) 466-4686

Matt Hawkins
Alliance Equity
Seattle, WA
(509) 990-3509

Calvin Hedman
Hedman Partners
(661) 286-1540

Trevor Hulett
R.L. Hulett & Company
8000 Maryland Avenue, Suite 245
St. Louis, MO 63105
(314) 721-0607

Gregory Isaacs
Sterling Business Advisors
2911 Turtle Creek, Suite 300
Dallas, TX 75219
(214) 553-1166

Latanja Johnson
Professional Financial Services
3084 Gaston Avenue
Montgomery, AL 36105
(334) 356-0065

Francis Keenan
(410) 729-1015

John Kevan
PNT, LLC
72 Paia Pohaku Street
Lahaina, HI 96761
(808) 283-9790

Don Keysser
Hannover, Ltd.
8014 Olson Memorial, Suite 444
Minneapolis, MN 55427
(612) 710-0995

Brian Knight
Country Business, Inc.
P.O. Box 1071
Manchester Center, VT 05255
(802) 362-4710

Raymond Kolak
Eckhart Kolak, LLC
55 W. Monroe Street, Suite 1925
Chicago, IL 60603
(312) 236-0646

David Kozich
Plethora Businesses
2117 W. Orangewood Avenue
Orange, CA 92868
(949) 610-5770

Jeff Kraai
Exit Strategies, Inc.
6000 S.E. Beach Drive, Suite 100
Vancouver, WA 98661
(360) 696-5812

Len Krick
Sunbelt Business Brokers of Las Vegas, Inc.
2300 West Sahara Avenue, Suite 800
Las Vegas, NV 89102
(702) 856-4701

George Lanza
Plethora Businesses
2117 West Orangewood Avenue
CA 92686
(714) 255-8862

Raymond Larson
Morgan Phillips Financial Group
6639 Date Palm Avenue S
St. Petersburg, FL 33707
(727) 235-9156

Garit Lawson
Coldwell Banker M&A
6550 S. Millrock Drive, Suite 200
Salt Lake City, UT 84121
(801) 947-8395

Jennifer LeBlanc
Tatum
10111 Richmond Ave., Suite 100
Houston, TX 77042
(832) 205-2937

David Levine
American Sustainable Business Council
14 Wooster Street
New York, NY 10013
(917) 359-9623

Thomas Lindahl
Lindahl & Associates
4450 Arapahoe Avenue, Suite 100
Boulder, CO 80303
(303) 415-2593

Mike Maak
NorthEast Business Advisors, LLC
P.O. Box 325
Rochester, MA 02770
(508) 763-0209

David Mabelle
(208) 263-6309

Liz Marchi
Montana Angel Network, Frontier Angel Fund, LLC
307 First Street West, Suite 2
Polson, MT 59860
(406) 883-4044

Kenneth Marks
High Rock Partners, Inc.
(919) 256-8152

Gene Massey
CinemaShares.com
1334 Westwood Blvd., Suite 6
Los Angeles, CA 90049
(310) 476-3668

Arne McDaniel
(303) 783-4830

Chris Mellen
Delphi Valuation Advisors, Inc.
100 River Ridge Drive, Suite 201
Norwood, MA 02035
(781) 551-8258

John Neff
Management Solutions International, Inc.
(407) 389-5900

Susan Noble
ParaBlue Service
84 Narragansett Road
Quincy, MA 02169
(617) 472-0952

Clifford Olin
The Olin Group, LLC.
468 Algerine Street
Afton, NY 13730
(607) 639-1120

Gary Papay
CK Business Consultants, Inc.
114 S. Railroad Street
Hughesville, PA 17737
(570) 584-6488

Gary Parker
(704) 641-0330

Dexter Perry
The Providence Group of North Carolina, LLC
1400 Crescent Green, Suite G-100
Cary, NC 27518
(919) 858-7817

Antony Prabhu
Sett & Lucas
110 Wall Street
New York, NY 10005
(646) 314-3555

Donna Prescott
Abbott, PA 16922

Michael Richards
Sunbelt Business Brokers
Tampa, FL 33634
(813) 831-5990

Len Russek
Murphy Business & Financial Corporation
513 Belcher
Clearwater, FL 33766
(727) 894-7888

Michael Sassi
M.D. Sassi Company
425 Market Street, Suite 2200
San Francisco, CA 94105
(415) 617-1550

Adam Schecter
Geneva Glen Capital
123 N. Wacker Drive, Suite 820
Chicago, IL 60606
(312) 525-8502

Brian Schmidt
Katz, Sapper & Miller
800 East 96th Street, Suite 500
Indianapolis, IN 46240
(317) 580-2248

Diane Smith
Northfork Strategies, Inc.
P.O. Box 5089
Whitefish, MT 59937
(406) 250-4328

Frederick Smith
UC Davis Graduate School of Management
806 11th Street
Davis, CA 95616
(415) 717-6833

E.J. Steele
Task At Hand
P.O. Box 88468
Los Angeles, CA 90009
(323) 514-59889

David Teten
Teten Advisors
611 W. 239th, 3H
Bronx, NY 10463
(917) 740-4450

Diane Thomas
Premier Sales, Inc.
14901 N. Scottsdale Road, #305
Scottsdale, AZ 85254
(480) 905-9030

Mark Thorsby
International Business Brokers Association
401 N. Michigan Avenue
Chicago, IL 60611
(312) 321-5137

James Tidwell
AM&AA
2709 Brighthaven Drive
Raleigh, NC 27614
(919) 793-6922

Dawn Trembath
Good Work
4344 Sterling Drive
Durham, NC 27712
(919) 724-8541

Jonathan Turkel
(212) 495-8271

Robert Waugh
Waugh & Company, Inc.
6150 State Road, 70 E.
Bradenton, FL 34203
(941) 755-3888

Kwame Winston
Old Red English Bulldogs Kennel, Inc.
P.O. Box 1086
Moncks Corner, SC 29461
(843) 688-5098

APPENDIX

Written Statements Submitted by Organizations Concerned with Small Business Capital Formation

Table of Contents

American Bankers Association
Building Success. Together.

Carolyn Walsh
Vice President and Senior Counsel
Center for Securities, Trust and Investments
202-663-5253
cwalsh@aba.com

November 9, 2010

Gerald J. Laporte
Chief, Office of Small Business Policy
Division of Corporation Finance
U.S. Securities and Exchange Commission
100 F Street, N.E., Room 3650
Washington, D.C. 20549-3628

Re: SEC Government-Business Forum on Small Business Capital Formation—ABA Recommendation

Dear Gerry:

In connection with the 2010 SEC Government-Business Forum on Small Business Capital Formation, the American Bankers Association[1] (ABA) is submitting the enclosed material regarding the ABA's outstanding request to the SEC to: (i) update the shareholder threshold under Section 12(g) of the Exchange Act of 1934 ("Exchange Act") from 500 security holders to 2,000 security holders; and (ii) amend the threshold under Section 15(d) and 12(g)(4) of the Exchange Act permitting de-registration from 300 to 1,200 security holders to relieve the regulatory burden placed upon smaller public companies, in particular community banks and savings associations.

Using anecdotal information obtained from some banks, we understand that community banks affected by the proposed change will <u>save</u> approximately $250,000 per bank if the shareholder number is raised. In the banking industry, it is understood that every one dollar saved can support $7-$10 of new lending. As a consequence, we believe that raising the shareholder threshold can have an immediate and positive impact on the amount of capital that could be deployed by community banks to increase lending to small businesses in their communities.

The ABA first raised this important matter in March 2005 with then-SEC Chairman William Donaldson. More than five years later, this issue continues to be of importance to small public companies, in particular community banks and savings associations. Moreover, we understand, through our numerous meetings with Commission staff and communications with members of Congress, that there may now be consensus that the existing registration rules are outdated and that the Commission should explore whether the current shareholder threshold numbers for registration and de-registration are acceptable criteria for determining when an issuer must register and remain as a public company.

---

1 The American Bankers Association represents banks of all sizes and charters and is the voice for the nation's $13 trillion banking industry and its 2 million employees. ABA's extensive resources enhance the success of the nation's banks and strengthen America's economy and communities.

In order that the current SEC Commission and staff can appreciate the importance of this issue, I have enclosed the following explanatory documents.

1. November 12, 2008 ABA letter requesting that the 500 shareholder threshold be updated.
2. ABA's 2010 500 Shareholder Talking Points.
3. Shareholder registration threshold amendment offered by Senator Hutchison to H.R. 5297. We understand that although this amendment had bi-partisan support with Senators Bayh (D-IN), Kerry (D-MA), Pryor (D-AR), Chambliss (R-GA) and Isakson (R-GA), the Senate did not consider it in connection with the Small Business Lending Bill.
4. Chart Showing Numbers and Geographic Distribution of Banks Potentially Affected by 500 Shareholder Threshold.

ABA hopes that the Commission will carefully consider this recommendation. We would be happy to continue to work with your offices to provide additional information on these issues from our member banks. Should you have any questions, please do not hesitate to contact me at the number or email address listed above or my colleague, Phoebe A. Papageorgiou, at (202) 663-5053 or phoebep@aba.com.

Sincerely,

Carolyn Walsh

Carolyn Walsh

Vice President and Senior Counsel
Center for Securities, Trust and Investments
American Bankers Association

AMERICAN BANKERS ASSOCIATION

1120 Connecticut Avenue, NW
Washington, DC 20036

1-800-BANKERS
www.aba.com

World-Class Solutions, Leadership & Advocacy Since 1875

Sarah A. Miller
Senior Vice President
Center for Securities, Trust and Investments
Phone: 202-663-5325
Fax: 202-828-5047
smiller@aba.com

November 12, 2008

John W. White
Director
Division of Corporation Finance
Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549

James Overdahl
Chief Economist
Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549

Re: Updating the Shareholder Threshold for Registration

Gentlemen:

I am writing to you, on behalf of the American Bankers Association[1] ("ABA"), to follow up on our prior discussions and correspondence regarding the outdated shareholder threshold for SEC registration. In particular, today's letter is provided to you in connection with Mr. David Bochnowski's participation in the November 20th SEC small business forum where he will raise the issues of: (i) updating the shareholder threshold under Section 12(g) of the Exchange Act of 1934 (“Exchange Act”) from 500 security holders to between 1,500 and 3,000 security holders; and (ii) amending the threshold under Section 15(d) and 12(g)(4) of the Exchange Act permitting de-registration from 300 to between 900 and 1,800 security holders to relieve the regulatory burden placed upon smaller public companies, in particular, community banks and savings associations (hereinafter collectively referred to as “banks”). While we hope that you both will be available to hear first-hand from Mr. Bochnowski about the impact of the 500 shareholder issue on community banks, we wanted to remind you of this issue prior to the forum and provide you with ABA's current thoughts.

The current credit crisis and the events of the last year make this issue one of vital importance to our community banks. Bank regulators are asking banks to raise capital—a difficult task during this market turmoil. Retaining an outdated shareholder threshold level adds to these current difficulties by interfering with community banks' ability to raise capital in their local communities for fear that they will trip the 500 shareholder threshold, and is, we believe, bad public policy.

[1] The American Bankers Association brings together banks of all sizes and charters into one association. ABA works to enhance the competitiveness of the nation's banking industry and strengthen America's economy and communities. Its members – the majority of which are banks with less than $125 million in assets – represent over 95 percent of the industry's $13.3 trillion in assets and employ more than two million men and women.

The Shareholder Threshold for Registration Should be Updated

The ABA first raised this important matter in March 2005 with then-SEC Chairman William Donaldson.[2] More than three years later, this issue continues to be of importance to small public companies, in particular community banks. Moreover, we understand, through our numerous meetings with Commission staff, and communications with members of Congress that there may now be consensus that the existing registration rules are outdated and that the Commission should explore whether the current shareholder threshold numbers for registration and de-registration are acceptable criteria for determining when an issuer must register as a public company.

Specifically we note that, Chairman Cox addressed this issue over one year ago, in a response to Senator Olympia Snowe's follow-up questions from a Small Business Committee Hearing. At that time, Chairman Cox informed Senator Snowe that SEC staff has been directed to determine whether the SEC has sufficient authority to amend the Commission's rules relating to the shareholder threshold that triggers registration and that the SEC's Office of Economic Analysis was directed to undertake a review of the Section 12(g) registration standards to determine whether they continue to be the most appropriate means of accomplishing the objectives of Section 12(g). We are concerned that the SEC's efforts in this regard have stalled.

Outdated Shareholder Thresholds Do Not Accomplish Section 12(g)'s Objectives

The ABA strongly believes that the current shareholder thresholds for registration and de-registration are terribly outdated and do not represent appropriate means to accomplish the objectives of Section 12(g). By simply updating the shareholder threshold for registration, the SEC could provide much needed regulatory relief to small businesses of all kinds.

Section 12(g) dictates the circumstances under which an issuer must register as a public company with the SEC and subsequently comply with the Commission's periodic reporting and other requirements. This section requires registration if a company has more than $10 million in assets <u>and</u> more than 500 shareholders of record. In 1964, when Section 12(g) was enacted to expand the registration and reporting requirements beyond companies traded on a national exchange, Congress understood the need for the regulation to be scaled and thus limited the reach of the provisions to ensure that ―the flow of proxy reports and proxy statements [would] be manageable from a regulatory standpoint and not disproportionately burdensome on issuers in relation to the national public interest served."[3] Companies are not considered to have a large

[2] *See* Letter of Mar. 2005, from Wayne A. Abernathy, American Bankers Association, to William Donaldson, Securities and Exchange Commission. Please also note, that in making this recommendation, the ABA specifically did not recommend that the current interpretation of "held of record" in Sections 12(g) and 15(d) be revised to mean "beneficial holder" rather than "record holder." Any such revision could in practice increase the regulatory burden, forcing into the periodic reporting system banks that currently are not in the system. <u>See</u> Letter of Dec. 13, 2005, from Sarah A. Miller, American Bankers Association, to Gerald LaPorte, Securities and Exchange Commission; and Letter of April 3, 2006, from Sarah A. Miller and Donna J. Fisher, American Bankers Association, to Nancy M. Morris, Securities and Exchange Commission.

[3] Securities Acts Amendments of 1964, Pub. L. No. 88–467, 78 Stat. 565 (adding Section 12(g), among other provisions, to the Exchange Act); .S. Rep. No. 88-379, at 19 (1963).

enough public market presence to be subject to significant reporting under the Exchange Act unless both the asset and shareholder thresholds are met.

For the banking industry, the shareholder number is the only meaningful Section 12(g) measure (as 99 percent of all banks have assets in excess of $10 million). Banks have large dollar assets due to the fact that loans are considered assets, which, in turn, are leveraged liabilities of the bank, *i.e.,* deposits. To give you some perspective, the bank regulators define a small bank for purposes of the Community Reinvestment act as an institution with less than $1 billion in assets,[4] so virtually all community banks that are considered small, in at least one context, will exceed the asset size parameter of the Section 12(g) test.

Over time, the asset measurement standard set by Congress in 1964 has been adjusted ~~to~~ assure that the burdens placed on issuers and the Commission were justified by the numbers of investors protected, the size of the companies affected, and other factors bearing on the public interest, as originally intended by Congress."[5] Nonetheless, while the asset size parameter has been increased ten-fold from the $1 million level initially required in 1964 to $10 million in 1996, to reflect the exponential growth in the securities market, the 500-shareholder threshold has never been adjusted, although the Commission noted in 1996 its intention to consider updating it.

Even the Department of Treasury has recognized that smaller financial institutions that are publicly traded by virtue of having 500 or more shareholders should be treated more akin to privately-held firms when applying to participate in the Capital Purchase Program. We are hopeful that the Commission will view this matter similarly and elect to increase the shareholder threshold. In the more than 40 years since Section 12(g) was adopted, the size of the investing market has grown substantially, as has the number of corporations and the number of investing shareholders. A small corporation today with a small investor footprint is significantly different from what it was 40 years ago. While the shareholder threshold of 500 at one time may have been an accurate reflection of a public market, it no longer is.

ABA Has Provided Information to the SEC to Illustrate the Outdated Nature of the Shareholder Threshold

Earlier this year, ABA began providing informal assistance to the SEC's Office of Economic Analysis (OEA) to assist them with their efforts to determine whether the current shareholder threshold numbers are outdated. Specifically, we provided OEA with data relating to the household location of several community banks' shareholders to help explain the local nature of the banks' shareholder base, under the theory that these shareholders have sufficient ability to monitor their investment in their local community bank and thus do not need the protections provided by the Exchange Act's periodic reporting requirements. The information we provided to the SEC reflects that between 70% and 95% of the surveyed banks' shareholders are in-state. Often they are bank customers and have the ability to make first hand observations regarding the health of the institution and its value to the shareholders and the community. It

[4] *See e.g.,* 12 C.F. R. §228.12 (u).
[5] Exposure Draft of Final Report of Advisory Committee on Smaller Public Companies, SEC Release No. 33-8666 (March 3, 2006) [71 FR 11090, 11097].

also helps illustrate that the investment decisions of these investors are not necessarily made in reliance on information and expensive reports filed by the banks under the Exchange Act.

A closer look at the nature of the community banks we sampled also reveals other factors that are inconsistent with a characterization of these banks as public companies that need to be subject to the full panoply of Exchange Act registration and reporting. Banks with less than 3,000 total shareholders rarely have liquid trading markets that allow them to truly benefit from being public. The banks surveyed by ABA had a total number of shareholders that ranged from 410 to 6,500. The average daily volume over a three month period for the surveyed banks was only 10,202. None of the banks with less than 1,500 shareholders had an average daily trading volume over the three month period that was greater than 850 shares. In addition, the average market capitalization of these banks is less than $144 million, and the banks with fewer than 1,500 shareholders had market capitalizations between $16.9 and $76.6 million.

The Disproportionate Burden to Community Banks

As these low market capitalization and thin trading markets statistics from our sample illustrate, community banks with less than 1,500 shareholders typically do not receive the traditional benefits of being public. The banks are local businesses with local shareholders. On average, they have revenue of $14.8 million and only 118 full-time employees. It is common for these banks to receive little or no analyst coverage, have a limited trading market, provide little liquidity for their shareholders, and attract little institutional investment. Any benefit that these companies receive from being public is significantly undermined by the disproportionately high costs of regulatory compliance placed on these smaller companies. In the post SOX era, it is well documented that the costs of being a public company are disproportionately borne by smaller public companies.[6]

The negative impact of the low shareholder threshold is felt acutely by community banks because unlike other small businesses, community banks are broadly held by shareholders in their communities. Even without intention to offer shares publicly, many community banks have seen their shareholder base grow as successive generations distributed their stock holdings among their descendents.

These factors exert significant pressure on banking organizations and other affected companies to reduce the number of shareholders in order either to avoid registration requirements or to de-register. Due to the increasing costs of being a registered public company, a number of small businesses, including some of our member community banks, have determined that de-registration is in the best interests of their shareholders. However, companies that wish to de-register must either have less than $10 million in assets or less than 300 record shareholders, and for banks who wish to de-register, this means somehow reducing their shareholder base below 300 record shareholders.

[6] *See Generally*, Foley & Lardner, The Cost of Being Public in the Era of Sarbanes-Oxley (August 2, 2007) *available at* http:/www.foley.com/publications/pub_detail.aspx?pubid=4487; Exposure Draft of Final Report of Advisory Committee on Smaller Public Companies, SEC Release No. 33-8666 (March 3, 2006) [71 FR 11090].

Reducing the number of record shareholders can be costly. Stock buybacks, reverse stock splits and the attendant legal costs are particularly expensive for small businesses. In addition, these transactions can have negative consequences for local communities. As much as community banks would like to get out from under the heavy weight of SEC registration, they often have no desire to reduce the number of shareholders, especially if that means disenfranchising the localized ownership that makes these banks members of the community. As Daniel Blanton, President and CEO of Georgia Bank Financial Corporation testified before the SEC Advisory Committee on Smaller Public Companies:

> We are reluctant to [de-register] because the Bank was founded on the belief that the Augusta [Georgia] area needed a locally owned and operated, relationship-based bank. Most of our shareholders live within our market and all but a few do some business with the bank. This localized ownership is quite common at community banks across the U.S. Often times, investing in the local bank is the only remaining investment members of a community can still make.

For those community banks that cannot reasonably go private due to a large shareholder base, many could be forced to merge with a larger partner in order to spread out the cost of compliance. Such regulatory-induced mergers or disenfranchisement cannot be wise public policy.

Investors Will Continue to be Adequately Protected

The banking industry is not seeking this change in order to ―go dark," and stop providing investors with disclosures. Community banks are part of a highly regulated industry governed by numerous statutes and regulations affecting almost every aspect of banking activity. Each banking institution is regulated by two agencies: the agency that issued the bank's charter and the Federal Deposit Insurance Corporation (―FDIC"). Significant financial and other information regarding every bank and savings association can be publicly viewed on the website maintained by the FDIC. All banks are required to make annual reports available to both their customers and investors. Most provide financial and other information to investors through their company websites.

Indeed, many community banks that elected to de-register under the current regulatory requirements pledged to make public disclosures on their website of information previously required to be filed with the Commission. As Mr. Bochnowski will explain at the upcoming SEC small business forum, keeping shareholders and the public fully informed about the bank's performance is essential to its presence as a community bank. The advantage to the small community banks that would come with de-registration is not a lack of transparency; rather it is a reduction of regulatory burdens and reporting requirements that pose a disproportionate burden on small community banks.

Conclusion

Understandably, our members are disappointed that this issue remains stalled despite having attracted the attention of members of Congress and SEC Chairman Cox. We strongly believe that it is time for the 500-shareholder threshold to be increased to a level that is an accurate indication of a public company. Making this overdue change will help restore the principals of proportionality and balance to our securities laws so that the benefits to the investing public outweigh the regulatory costs to our nations' small businesses. Increasing the shareholder threshold number will significantly reduce the unwarranted regulatory hardship suffered by these small community banks and allow them to continue to be job incubators on main street America.

We are encouraged that Mr. Bochnowski will have the opportunity to present the concerns of our community banks at the upcoming SEC small business forum. We would be happy to continue to work with your offices to provide additional information on these issues from our member banks. Should you have any questions, please do not hesitate to contact me or my colleague, Carolyn Walsh, at 202-663-5253 or cwalsh@aba.com.

Sincerely yours,

Sarah A. Miller

Sarah A. Miller

cc: Mauri Osheroff, Associate Director, Division of Corporation Finance
Elizabeth Murphy, Chief, Office of Rulemaking
Gerald LaPorte, Chief, Office of Small Business Policy

Current Capital Crisis Calls for Removal of Outdated Impediments to Community Banks' Ability to Raise Capital—Shareholder Threshold for SEC Registration Should be Increased

- Currently, Section 12(g) of the Securities Exchange Act of 1934 requires a company with $10 million in assets and **500 shareholders** to register its securities with the SEC and subsequently comply with the SEC's significant registration and reporting requirements, including compliance with Sarbanes-Oxley.

- While the $10 million dollar asset size measure has twice been increased since Congress enacted Section 12(g) in 1964, the shareholder gauge of a public company, the only measurement of significance for banks has never been updated. If Congress were to update the shareholder threshold for registration, the SEC would be able to provide much needed regulatory relief for community banks.

- Banking regulators are currently calling on banks to increase their capital. **The outdated shareholder threshold level prevents small banks from raising capital from investors in their community because of fear that they will trip over the threshold number and overnight cause their regulatory compliance costs to skyrocket. It is bad policy and should be addressed during this credit crisis—not after it is over.**

- **Banks with 2000 shareholders or less are local businesses with local shareholders. These institutions had median revenue of $8.4 million and a median 196 full-time employees as of the fourth quarter of 2009.** It is common for these banks to receive little or no analyst coverage, have a limited trading market, attract little (if any) institutional investment and, yet, incur disproportionately high costs of regulatory compliance. The small benefit that these companies receive from being public is nonetheless compounded by the disproportionately high costs of regulatory compliance placed on these smaller companies. **In the post SOX era, it is well documented that the costs of being a public company are disproportionately borne by smaller public companies.**

- The ever increasing regulatory costs are exerting significant pressure on banking organizations to reduce the number of shareholders in order either to avoid registration requirements or to de-register. However, companies that wish to de-register must either have less than $10 million in assets or less than 300 record shareholders, and for banks who wish to deregister, this means somehow reducing their shareholder base below 300 record shareholders.

- Reducing the number of record shareholders can be costly—and in this time of industry turmoil and credit contraction unwise. Moreover, these transactions can have negative consequences for local communities. As much as community banks would like to get out from under the heavy weight of SEC registration, they often have no desire to reduce the number of shareholders, especially if that means disenfranchising the localized ownership that makes these banks members of the community.

- Making this overdue change will help restore the principals of proportionality and balance to our securities laws so that the benefits to the investing public outweigh the regulatory costs to our nations' small businesses.

- Increasing the shareholder threshold number will significantly reduce the unwarranted regulatory hardship suffered by these small community banks and allow them to continue being lenders in their communities and job incubators on main street America.

AMENDMENT NO.________ Calendar No.______

Purpose: To address the shareholder registration threshold under the securities laws, and for other purposes.

IN THE SENATE OF THE UNITED STATES—111th Cong., 2d Sess.

H. R. 5297

To create the Small Business Lending Fund Program to direct the Secretary of the Treasury to make capital investments in eligible institutions in order to increase the availability of credit for small businesses, to amend the Internal Revenue Code of 1986 to provide tax incentives for small business job creation, and for other purposes.

Referred to the Committee on ____________________ and ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT intended to be proposed by Mrs. HUTCHISON

Viz:

At the appropriate place, insert the following:

SEC. __. SHAREHOLDER REGISTRATION THRESHOLD.

(a) AMENDMENTS TO THE SECURITIES EXCHANGE ACT OF 1934.—

(1) SECTION 12.—Section 12(g) of the Securities Exchange Act of 1934 (15 U.S.C. 781(g)) is amended—

(A) in paragraph (1)—

(i) by striking subparagraphs (A) and (B) and inserting the following:

"(A) in the case of an issuer that is a bank, as such term is defined in section 3(a)(6) of this title, or a bank holding company, as such term is defined in section (2) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841), 2000 persons or more; and

"(B) in the case of an issuer that is not a bank or bank holding company, 500 persons or more,"; and

(ii) by striking "commerce shall" and inserting "commerce shall, not later than 120 days after the last day of its first fiscal year ended after the effective date of this subsection, on which the issuer has total assets exceeding $10,000,000 and a class of equity security (other than an exempted security) held of record by"; and

(B) in paragraph (4), by striking "three hundred" and inserting "300 persons, or, in the case of a bank, as such term is defined in section 3(a)(6) of this title, or a bank holding company, as such term is defined in section (2) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841), 1200".

(2) SECTION 15.—Section 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(d)) is amended, in the third sentence, by striking "three hundred" and inserting "300 persons, or, in the case of bank, as such term is defined in section 3(a)(6) of this title, or a bank holding company, as such term is defined in section (2) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841), 1200".

(b) STUDY OF REGISTRATION THRESHOLDS.—

(1) STUDY.—

(A) ANALYSIS REQUIRED.—The Chief Economist and Director of the Division of Corporation Finance of the Commission shall jointly conduct a study, including a cos-benefit analysis, of shareholder registration thresholds.

(B) COSTS AND BENEFITS.—The cost-benefit analysis under subparagraph (A) shall take into account—

(i) the incremental benefits to investors of the increased disclosure that results from registration;

(ii) the incremental costs to issuers associated with registration and reporting requirements; and

(iii) the incremental administrative costs to the Commission associated with different thresholds.

(C) THRESHOLDS.—The cost-benefit analysis under subparagraph (A) shall evaluate whether it is advisable to—

(i) increase the asset threshold;

(ii) index the asset threshold to a measure of inflation;

(iii) increase the shareholder threshold;

(iv) change the shareholder threshold to be based on the number of beneficial owners; and

(v) create new thresholds based on other criteria.

(2) REPORT.—Not later than 2 years after the date of enactment of this Act, the Chief Economist and the Director of the Division of Corporation Finance of the Commission shall jointly submit to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Serv-

ices of the House of Representatives a report that includes—

(A) the findings of the study required under paragraph (1); and

(B) recommendations for statutory changes to improve the shareholder registration thresholds.

(c) RULEMAKING.—Not later than one year after the date of enactment of this Act, the Commission shall issue final regulations to implement this section and the amendments made by this section.

Institutions Impacted by Shareholder Threshold Changes

State	Pub Traded 300 - 2000 Shareholders		ABA Survey Respondents*		Total Impacted Banks
AK	2				2
AL	6		4		10
AR	2				2
AZ			4		4
CA	29		2		31
CO	2		1		3
CT	2				2
DC			1		1
DE	1				1
FL	8		7		15
GA	9		9		18
HI			1		1
IA	6		4		10
IL	14				14
IN	18		1		19
KS			3		3
KY	6		3		9
LA	6				6
MA	6				6
MD	13				13
ME	3				3
MI	15		10		25
MN	2				2
MO	7		4		11
MS	4		2		6
MT	2				2
NC	15		7		22
NH	1		2		3
NJ	11		4		15
NV			1		1
NY	25		1		26
OH	26		1		27
OK	2				2
OR	5				5
PA	32		10		42
PR	2				2
RI	2				2
SC	11		4		15
SD	1				1
TN	2		10		12
TX	5		4		9
UT			2		2
VA	23		6		29
VT	3				3
WA	8		3		11
WI	6		5		11
WV	7				7
WY			1		1
TOTAL	**350**	**+**	**117**	**=**	**467**

*Banks under 500 shareholders who expressed concern about the rule in 2009-2010 ABA capital survey.

Source: HighlineFi, ABA.
Data as of 2Q2010. As of 9/9/2010.

WRITTEN STATEMENT OF
MARIANNE HUDSON, ANGEL CAPITAL ASSOCIATION

FOR THE
U.S. SECURITIES AND EXCHANGE COMMISSSION
2010 SEC GOVERNMENT-BUSINESS FORUM ON
SMALL BUSINESS CAPITAL FORMATION

NOVEMBER 18, 2010

Thank you for the opportunity to provide a statement during this important forum and provide recommendations for the SEC to consider in ensuring a strong angel capital market that helps small businesses start and grow.

I am Executive Director of the Angel Capital Association (ACA), the professional alliance of angel groups in North America, which includes 150 member angel groups in 44 states. More than 6,500 accredited angel investors belong to our member angel organizations. ACA is focused on building the skills of angel investors so that they are better mentor capitalists to start-up companies and on increasing the number of angels participating in high quality groups in the United States.

Angel Investors, Small Businesses, and the Economy

Before discussing regulatory recommendations, let me first talk about the importance of angel investors and the entrepreneurial firms they support through investment and mentoring.

Analysis by the U.S. Census Bureau and the Ewing Marion Kauffman Foundation in 2009 and 2010 found that businesses that were less than five years old created all of the net new jobs in our country over the last 25 years. The majority of these jobs came from innovative businesses that grew exponentially, with angel-backed company examples such as Google, Facebook, and Starbucks.

As our country thinks about job growth and building a healthy economy, we believe it is important to consider the best ways to ensure these early-stage innovative entrepreneurial businesses have access to the resources they need. Angels specialize in high-growth innovative businesses. These firms are financed in a number of ways, but 30,000 to 50,000 of them receive equity investment from angel investors each year.

We estimate that angel investors may be responsible for up to 90 percent of the outside equity raised by start-ups after the capital resources of their founders are exhausted. These firms rarely have the collateral to receive bank loans and they are generally too small and too young to receive venture capital.

The exact number of angel investors in the country is not known, but experts estimate that about 250,000 angels invest $20 to $30 billion per year in promising early-stage companies. Many angel investments are made by individual angels who invest $10,000 to $200,000 per company. A trend in our field is for individual angels to join together in formal angel groups to pool their expertise and capital to make total investments of $100,000 to as much as $2 million, per survey data from our membership. A large portion of the companies that receive angel group investment are in technology, clean tech, and life science fields.

The angel investors who participate in angel groups have built strong processes for evaluating and making investments and also for ensuring the survival and growth of their portfolio companies. All ACA member groups require that their member angels are accredited investors.

Recommendations Related to Angel Investing

We recommend several actions or decisions for the SEC to continue a healthy angel market for high growth startups after a good process of gathering facts and analyzing input from experts and participants. Many of our recommendations are related to the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, as we note that the SEC will need to make rules that assist in implementing the Act over the next several months.

We make these recommendations in the general context that some rules need to be made or updated quickly because the Dodd-Frank Act requires that, but then it is important to leave the Regulation D environment for angel investing as it is to assure a stable and common understanding of the requirements by small business issuers and angel investors. More angel investors will build their activity when they know the regulations are set and not subject to regular change.

Because of the impact angel investors and the companies they invest in have on our economy, we encourage the Commission to do everything in its power to ensure that angel investing in high-growth early-stage companies continues to be as easy and low-cost as possible. Regulation D angel financings should continue using the framework that has worked well for many years.

Accredited Investor Standards

Congress, particularly the Senate, was clear in its intent to ensure that the Dodd-Frank Act did not negatively impact angel investing and the small businesses in which they invest. As of today, the Web site of the Senate Banking Committee still includes a press release heralding amendments to the Act that "saved angel investing." We believe it is important to recognize this intent during the rule-making process on several issues:

Net Worth Threshold

In a compromise which ACA supported, the Dodd-Frank Act updated the net worth standard to be $1 million, not including the value of the primary residence of the investor. We believe, however, that small businesses would be best served by maximizing the number of accredited investors in the angel investor market. Our preference is to include equity owned in homes as part of the net worth calculation, if possible. To the extent the Commission can develop clear rules that don't punish individuals for negative value in their homes, (i.e., don't debit nonrecourse deficiencies of underwater mortgages from the calculation of net worth exclusive of the principal residence), we believe small businesses will be better off. The Commission may want to keep in mind that under the laws of many states, mortgage debtors are often not liable for such deficiencies. This would ensure that fewer angel investors who were active as angel investors just four months ago would lose their ability to make angel investments with the protections of Regulation D.

Annual Income Standard

We particularly note that the Senate compromise completely rejected increasing income requirements at this time. Earlier versions of the Dodd-Frank bill included a requirement to increase the annual income standard under the accredited investor definition for inflation, with most people understanding that the increase would track back to when the standard was set nearly 30 years ago. Based on most of the reports we read, this inflationary adjustment would have at least doubled the income threshold from $200,000 to $400,000. It was clear that such an increase would significantly reduce the number of angel investors and hurt innovative small businesses as a result. The final Act that is now law includes no inflationary increase for income.

ACA is aware that recommendations for increasing the income standard come up to the Commission every few years and it appears that such a request is being made in 2010. We highly recommend that no adjustments be made to the annual income standard.

Increasing the income standard for accredited investors for inflation would dramatically reduce the number of accredited angel investors at a time when the economy needs angel investors to support the early-stage companies that will create jobs. The exact decline depends on the framework used for determining inflation, but 2008 Internal Revenue Service data shows the potential for a very large decline in investors who meet the accredited investor definition based only on annual income. For instance, 3.4 million tax filers had income of $200,000 to $500,000 in 2008, while 16 percent of that number (578,000) had incomes of $500,000 to $1 million.

We believe the impact caused by the reduction in angel investors would be particularly hard on rural areas and the middle part of the country, where salaries and the cost of living are generally lower than on the east and west coasts. Angel investors are located in every state. Promising startups outside the coasts and major cities would have an even smaller pool of capital to draw upon than they do now.

Reviewing the Accredited Investor Definitions

As the Commission conducts studies and reviews in the future related to accredited investor definitions, Congressional intent must be considered. Under the Act, the Commission should conduct a review "determine whether the requirements of the definition … should be adjusted or modified for the protection of investors, in the public interest, and in light of the economy." ACA underscores ***"in light of the economy"***. In fact, our take is that the thresholds could be lowered for angel investors as more is learned about the companies that receive investment, the jobs that are created as a result, and the relative lack of fraud in angel investment.

As mentioned earlier in this statement, angel investors are one of the key funders of the early-stage companies that create all of the net new jobs in the United States. These jobs are critical for the health and growth of the American economy.

In addition, the angel investment arena has been virtually complaint free in terms of fraud. While state securities regulators have mentioned many concerns about fraud in private placements, none of the examples they used were for angel investment. As some of our legal advisors note, in the rare cases where an angel investment is tainted by issuer fraud, the startup ecosystem and investor remedies under federal and state law are more than adequate to punish the bad actors. The startup ecosystem, made up of investors, entrepreneurs, attorneys, accountants, university faculty, and economic development professionals, has a way of communicating and learning from each other to ensure bad actors are eliminated from current and future investments.

Further, we do not see any correlation between amount of income and wealth compared to sophistication of an angel investor. In a review of best practices for angel investment, ACA finds that the best angels are those who understand start-ups, have a risk tolerance for angel investment, and are willing to put in the time to evaluate angel investment opportunities and mentor the entrepreneurs in whom they invest.

One of the ACA Board members and I believe the accredited investor definitions that were set in 1982 were too high and that just recently they have become more appropriate for our economy and angel investment. This has allowed more angels to participate, leading to the launch of more innovative companies, and the creation of more jobs.

General Solicitation Rules

As the Internet and social networking have changed how the world does business, the Commission may want to consider changes to rules for general solicitation and advertising of angel investment opportunities. It is currently fashionable to use Twitter, list serves, postings on social networks and other online means to seek deals or investors. Initiatives like AngelList are attracting well regarded angel investors who are promoting their interest, generally in startup financing, to find candidates for their investment dollars.

In this new world of communication, it makes sense to consider changes to the general solicitation rules. One way to do this is to take away the focus of the rules off of “the means of communication, the chains of introduction, and the manner of the medium” in Rule 504. Instead, the SEC might consider whether, regardless of how an individual heard about the deal, that investor can fend for himself or herself – i.e. the investor is accredited. This approach could include the basic concept that “no communication is a general solicitation if reasonable means or a screening process is used to ensure that such communication is directed only to accredited investors.”

Related to this issue is addressing the need of angel investors interested in exiting their investments in the secondary market, via listing their shares on secondary trading platforms. Many angels hope that no new securities regulations are developed that crimp the ability of private companies to help arrange liquidity for angel investors by listing their shares on private securities exchanges.

Thank you for the opportunity to share these ideas with the Commission. We appreciate the SEC’s focus on getting transparent feedback from the public on regulatory issues. The Angel Capital Association is focused on promoting strong angel investment practices that help start and grow great companies and that continue to protect investors and small company issuers. If we can provide more information or clarity on any of the above issues, we would be pleased to do so.

fei
financial executives international
www.financialexecutives.org

COMMITTEE ON PRIVATE COMPANY-POLICY

November 17, 2010

Gerald J. Laporte
Chief, Office of Small Business Policy
Division of Corporate Finance
Securities and Exchange Commission
100 F Street NE, Room 3650
Washington, D.C. 20549

Dear Mr. Laporte:

We are providing this statement on behalf of the Committee on Private Company-Policy ("CPC-P") of Financial Executives International ("FEI") in response to the Security and Exchange Commission's ("SEC") Government-Business Forum on Small Business Capital Formation. CPC-P appreciates the opportunity to express our views regarding ways for government to work with privately-held and family owned businesses to improve the environment for small business capital formation.

FEI is a professional association representing the interests of more than 15,000 chief financial officers, treasurers, controllers, tax executives, and other senior financial executives from over 8,000 major companies throughout the United States and Canada. FEI represents both the providers and users of financial information. CPC-P is a national committee that formulates policy for FEI in line with the views of the membership. This statement represents the views of the CPC-P.

Protecting Privately-held and Family Owned Business' Access to Capital: Since the financial market meltdown of 2008, private companies have felt the impacts of significant contraction of liquidity in the traditional financial sector, with the banks having their capital bases severely shrunk and credit standards tightened by the U.S. government and associated oversight agencies. Private companies finance most of their capital needs through after tax cash flow and traditional bank borrowing. When cash flow is reduced or restricted due to increased taxes or tighter lending rules and regulations, it limits private companies from generating jobs, making investments or performing research and development. Additionally, the uncertainty surrounding the existence and reach of certain tax policies prevents private companies from being able to plan and commit capital which stifles growth in an already soft economy.

Therefore, a number of impediments that private companies face when attempting to access capital would be lessened if Congress and the SEC would work to: a) enhance policies that increase access to capital via the development of more competitive U.S. tax policies for privately-held companies that promotes and sustains technological innovation, supports U.S. manufacturing and investment in inventory, encourages savings through business investment, and b) provide reasonable access to traditional banking credit markets by insuring that policies and regulations are consistently aligned.

FEI supports pro-growth policies and recommends the following principles to assist with privately-held business capital formation:

- *Enhance the global competitiveness of U.S. companies.* The U.S. has the second highest corporate tax rate among industrialized countries. A competitive effective corporate income tax rate is needed for the U.S. to remain competitive in the global marketplace and to promote continued U.S. economic growth and job creation.

  The relatively high U.S. tax rate creates a long-term competitive disadvantage for U.S.-based businesses. High corporate tax rates make domestic investment less attractive and create a competitive pricing advantage for companies with lower corporate income tax rates. Over time companies in lower effective tax rate environments achieved both higher real wage levels and economic growth rates. We encourage policymakers to lower rates and restore the U.S. corporate tax system to a competitive position.

  While many businesses pay their taxes through the corporate tax system, a significant portion of small and family owned businesses are subchapter "S" corporations or partnerships, and the owners pay their business taxes on their personal tax return. As a result, provisions of the personal tax code, such as the personal Alternative Minimum Tax (AMT), personal income tax rates and the estate tax have an impact on small businesses. Further, any privately-held business of substance will generate taxable income allocable to its owners plus earned income in excess of the $200,000/$250,000 putting them in the highest tax rate classification. In most cases, the allocated tax income less the taxes on such income is retained in the business to meet capital needs. It is important to U.S. job growth to extend the current tax rates enacted in 2001 and 2003 and index the AMT to inflation.

  It is also essential to recognize that the current estate tax system penalizes privately-held businesses by creating a material liquidity event at the time of the owner's death. This liquidity event causes significant disruption in those businesses with many ceasing to exist and destroying capital and jobs. At a best case basis, capital which could otherwise be used to maintain and grow jobs and produce output is diverted from the business to satisfy the death taxes. We believe the best policy is to fully repeal the estate tax. However, we understand that full repeal of the estate tax may not be possible with current budget deficits, so we support more equitable relief that does not unduly penalize going concerns that wish to survive the death of an owner.

  In addition, the Interest Charge Domestic International Sales Corporation (IC-DISC) is an important tax provision that was created by Congress over 20 years ago to improve the competitiveness of U.S. exporters in the global marketplace. The US economy increasingly relies on small exporters for economic growth, and small and closely-held exporters rely upon the IC-DISC tax provision to grow their businesses and employee rosters. Therefore, CPC-P recommends that the IC-DISC provision should be protected in any future tax reform efforts.

- *Promote and Sustain Technological Innovation.* Technological developments are an important component of economic growth, productivity and high paying jobs. Tax policy considerations provide a historic opportunity to make permanent the research and development (R&D) tax credit. The credit also should be strengthened by increasing the Alternative Simplified Credit. The R&D credit spurs innovation and economic growth and creates high-wage American jobs. A permanent extension of the strengthened credit would enhance its incentive value by providing the certainty that would permit companies to factor it into their long range project planning.

- *Support U.S. Manufacturing and Investment in Inventory.* The last-in, first-out (LIFO) inventory accounting method has been expressly permitted in the tax law for 70 years and has a solid foundation in financial accounting and economic theory. LIFO encourages companies to maintain and grow their investment in inventory which in turn furthers job creation. Moreover, LIFO accurately reflects income for tax purposes because current revenues are matched against current costs.

  The repeal of LIFO as a method of inventory accounting would have an adverse effect on companies in many different industries, including general manufacturing, publishing, retail and textiles. In some cases, companies might be forced to raise significant equity or debt capital in order to maintain their current financial position if LIFO were repealed. We encourage policymakers to preserve LIFO for American businesses that maintain inventories.

- *Encourage Savings Through Business Investment.* Business investment is another important driver of economic growth and jobs. However, the lack of available capital has made it increasingly more difficult for privately-held businesses to invest money in their own company. For example, various business leaders have recently floated the idea of providing companies tax credits or a tax holiday over a specified length of time to businesses that make capital investments in the U.S. by building or expanding a new facility. Ideas like this will not only further the value of the capital investment for companies, but it will also create an environment where workers are hired and the economy is stimulated.

- *Avoid Tax Increases Targeted at Specific Corporate Structures.* Recently, there was an effort in Congress to require many S corporations to begin paying employment taxes on all active shareholder, non-wage income. Since shareholders in S corporations are taxed even when income is not actually distributed, this provision would have reduced capital available to S corporation owners to create jobs and invest in their businesses. This particular provision is just the latest example of efforts to alter established tax law pertaining to the most popular corporate structure in the U.S. Nearly 62 percent of all business entities are set up as S corporations. Therefore, they are one of the main drivers of job and economic growth. This is why CPC-P recommends that the rules pertaining to S corporations be simplified and greater flexibility be provided to the owners of these vital corporate structures.

- *Review of Costly and Burdensome Policies.* Privately-held companies continue to be concerned with the overly prescriptive and costly regulations that are required of them by the U.S. Federal government. A recent example of additional burdensome requirements asked of privately-held companies is the 1099 reporting requirement found in the *Patient Protection and Affordable Care Act*. CPC-P agrees that finding practical ways to reduce the tax gap and prevent waste, fraud and abuse is beneficial. Nevertheless, the new 1099 reporting requirement is estimated to increase the man-hours spent on complying with the new requirements tenfold. The time and money needed to meet this new requirement diverts resources away from providing additional value to businesses which is needed to grow the economy. Further, we are concerned with the premise behind this reporting requirement that commercial transactions involving the sale and purchase of goods and certain services are not properly accounted for as gross receipts on the books of the seller. Thus, CPC-P supports the full repeal of the 1099 reporting requirement.

CPC-P also understands the critical needs of privately-held companies to obtain cost-effective professional assistance in: a) raising private capital prior to an initial public offering (IPO), and b) transferring ownership of their businesses via purchases, sales, or exchanges of stock, mergers, and other acquisition structures, in order to continue their growth and create new jobs. As a result, CPC-P supports efforts undertaken by the American Bar Association ("ABA") and the Alliance of Merger and Acquisitions Advisors ("AM&AA") to clarify and simplify laws and regulations impacting the securities-related activities of private placement brokers and M&A advisors/intermediaries. CPC-P recommends that the SEC adopt rules as first recommended by the ABA in its Report and Recommendations of the Task Force on Private Placement Broker-Dealers, dated June 20, 2005, and subsequently adopted/recommended by the SEC Government-Business Forums on Small Business Capital Formation of 2006, 2007, 2008 & 2009. Private Placement Brokers (PPB) and M&A Brokers (MAB) are important to small privately-held companies, because current rules pertaining to licensed brokers make the cost of raising pre-IPO capital and mergers and acquisitions too prohibitive for many private companies, effectively disallowing such firms from having access to these important sources of early stage funding.

CPC-P would welcome any opportunity to discuss these proposals or to provide additional information. CPC-P staff and business leaders from FEI's member companies are available to speak on any of these issues. If you or your staff should have any questions, feel free to contact Chris Graham, Manager of Government Affairs at 202-626-7809 or cgraham@financialexecutives.org.

Sincerely,

Mark Smetana
Chair
FEI Committee on Private Company-Policy

INDEPENDENT COMMUNITY BANKERS of AMERICA®

November 18, 2010

Gerald J. Laporte
Chief, Office of Small Business Policy
Division of Corporation Finance
U.S. Securities and Exchange Commission
SEC Office of Small Business Policy
100 F Street, N.E., Room 3650
Washington, D.C. 20549-3628

Re: ICBA's Comments to the SEC Government-Business Forum on Small Business Capital Formation

Ladies and Gentlemen:

The Independent Community Bankers of America[1] ("ICBA") represents nearly 5,000 Main Street community banks. Throughout the financial regulatory reform process, ICBA has supported strong reforms that hold accountable Wall Street and systemically dangerous financial firms and unregulated entities whose risky behaviors led to the financial crisis. The present financial and economic crisis clearly demonstrates that reform of Wall Street is needed to prevent this kind of catastrophe from ever again harming our nation's taxpayers and our communities. In passing the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd-Frank Act"), Congress created an important precedent that recognizes two distinct sectors within the financial services spectrum-Main Street community banks and Wall Street megabanks. Congress' willingness to differentiate between community banks and large banks in important areas such as the FDIC assessment base, stricter oversight of too-big-to-fail institutions and protection for trust preferred securities will save community banks money and allow them to better compete, serve their communities and promote economic growth in their markets. These provisions of the Dodd-Frank Act establish the congressional policy for

[1] The Independent Community Bankers of America represents nearly 5,000 community banks of all sizes and charter types throughout the United States and is dedicated exclusively to representing the interests of the community banking industry and the communities and customers we serve. ICBA aggregates the power of its members to provide a voice for community banking interests in Washington, resources to enhance community bank education and marketability, and profitability options to help community banks compete in an ever changing marketplace.

With nearly 5,000 members, representing more than 20,000 locations nationwide and employing nearly 300,000 Americans, ICBA members hold $1 trillion in assets, $800 billion in deposits, and $700 billion in loans to consumers, small businesses and the agricultural community. For more information, visit ICBA's website at www.icba.org.

tiered regulation that recognize Main Street community banks as having a different banking model from large and internationally active institutions.

Now that the Dodd-Frank Act has become law, ICBA will work to fix problem provisions in the legislation and minimize any additional burdens on community banks as regulations are written and implemented so community banks can continue to serve the needs of their local customers and do not continue to pay the price for an economic crisis they did not cause. While the many new banking regulations that will result from the mandates set forth in the Dodd-Frank Act are a primary concern of community banks, the rules of the U.S. Securities and Exchange Commission (the "Commission") applicable to publicly traded financial institutions are also vitally important as they have a direct impact on the small business capital formation. With the future advent of new, more stringent regulatory capital requirements required by the Dodd-Frank Act and the implementation of capital proposals of the Basel Committee on Banking Supervision ("Basel III"), many of the nation's community banks will be forced to access the capital markets over the next several years if they are to continue to meet the needs of their local communities and serve as an engine for economic recovery and growth. At this critical time, it is more important than ever that the rules of the Commission follow the lead established by Congress and differentiate between large banks and community banks in instances where new disclosure requirements could unduly burden community banks and other small issuers and inhibit small business capital formation. The Commission's rulemaking to implement the corporate governance provisions of the Dodd-Frank Act provide the Commission with a first opportunity to ensure that the capital formation process remains open to community banks.

Corporate Governance Requirements of the Dodd-Frank Act

The Dodd-Frank Act includes several corporate governance provisions, each of which could have a disproportionate burden on publicly-traded community banks and other smaller reporting companies.

1. Separate Votes on Certain Compensation Matters. Section 951 of the Dodd-Frank Act requires public companies with a class of securities registered under the Securities Exchange Act of 1934, as amended (the "Exchange Act") to give their shareholders a "say-on-pay" by including a separate, non-binding proposal allowing shareholders to vote on the compensation of executive officers at least once every three years, beginning with the first meeting of shareholders held after January 21, 2011. Section 951 of the Dodd-Frank Act also requires every proxy statement seeking a shareholder vote to approve an acquisition, merger, consolidation or proposed sale of all or substantially all of a reporting company's assets to include a to-be-prescribed form of disclosure regarding any agreements or understandings with any named executive officer of the seller concerning any type of compensation (whether present, deferred or contingent) that is based on or otherwise relates to the transaction and the aggregate total of such compensation. The proxy statement must also include a separate shareholder resolution to approve such arrangements, understandings or compensation as disclosed, unless they have been the subject of a prior annual, biennial or triennial say-on-pay vote.

As with many provisions of the Dodd-Frank Act, many of the specifics of what must be included in "say-on-pay" and "golden parachute" proposals were delegated to the Commission to handle through its rulemaking process. The Dodd-Frank Act expressly permits the Commission, by rule or order, to exempt an issuer or class of issuers from the requirement to include say-on-pay and golden parachute votes in certain proxy statements and directs the Commission to take into account whether these requirements "disproportionately burden small issuers."[2]

Despite this directive, in its proposed rule, the Commission has proposed not to exempt smaller reporting companies from the say on pay or golden parachute votes, stating that it does "not believe our proposed rules would impose a significant additional cost or disproportionate burden upon smaller reporting companies**."[3] ICBA strongly disagrees with this conclusion and urges the Commission to reconsider this position in the final rule.** The Commission has acknowledged that "compensation arrangements of smaller reporting companies typically are less complex than those of other public companies."[4] In doing so, the Commission has established scaled disclosure requirements set forth in Item 402 of Regulation S-K for smaller reporting companies and do not require smaller reporting companies to provide a Compensation Discussion and Analysis or CD&A. **Despite the Commission's preliminary conclusion to the contrary, the fact remains that requiring separate votes on say on pay and golden parachutes *does* add significantly to the already onerous disclosure burden that publicly-traded community banks and other small issuers face.** In addition, the proposed rules create a new requirement to quantify golden parachute arrangements in merger proxies even though smaller reporting companies are not required to provide this quantification under current Item 402(q) in annual meeting proxy statements.

2. New Executive Compensation Disclosure Requirements. Section 953 of the Dodd-Frank Act directs that the Commission require companies to provide additional disclosures with respect to executive compensation. In particular, Section 953 requires the Commission to:

- *Pay versus Performance*: amend its disclosure rules for proxy statements to require a disclosure of the relationship between compensation actually paid to named executive officers and the financial performance of the issuer, taking into account changes in stock price, dividends and other distributions;
- *Internal Pay Equity*: amend its regulations to require that any prospectus, proxy statement or annual report filed with the Commission include a disclosure of (a) the median of the annual total compensation of all employees of the issuer (other than the chief executive officer), (b) the annual total compensation of the chief executive officer, and (c) the relationship between the foregoing amounts; and

[2] See Section 14A(e) of the Exchange Act.
[3] SEC Release Nos. 33-9153; 34-63124; File No. S7-31-10 dated October 18, 2010.
[4] See Executive Compensation and Related Person Disclosure, Release No. 33-8732A (Aug. 29, 2006) [71 FR 53158] (hereinafter, the "2006 Executive Compensation Release") at Section II.D.1. The scaled compensation disclosure requirements for smaller reporting companies are set forth in Item 402(1) [17 CFR

- *Hedging By Employees and Directors*: amend its proxy disclosure rules for annual meetings of shareholders of reporting companies to require a disclosure regarding whether any employee or member of the board of directors, or their designees, is permitted to purchase financial instruments (such as prepaid variable forward contracts, equity swaps, collars and exchange funds) that are designed to hedge or offset any decrease in the value of equity securities of the issuer granted by the issuer as compensation or held directly or indirectly by the employee or director.

These new requirements would require complex financial calculations and, in the case of Internal Pay Equity compensation disclosure, potentially significantly expand the universe of persons subject to, indirectly or directly, executive compensation disclosure requirements. In addition, it is unlikely that officers or directors of community banks would be engaged in hedging activities in connection with their compensation packages. As discussed in significant detail above, the Commission has acknowledged that compensation arrangements of smaller reporting companies typically are less complex than those of other public companies, has established scaled disclosure requirements set forth in Item 402 of Regulation S-K for smaller reporting companies and does not require smaller reporting companies to provide a CD&A.[5]

3. Clawback Policies. Section 954 of the Dodd-Frank Act expands Sarbanes-Oxley Act's rules regarding clawbacks of executive compensation by requiring that listed companies be required to disclose their policies for incentive-based compensation that is based on information required to be reported under the federal securities laws. It also requires that listed companies' policies require the recovery from any current or former executive officer (regardless of culpability) of any incentive-based compensation (including stock options awarded as compensation) received by the executive during the three-year period preceding the date on which the issuer is required to prepare an accounting restatement due to any material non-compliance of the issuer with any financial reporting requirements under the securities laws, based on erroneous data, to the extent the compensation exceeds the amount that would have been paid under the accounting restatement.

Despite the fact that they had nothing to do with the financial crisis, community banks are already having great difficulty in attracting and retaining qualified officers given the perceived hostile regulatory environment and the prospect of FDIC litigation and personal liability for officers and directors of failed banks. Officers of community banks generally earn compensation far, far less than larger institutions. **Given this lower compensation level, the enhanced prospect of a compensation clawback would make it even more difficult for community banks to attract and retain qualified officers**. **The clawback provisions could also make privately held community banks reluctant to become publicly-traded companies**

[5] See Executive Compensation and Related Person Disclosure, Release No. 33-8732A (Aug. 29, 2006) [71 FR 53158] (hereinafter, the "2006 Executive Compensation Release") at Section II.D.1. The scaled compensation disclosure requirements for smaller reporting companies are set forth in Item 402(1) [17 CFR

and, in doing so, inhibit their access to capital at a time when banks need capital most.

4. Proxy Access. Section 971 of the Dodd-Frank Act affirmed the Commission's authority to promulgate a so-called "proxy access" rule pursuant to which shareholders would be allowed to use the company's proxy statement to nominate candidates to the board of directors. New Rule 14a-11, the centerpiece of proxy access, was finalized by the Commission on August 25, 2010 and gives shareholders or shareholder groups that have collectively held both voting and investment power of at least 3% of a company's voting stock for three continuous years the right to use a company's proxy statement to include their nominees for up to 25% of the company's board of directors (but no less than one director).[6] While Section 971(c) of the Dodd-Frank Act specifically provided the Commission with the authority to exempt an issuer or class of issuers from requirements adopted for the inclusion of shareholder director nominations in company proxy materials and instructed the Commission to take into account whether such requirement for the inclusion of shareholder nominees for director in company proxy materials disproportionately burdens small issuers, the Commission chose to delay the implementation of the new rule until November 15, 2013 for smaller public companies rather than exempting such issuers from the requirements.[7]

Despite the fact that they had nothing to do with the financial crisis, community banks are already having great difficulty in attracting and retaining qualified directors given the perceived hostile regulatory environment and the prospect of FDIC litigation and personal liability for directors of failed banks. The enhanced prospect of a proxy contest would make it even more difficult for community banks to attract and retain qualified directors in the current challenging economic environment at a time when the industry needs them most. As is also the case with respect to the clawback provisions, it could also make privately held community banks reluctant to become publicly-traded companies and, in doing so, inhibit their access to capital at a time when banks need capital most to rebuild the strength of their balance sheets.

ICBA believes that the discussion above presents a compelling case that the corporate governance provisions of the Dodd-Frank Act disproportionately burden community banks and other small issuers. Accordingly, the Commission should use the authority expressly delegated to it by Congress to exempt community banks from such corporate governance provisions through its rulemaking authority. The Commission has had the wisdom and courage to differentiate between types of issuers before when it postponed the effectiveness of Section 404(b) of the Sarbanes-Oxley Act for non-accelerated filers. The Commission's decision was ratified by Congress in Section 989G of the Dodd-Frank Act which added a new Section 404(c) to the Sarbanes-Oxley Act providing that Section 404(b) of the Sarbanes-Oxley Act shall not apply with respect to any audit report prepared for an issuer that is neither an accelerated filer nor a large accelerated filer as defined in Rule 12b-2 under the Exchange Act. The Commission adopted amendments to its rules and forms to conform to this new Section

---

[6] SEC Release Nos. 33-9136; 34-62764; IC-29384; File No. 57-10-09 dated August 25, 2010.

404(c).[8] The Commission should not hesitate to utilize the discretion that Congress has explicitly delegated to it to minimize the regulatory burden on publicly-traded community banks. Doing so would significantly enhance the capital formation process.

Shareholder Thresholds for Registration and Deregistration Under the Exchange Act

As discussed above, with the future advent of new, more stringent regulatory capital requirements required by the Dodd-Frank Act and the implementation of Basel III, many of the nation's community banks will be forced to access the capital markets over the next several years if they are to continue to meet the lending needs of their local communities and serve as an engine for economic recovery and growth. In the discussion of exempting community banks from many of the new corporate governance and executive compensation provisions of the Dodd-Frank Act set forth above, we made the case that the imposition of new requirements would disproportionately burden publicly-traded community banks and other small issuers. We also made the case that the new requirements could make privately held community banks reluctant to become public companies and thereby inhibit the capital formation process. But the Commission can do more than use its delegated rulemaking authority to limit the applicability of new and burdensome requirements on publicly-traded community banks and other small issuers. **It can also proactively take steps that would enhance the access to capital for thousands of companies around the country (including but not limited to community banks) by updating the shareholder threshold above which companies must register a class of securities under Section 12(g) of the Exchange Act from the current 500 to 2,000 and increasing the shareholder threshold below which companies may de-register a class of securities under Section 12(g) of the Exchange Act to 1700.**

The current 500 shareholder threshold for registration is artificially low and deters many community banks from raising capital for fear that they will exceed the 500 shareholder threshold, be compelled to register under the Section 12(g) and incur the significant burden and expense associated with being a public company (some of which are discussed earlier in this letter). Unlike the Wall Street megabanks, community banks do not have the expense platform to absorb these costs and, as such, life as a public company is disproportionately expensive for community banks compared to larger institutions. Likewise, increasing the shareholder thresholds for deregistration would free many publicly-traded community banks from the significant cost of Exchange Act compliance, thereby making them more profitable, better able to raise additional capital when needed, and enhancing their safety and soundness. Many community banks would save annually over $100,000 if the shareholder threshold was raised.

It is important to note any change in the shareholder thresholds would not harm investors. Community banks, like all banks, are part of a highly regulated industry governed by numerous federal and state laws and regulations. Each community bank is supervised by one or more federal regulators at the bank and holding company levels, and

[8] SEC Release Nos. 33-9142; 34-62914 dated September 15, 2010.

in the case of state-chartered banks, at least one state regulator as well. Every community bank files detailed publicly available financial reports with one or more federal regulators each quarter. All banks are required to make annual reports, including audited financial statements, available to their customers and investors.

Updating the shareholder threshold requirements under the Exchange Act would have a tremendously positive impact on capital formation. Such a change would also be consistent with the findings of this forum's November 20, 2008 Final Annual Report, which recommended that the Commission "provide relief to smaller banks and bank holding companies by increasing the Section 12(g) registration thresholds for those entities." The shareholder thresholds have not been updated since 1964. In this critical time, it is high time to change them.

ICBA appreciates the opportunity to comment on the SEC's recent proposals under the Dodd-Frank Act and to make recommendations on ways to improve small business capital formation. If you have any questions about our letter, please do not hesitate to contact me at 202-659-8111 or Chris.Cole@icba.org.

Sincerely,
/s/ Christopher Cole

Christopher Cole
Senior Vice President and Senior Regulatory Counsel

2010 SEC Government-Business Forum on Small Business Capital Formation

November 18, 2010

Jim Jaffe
President and CEO
National Association of Seed and Venture Funds

Introduction

Chairman Paredes, Director Cross, Chief Laporte and representatives from the innovation capital organizations, thank you for the opportunity to address this Forum today.

Good morning. My name is Jim Jaffe and I am the President and CEO of the National Association of Seed and Venture Funds, located in Philadelphia, PA. Our association represents over 170 national and international organizations and has over 750 individuals engaged in seed and early-stage innovation capital creation. We are an organization of innovation capital leaders: private, public and non-profit organizations who are committed to building their local, regional and state economies by investing in local entrepreneurs - we are focused on Advancing Innovation Capital.

NASVF began in 1993 as an ad-hoc group of practitioners seeking the best models to encourage capital formation in their states, particularly for new technology ventures. These founders continued to meet each year and in 1997 formally incorporated the group as a not-for-profit named the National Association of State Venture Funds. The name was changed in 2000 to reflect the Association's expanding service to private sector funds and programs.

I want to thank the SEC and this forum for providing me the opportunity to comment at today’s forum and the importance of small business capital formation in the U.S. NASVF’s membership represents the seed and early-stage capital investment time period. These investments range from $100,000 - $2,500,000. This funding is provided by our members who represent:

- Individual Angel investors
- Angel groups
- Early stage Venture Capital organizations

- Government financed State and regional technology-based economic development organizations
- Federal government programs including Small Business Innovation Research and Small Business Technology Transfer (SBIR/STTR), Partnership Intermediary Agreements (PIAs) and other resources for early-stage companies including Cooperative Research and Development Agreements (CRADAs).
- Incubators, Accelerators, Service Providers, and R & D Companies

My colleagues joining me today: Ms. Hudson from the Angel Capital Association represents the same stage of investment as NASVF while Mr. Heeson's organization represents the mezzanine and later stages of investment. Each of our representative organizations have similar objectives; providing the much needed innovation capital to assist emerging technology-based enterprises in commercializing new technologies; create and retain high wage jobs and making America more competitive.

POSITION AND EXAMPLES OF INNOVATION PROGRAMS

We at NASVF are implementing several new initiatives that I would like to share with this forum, with a focus on activities with the U.S. Department of Agriculture, and the Agricultural Research Service (ARS) – the principal intramural research agency of USDA.

The annual research budget for ARS is over $1.2 billion. Research is conducted by 2,500 scientists in 21 National Programs at 100 locations throughout the U.S. Under the Stevenson-Wydler Act of 1980, and the Federal Technology Transfer Act of 1986, ARS is responsible for determining how best to commercialize the technologies that are developed by these scientists.

In realizing that the early-stage investment continuum was dealing with a shortage of start-up or seed funds, our national organization along with 8 regional technology-based economic development organizations formed the Agricultural Technology Innovation Partnership (ATIP) sponsored by the USDA Agricultural Research Service. The goal of this partnership is to strengthen and enhance opportunities for private sector partnerships with the ARS. This is accomplished through the licensing of ARS technologies, and/or through establishing Cooperative Research and Development Agreements (CRADAs) with companies that can successfully commercialize ARS innovations. The overarching goal of ATIP is to increase the number of private sector firms who invest in ARS technologies and to increase the impact and recognition of ARS research programs.

Membership in ATIP is formalized with a Partnership Intermediary Agreement executed by the Office of Technology Transfer on behalf of ARS. PIAs are specifically authorized by federal statute as a technology transfer instrument. Currently, only the Department of Defense and ARS are utilizing PIAs in a strategic manner.

There are nine economic development partners nationwide (eight have seed, angel, and early-stage investment programs) including NASVF that have chosen to enter into a technology transfer partnership with ARS as part of the Agricultural Technology Innovation Partnership program network. The Partners include:

- Maryland Technology Development Corporation
- Mississippi Technology Alliance
- Wisconsin Security Research Consortium
- National Association of Seed and Venture Funds
- Georgia Research Alliance
- California Association for Local Economic Development
- Kansas Bioscience Authority
- Center for Innovation at Arlington, TX

ATIP provides an effective network for the ARS, with each member serving as a conduit to a greater number of local state, or regional organizations, including venture capitalists and angel investors.

Technically, each of the partners in this network, are referred to as Innovation Intermediaries. The definition of an Innovation Intermediary is "An Organization at the Center of the region's, state's or country's efforts to align local technologies, assets and resources to work together on advancing Innovation."

The goal of the ATIP Network is to develop a seed fund for the partners to deploy through a 1 to 1 match. While state and regional economic development funding has been reduced by 30%-50% during this economic crisis, we want to attract new investors to this unique and rewarding investment opportunity.

NASVF works with an Innovation Coalition, a group of international organizations committed to promoting, advocating and communicating the benefits of innovation. The Innovation Coalition is a collaborative group of associations that supports each part of the continuum for commercializing university research to create companies that create jobs. The goal is to garner a better understanding of each other's missions and to work collaboratively to leverage resources and activities of these associations to maximize the impact of each and ultimately maximize job creation in America. Members include:

- Angel Capital Association - ACA (who is represented here today)
- National Business Incubator Association - NBIA
- Association of University Research Parks - AURP
- Association of University Technology Managers - AUTM
- State & Science Technology Institute - SSTI
- National Association of Small Business Investment Companies - NASBIC
- Community Development Venture Capital Alliance - CDVCA
- Association of University Research Parks - AURP
- Technology Councils of North America - TECHNA

Besides the lack of early-stage financing, there are several emerging tax credit issues that I would like to address.

ANGEL TAX CREDIT

The National Academies have cautioned that "without high-quality, knowledge-intensive jobs and the innovative enterprises that lead to discovery and new technology, our economy will suffer and our people will face a lower standard of living."

Our trading partners around the globe recognize the long-term value of R&D and have moved aggressively to implement generous and permanent tax policies that attract these vital investments to their shores.

The membership of the NASVF commends thoughtful application of lessons learned in modeling the Angel Investment Tax Credit legislation. Currently, 21 states have enacted legislation to enable Angel investors to take advantage of an innovative method for providing the much-needed capital for early-stage companies. NASVF believes that tax credit for investing in qualified early stage companies is crucial to enhancing the local and regional entrepreneurial business environment. Two examples are from Wisconsin and Minnesota:

- Wisconsin Act 255 provides tax incentives for investors in early stage companies. This has created a healthy angel community, which helps sustain that region's innovative early-stage companies.
- Minnesota's Angel Tax Credits provide incentives to investors or investment funds that finance startup and emerging companies focused on high technology or new proprietary technology. This Angel Tax Credit:
    - Provides a 25-percent individual income tax credit for qualified investors
    - Is refundable. Non-Minnesota residents, including residents of foreign countries, are eligible for the credit
    - Allows a maximum credit of $125,000 per year per individual
    - Allows a maximum credit of $250,000 for those married and filing jointly

NASVF believes that every effort should be made to take advantage of lessons learned in order to build an effective tax policy that helps sustain local and regional economic improvement on a national basis.

We urge a comprehensive legislative initiative regarding angel investor tax credits, with specific attention to the areas of immediate behavioral reward, venture eligibility, and investment eligibility.

IMPACT

Incentives must reward changed behavior, and to benefit our current economy, that behavior should change immediately. An incentive to invest in early stage companies must be one that encourages immediate action. To do that, the incentive must have an expiration date and be of a high enough value to warrant action. We recommend a five-year term on the credit; with a three-year carry forward/ carry back provision. A 25 – 30 percent credit for the total investment would elicit action, and the investment should be held for three years or the tax credit could be recaptured (with the exception of a liquidation of the business). Alternatively, a 10 percent credit awarded every year for the first three years of investment would assure patience in exiting and multiple years of capital investment.

VENTURE ELIGIBILITY

Care should be taken to define the types of ventures that would be eligible for the investor to receive the credit. We recommend qualifying such ventures as per the exclusion 1202 (e) (3) in the IRS code, as well as excluding ventures that are shell companies, real estate or life style businesses.

INVESTMENT ELIGIBILITY

Legislation should also define how the investment funds might be used if they are to qualify for a tax credit. We recommend excluding investments to repurchase or redeem shares, funds invested by family members, and capping investments to $2 million per taxable year and with a maximum in any one venture capped at $1 million.

CLOSING

Supporting and encouraging angel investment will allow local businesses to create high-skill, high-wage jobs, resulting in a positive economic impact in local, regional, states' economic growth. We support proper legislation that rewards immediate investing in qualified early-stage ventures. The ATIP partnership program and the Innovation Coalition are two of many new and innovate initiatives that we at NASVF are engaged in to "move the needle" that will hopefully produce new and additional innovation capital for America's emerging technology-based enterprises. In closing, I strongly support the national Angel Investment Tax Credit legislation, as it is an extremely important component of America's Innovation program portfolio.

I would like to thank you for the opportunity to present my view to this Forum on behalf of the board and membership of NASVF.

NASBIC
America's Small Business Partners

Small Business Investor Alliance
Growing the Economy One Small Business at a Time

November 15, 2010

Gerald J. Laporte
Chief, Office of Small Business Policy
Division of Corporation Finance
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549-3628

Protecting the Ability of Private Equity to Provide Capital to Small Businesses

Private equity investment in small businesses plays an important role in creating jobs and in growing businesses. The small business private equity continuum that spans from angel investors, seed funds, venture funds, growth funds, Small Business Investment Companies (SBIC), mezzanine funds, to transition/change in control funds are all private equity that directly invest in domestic small businesses. Not one element of this continuum, or even the entire bloc collectively, poses any systemic risk – none. None of these fund types were a contributing factor to the financial meltdown. To the contrary, these small business investors helped save thousands of small businesses and create new ones. Small business funds provide more than capital. They provide expertise, strategic counsel, management development, and business networking to which the small business owners would otherwise never have access.

Small business investing requires, and in fact thrives on, business and economic risk. Business and economic risk are healthy, manageable, and benefit the economy. Political and regulatory risks, particularly the risk of unintended consequences of new regulations that were designed to target systemically significant entities, pose a real threat to the viability of small business investors and the entrepreneurs they foster. While nothing in the small business private equity continuum contributed to the financial meltdown, these funds are now at risk of taking a disproportionate share of the regulatory burden. As regulators sort through the thousands of pages of Dodd-Frank and write thousands of new pages of regulations to interpret this complex and expansive statute, we would implore you to look not only at the aggregate impact of your actions, but to specifically focus on the real world impacts on domestic small businesses and the funds that provide capital to them – capital that is not and will not be available from banks. We understand the societal imperative to move away from excessive risk for large systemically critical institutions. However, if the new regulatory regime damages the ability of "non-systemic" investors to risk their capital in small businesses, then small businesses and the entrepreneurs who create them will be the ones who ultimately pay the price. The regulatory burdens that a small fund can endure are very different from what a large fund can endure.

You will hear from other associations about their respective investment classes, but take a moment to look at SBICs and lower middle market funds. These private equity funds are set up as partnerships, commonly with a 10 year life span. The partnership nature of these funds aligns the interests of the general partners (fund managers) with the limited partners investing in them. In almost all cases, the "carried interest" (the fund managers' share of the profits) is contingent on meeting an agreed upon profit target, ensuring pay for performance. The limited partners in small business private equity funds can be wealthy individuals (accredited investors), but more commonly are institutional investors. These institutional investors have teams of professionals that screen fund managers, to ensure that they are dealing with the best management teams available. To diversify their own investment exposure institutional investors generally invest in no more than 5% of a fund, but given the very small size of most small business funds they can be a higher percentage of a small fund without creating any concentration risk. These funds provide patient capital by using equity, debt with equity features, subordinated debt, or a mix of all three – capital that banks cannot and will not provide. Given that these funds are investing in small businesses that are either profitable or at least growing, the risk profile of SBIC and lower middle market funds is relatively low risk. The vast majority of these small business investments are profitable, but generally are "singles" or "doubles" and not "home runs." While banks have cut off lending thousands of small businesses, SBICs, lower middle market funds, and other small business private equity never stopped backing domestic small businesses. The economy needs more of these funds, not less. As regulations are promulgated they should be fashioned in a way to encourage a greater number of small business funds.

It is important to be clear what Small Business Investment Companies and lower middle market funds are not. These funds are not buy or selling stocks on the exchanges. They are not "hedging" or playing currency markets. They are not large, generally smaller than $500 million, with most being well below $300 million. They are not performing hostile takeovers, but are backing small businesses to grow them. These funds are generally not large organizations. Most have fewer than ten employees, with some having as few as two to three people. Smaller funds are not able to absorb large regulatory compliance costs. The smaller the fund the more painful it is to absorb regulatory compliance expenses. They are very unlikely to invest in larger businesses. It is a fact that that the smaller the fund the more likely it is to invest in small businesses. These funds are not get rich quick schemes trying to time markets or make a quick buck. Investing takes time, commonly years, and the funds themselves have a decade long life span. Because of the size of the funds, these fund managers cannot ride on management fees. The bulk of the fund manager's pay comes from profit sharing and thus maintaining the common interests with the investors. These funds are not limiting their investments to Silicon Valley or to foreign markets. To the contrary, SBICs invest exclusively domestically as do most other lower middle market funds. These funds invest in the areas of the country and in sectors that are routinely passed over by the large funds. There are good small business investments from Montana to Alabama. These funds do not invest exclusively in software or biotechnology, but they do have the audacity to recognize that manufacturing can still be successful in the United States.

While small business investing slowed in the financial crisis, small business private equity has returned and is serving the small business community. Debenture SBICs just had their biggest year in the 52 year history of the program, putting approximately $2 billion into thousands of domestic small businesses. One in four of these investments were made in "smaller enterprises." One in five of these investments were in businesses less than two years old. One in ten of these investments were "Competitive Opportunity Gap" small businesses. Clearly, these funds have already exceeded last year's investment amount and 2011 and 2012 are expected to be even better years for small businesses because scores of new SBICs will be coming online.

Examining the most recent private equity industry data from PitchBook reveals very encouraging trends pertaining to the availability of capital made available by lower middle market funds. So far in first three quarters of 2010, small funds with assets between $50 million and $500 million have matched the number of transactions for all of 2009. If this pace continues these funds are on pace to handily break the previous year's total. Additionally, for funds falling in this same asset size range, $24 billion have been invested so far in FY2010, compared to $23.4 billion for all of FY2009.

Regulatory actions should encourage these trends, not discourage them.

<u>Minimizing the Negative Impact of SEC Registration on Small Investment Funds</u>

Specific Recommendations:

- Raise asset threshold from $150 million to enable small business funds to raise more capital for investing in small businesses. The cost of registration is manageable for very large funds but is onerous on small funds.
- The venture definition, and therefore exclusion, should protect all funds that invest directly in "small businesses." Small Business is clearly defined in the Small Business Investment Act. This should not be the only option for qualifying for the venture exemption, but it should be at least one of the available options for exemption.
- Apply the triggering threshold exclusively to funds that are otherwise non-exempt. For example, a $75 million small business fund would be forced to register if it also had a $90 million SBIC.
- Minimize the record keeping burden for exempt funds. If exempt from registration, offer these funds a true exemption from the burden.
- Create a "Registration Light" system for funds that invest primarily in small business.

While the Dodd-Frank Act is written in a way to specifically exempt SBICs and those who are in the process of qualifying for an SBIC license from registering with the SEC, the same cannot be said for other privately operated small business investment funds. While §408 attempts to address the burdensome registration requirements for these job-creating small funds, it is written in a way that can create an investment disincentive to managers of these small funds, and in turn will be a detriment to small business owners as a whole.

§408 of the Dodd-Frank Act states the following makes the advisor to a small fund exempt from SEC registration requirements:

- Solely advises private funds
- Have total assets under management in U.S. of less than $150 million.

§408 also states that although exempted, these advisers may be required to maintain all records as if registering with the SEC, and the SEC may periodically request reports, annual reports, etc., thus adding no significant benefit to the public, but plenty of burden on a small fund. If they are exempt, why should these funds absorb hundreds of thousands of dollars in costs that add no value to the investors or the public? If a new burden must be created, then creating a record-keeping requirement for small business funds that are exempt from registration will still allows for data collection, but is less onerous and costly, which will allow for more investment in small businesses.

For fund managers that have both an SBIC fund and a non-SBIC fund, the capital under management from the SBIC should not be included in the registration trigger. SBIC are already highly regulated – more highly regulated than any other private equity even under an aggressive interpretation of Dodd-Frank. Given this regulatory structure, small funds should not be penalized with additional regulatory compliance costs if due to the size of their non-SBIC they would not otherwise be required to register.

For the middle-market funds that have more than $150 million in assets under management but are still below the $500 million level should not be required to register with the SEC in the same manner than a fund with billions of dollars of assets under management. The SEC should create a "Registration Light" requirement to where these middle-market funds would still be required to register with the agency, but would not have to perform the time and money-intensive actions that are only applicable to larger funds. A "Registration Light" system would allow these funds, which are still considered extremely small within the private equity industry, to spend more time investing in small businesses and less time stretching their infrastructure and staffs thin in order to report an amount of information to the SEC that is more than the agency needs to track the fund's performance.

Minimizing the negative impact of the Volcker Rule on Small Investment Funds

Specific Recommendations:

- While SBIC investments are explicitly permitted, regulators should not pose any additional restrictions on investments in SBICs.
- Do not require independent Limited Partners in bank-sponsored funds to be required to already be trust, fiduciary, or investment advisory clients of the banking entity.

- When implementing the Volcker Rule, regulators should raise the 3% Tier-1 capital limit on bank investments in a small investment fund.
- Regulators must allow a bank to be a sponsor of an SBIC or other small business fund while still being permitted to provide custodial services to the fund.
- Define "Private Equity Investment" as "cash invested into a private fund minus cash distributed by that private fund."
- Do not force the divestiture of illiquid assets by small investment funds all at one time.

Small business private equity funds and SBICs are funds that invest directly in small businesses. The Volcker Rule should be implemented in a way to encourage small business investing instead of inhibiting it. The SBA has stated that 65% (9.8 million) of new jobs created from 1993-2009 were due to small businesses. It must be implemented in a manner such that funds that invest in small businesses will continue to be able to receive investment, sponsorship, and organizational guidance from banks. Banks, both large banks and community banks, are critical sources of investment capital for small business funds. The funds are not critical to the banks, but the banks are critical to the funds. Without a mutually beneficial relationship with banks, many of these small private equity funds cannot serve the small business community.

Often confused with hedge funds that, who in volatile situations can affect the nationwide economic outlook and pose a systemic risk, small business private equity funds investing in only a tiny fraction of the total U.S. economy and bank capital therefore do not pose a systemic risk. In implementing the Volcker Rule, it will be extremely important that systemic risky practices are clearly delineated in such a way that they do not apply to small business private equity funds or SBICs. If these funds were forced to adhere to the same policies reserved for systemically risky entities then the result would be extremely detrimental to the small business owners that rely on this niche small business investment industry as a primary source of patient capital.

The risk associated with bank investment in and sponsorship of small business private equity funds is minimal because banks and other institutional investors commonly diversify their risk by limiting their amount of investment in any one small fund; rather, banks spread out their investments across a range of vehicles.

The sponsoring of small business private equity funds and SBICs allows banks to not only provide capital to their communities and neighboring areas, but also to invest in both early-stage and existing companies that create jobs and stimulate economies. These small job-creating companies generally are not eligible for traditional bank loans, but are excellent candidates for capital or equity infusions from private equity funds that receive their funds for investment from banks. In this manner, small companies are given the opportunity to grow and hire new workers; only in this case the capital is not commonly coming from a single bank or from a single loan, but rather through investments made by funds of experienced investment professionals who specialize in this type of transaction. Of further importance, the fund's investment in small businesses mitigates risk by distinguishing standard loans from direct investments and maximizing returns while compartmentalizing the risk to the bank.

Small business private equity funds fill a crucial void for small businesses looking for capital, as these small businesses generally cannot receive investment from most large funds. It is critical to recognize that most large funds must invest in sizes too large for small businesses to absorb. A $200 million funds will likely make investments in $1 million to $5 million sizes. A $1 billion plus fund commonly deploys capital in $50 million investments.

As it is written, the Volcker Rule may not allow a banking entity deemed a "sponsor" of a private equity fund to offer certain services in relation to this sponsorship. For example, a bank that is deemed a "sponsor" of a private equity fund is not allowed to provide any custodial services or offer any services that are considered "covered transactions." These "covered transactions" include extensions of credit; therefore, as a "sponsor," a banking entity would be considered a directed trustee but unable to provide basic credit services to its fund clients. This policy of prohibiting banks from performing basic custodial services will not only discourage banks from sponsoring small business investment funds, but will cut off capital to small businesses. If implemented with this prohibition on banks, it would also be very onerous for entities located in areas that aren't financial hubs. It would be tragic if the Volcker Rule were to cut off investment to the next generation of entrepreneurs due to regulatory actions cutting off bank capital and banking relationships to small business funds

In implementing the Volcker rule regulators are tasked with defining terms such as "Private Equity Investment." "Private Equity Investment" should be defined as "cash invested into a private fund minus cash distributed by that private fund." In this manner, the definition of "Private Equity Investment" will not be based on capital commitments, which are not called all at once for private equity funds, but rather over a course of 10 or more years. If the definition of this investment is based on capital commitments rather than cash on hand, total private equity investments allowed under the Volcker Rule would decrease substantially, further disrupting the flow of capital to small businesses.

When regulators are examining the best way to implement the Volcker Rule to allow for its provisions dealing with the appropriate timing of the divestiture of illiquid assets, they must take into account that lives of illiquid private equity funds may extend for 15 or more years, and that there are very high penalties for failing to meet future capital calls, including the loss of all previously invested capital. Given this information, it will be extremely important regulators do not force the liquidation of small private equity funds all at one time as this would saturate the secondary markets, cause a loss of value for all funds, and negatively impact the small businesses that rely on these funds for capital.

The key theme throughout these comments is to be careful when dealing with small business. As regulators are looking at the big picture it is imperative that the impact on small business is constantly assessed. It is all too easy to cut off capital to small businesses while focusing on the big institutions that get all the attention. Please take the time to drill down to the real world impact on small business investing as you interpret and implement financial regulatory reform.

Sincerely,

Brett T. Palmer
President
National Association of Small Business Investment Companies
Small Business Investor Alliance

Venture Capital & Adviser Registration

October 2010

NVCA
National Venture Capital Association

Today, We'll Address These Topics

- Why is venture capital important to the U.S. economy?
- How does venture capital work?
- Why did Congress exempt venture capital from registration?
- How does venture capital differ from other types of equity investing?

Why is Venture Capital Important to the U.S. Economy?

Venture Capital Builds Companies From Scratch…

Web

Google
eBay
YouTube Broadcast Yourself
AOL
Yahoo!
PayPal MasterCard VISA BANK
facebook
amazon.com

High tech

Sun
ORACLE
CISCO
intel

Retail/Services

Starbucks Coffee
STAPLES that was easy
FedEx

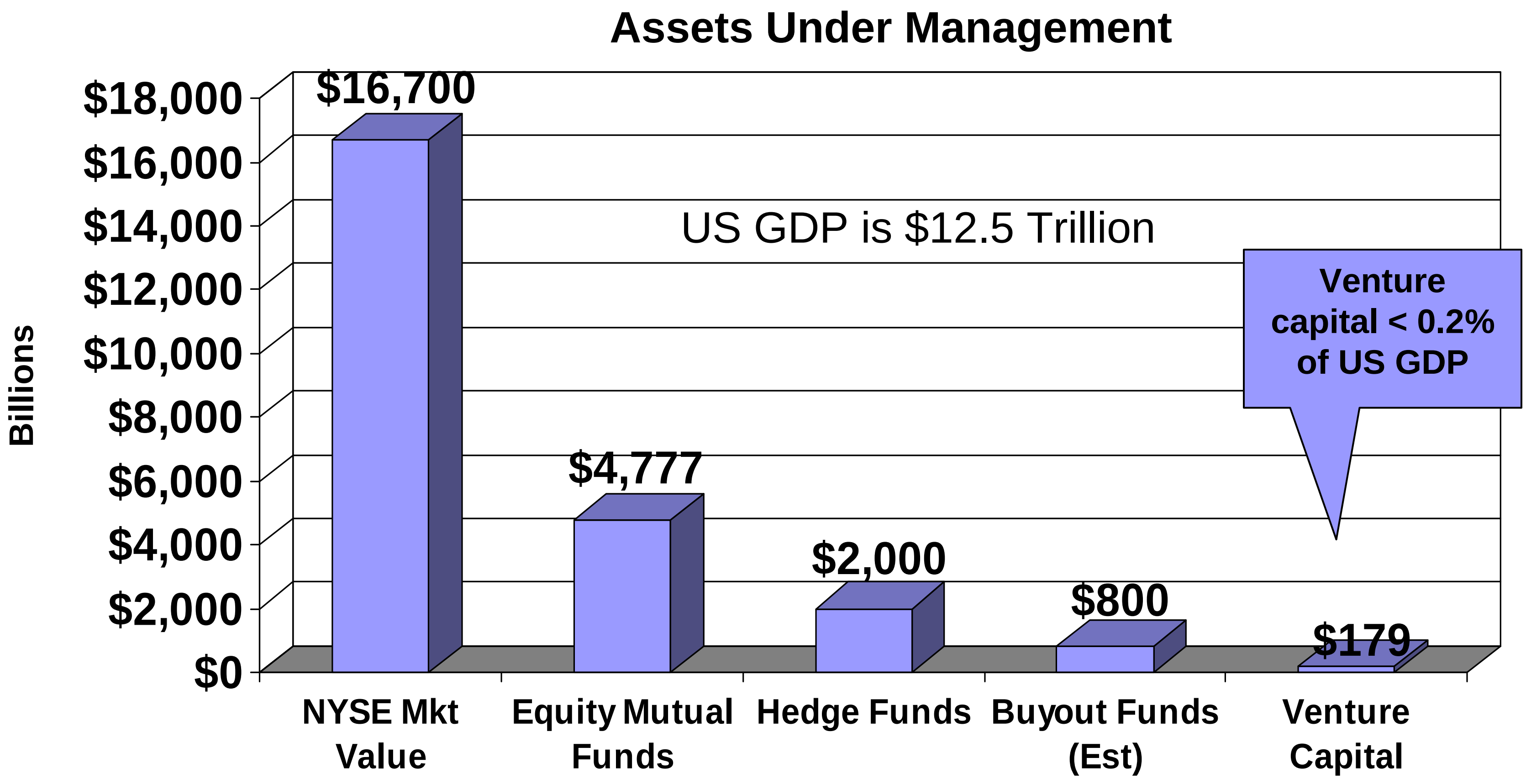
Life science

Genentech IN BUSINESS FOR LIFE
Allscripts
athenahealth

Cleantech

A123 SYSTEMS
TESLA
evergreensolar

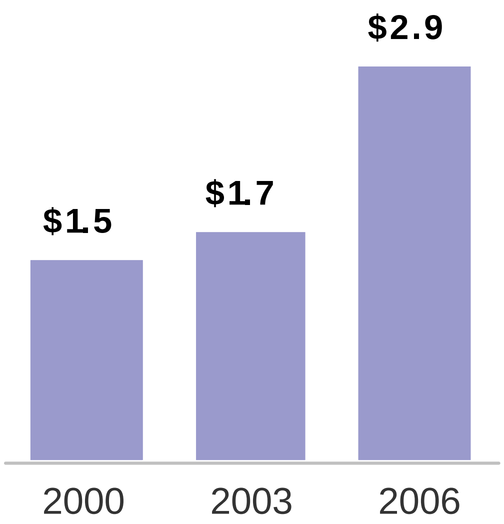
…With Relatively Tiny Amounts of Capital



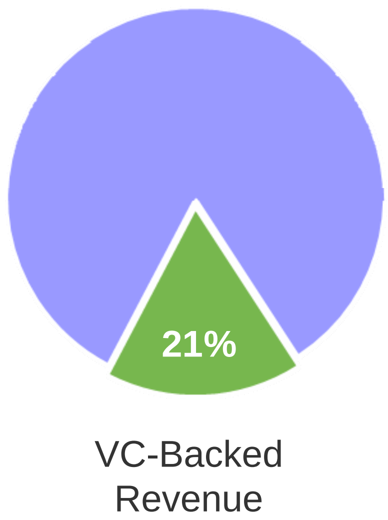
Source: AIMA, Investment Company Institute, NYSE.com, Thomson Reuters, NVCA
Annual Venture Investing <$20B per annum vs. $12.5T GDP

Venture-Backed Companies Create Jobs…

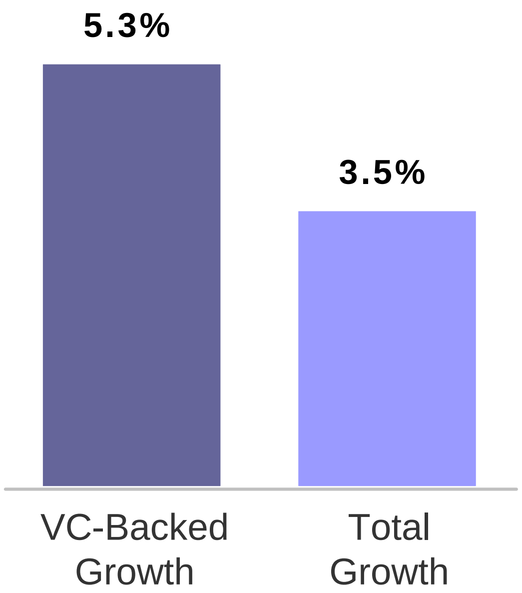
VC-Backed U.S. Revenues (Trillions)



As a % of Total U.S. GDP in 2008



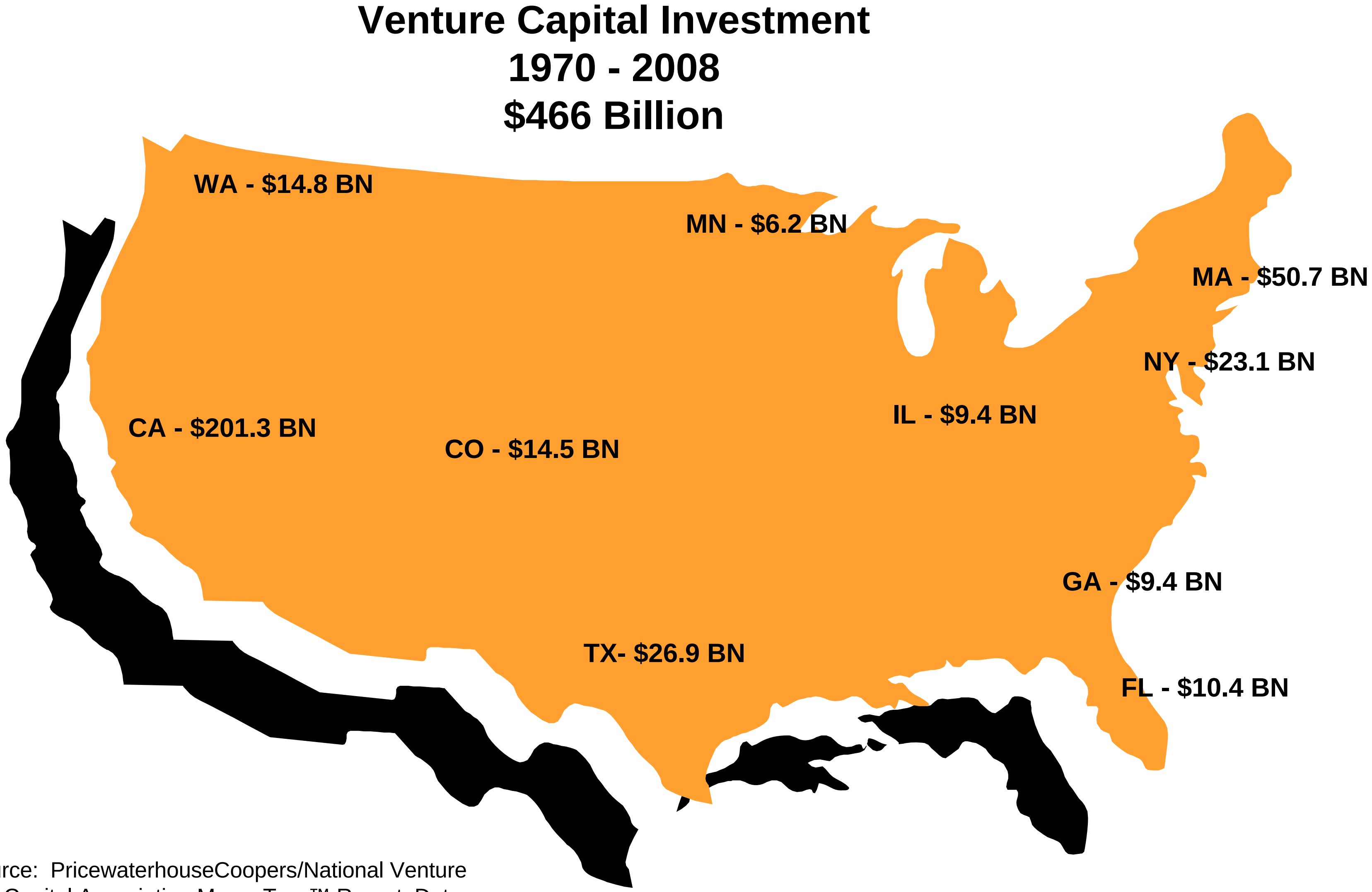
Outpaces 2006-2008 Total U.S. Sales Growth



Venture Backed Companies Have Significant Economic Impact
Even Though Venture is Historically < 0.2% of GDP

Source: Venture Impact 2007, 2008 & 2009 by Global Insight

…All Over The United States



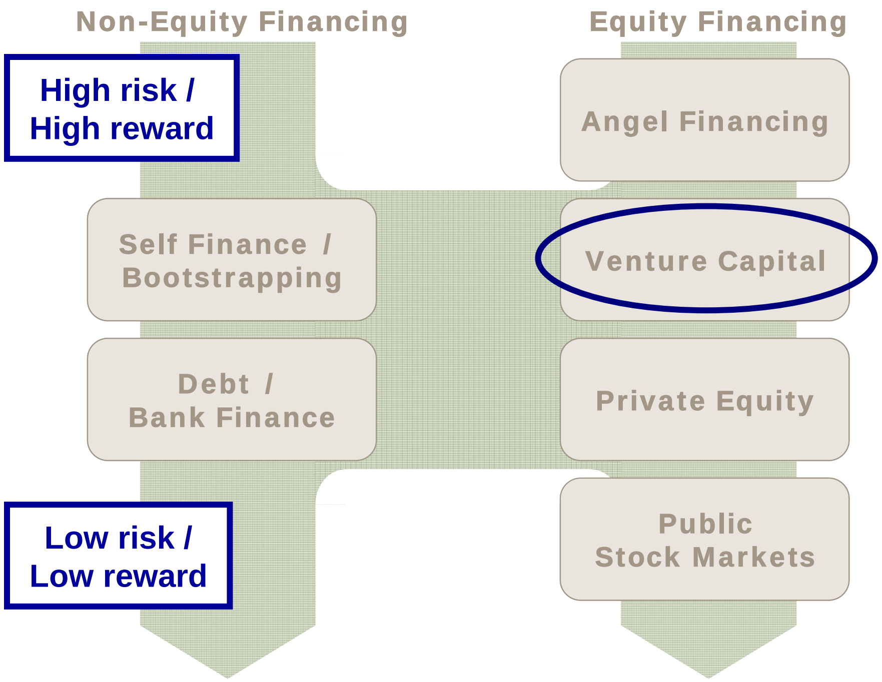
Source: PricewaterhouseCoopers/National Venture Capital Association MoneyTree™ Report, Data: Thomson Reuters

7

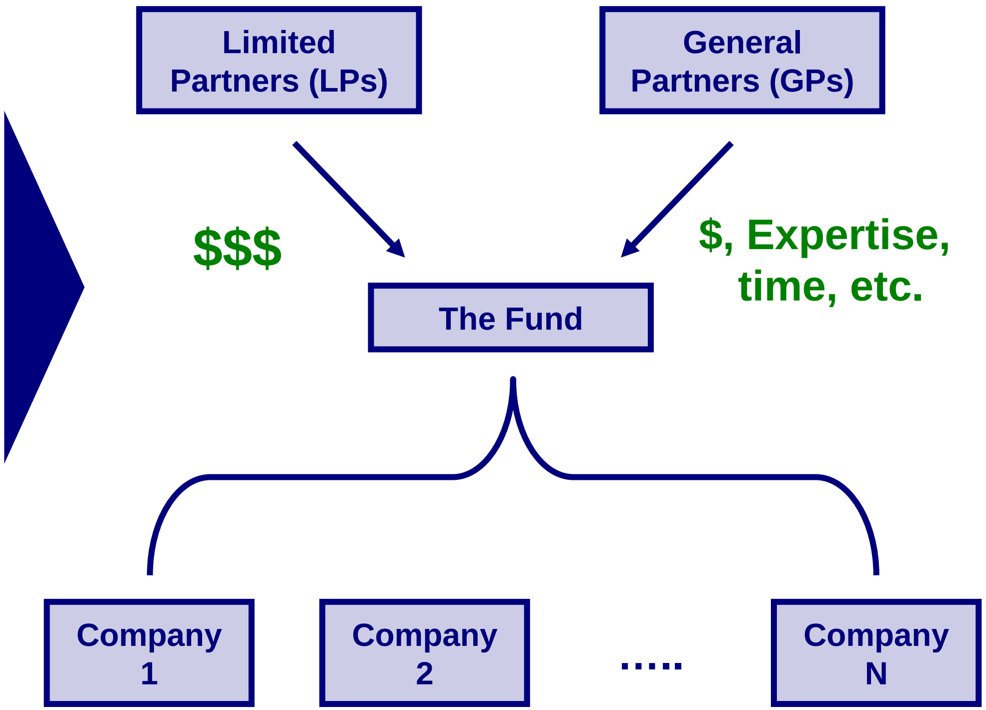
How Does Venture Capital Work?

Venture Capital Combines Money With Expertise

Many ways to fund a business…



…of which venture is one.



Our LPs Are Professionals Who Invest Long-Term

- Typically pension funds, endowments, foundations
- Institutional investors – no retail investors
- Typical fund term is 10 years with possible year-long extensions
- LP investments cannot be redeemed except for extraordinary circumstances
- GPs invest ~1-5% of a fund alongside their LPs, so their incentives are aligned

We Are Company Managers, <u>Not</u> Money Managers

- We are awarded Board seats
- We manage our companies <u>actively</u>
- Many of us are former entrepreneurs who have built successful businesses
- We provide strategic counsel to CEOs & provide access to our networks
- We build sizable companies over 5-10+ years and often take them public
- We are financially incentivized to help our companies succeed and to provide capital gains for our investors alongside the companies’ founders

Venture Capital Builds New Companies By…

- Using the same, simple financial instruments over the last 40 years
- Investing primarily in originally issued stock in start-up companies so cash is <u>used to build the company</u>
- Aligning ourselves with our CEO's and our LP's. We only distribute proceeds when companies are sold or go public
  - May hold public stocks post IPO to deliver full value to LP's
  - Distribute capital first to repay LP's capital including fund operating expenses
  - Only distribute "carried interest" gains to GP's once LP's interests satisfied

Venture Capital Is High Risk & Reward... LPs Know That A Few Exits Account For Most Returns

Typical Venture Fund Target Returns Model	% of Fund	Expected Average Return	Expected Return
Negative Outcomes	40%	0.5x	0.2x
Base Case Outcomes	40%	3.0x	1.2x
High Case Outcomes	20%	10.0x	2.0x
Gross Return – Net of Losses			3.4x

Venture Firms Vary Greatly in Size, Stage, & Strategy

- Firms may manage as little as $50M; a few have more than $1B in a single fund
- Firms may have as few as 2 FTEs
- Firms may invest in early or growth stage companies, or both
- Firms may invest in different regions of the country exclusively, or may have broader focus
- <u>All venture firms</u>, however, share these common features:
  - Invest equity in privately-held companies
  - Distribute capital gains only when companies grow significantly
  - Do <u>not</u> use leverage to drive returns
  - Do <u>not</u> individually take a majority ownership stake in companies

Why Did Congress Exempt Venture Capital From Registration?

Venture Firms Were Granted Exemption From Registration By Congress Because…

- We present no systemic risk to the financial system:
  - We invest tiny amounts of capital
  - In traditional, long term financial instruments
  - That do not result in counterparty risk
- Our investors are long term, sophisticated institutional investors. Therefore, there is minimal concern about investor protection.
- We only succeed when our companies and investors succeed.
- We are distinct from buyout and hedge funds.
- The direct and indirect economic costs of registration would be highly burdensome and expensive.
- We build companies with competitive technologies that create lasting jobs and bolster the U.S. economy.

Why Venture Capital Does Not Pose Systemic Risk

- VC is not interconnected with broader financial system
  - No redemption; no liquidity or carried interest until company is sold or goes public
  - Investment into originally issued stock, not public markets
- VC does not use leverage; no cascading effect if fund fails or portfolio companies fail (expected to happen)
  - If LP invests $1m, can only lose $1m
- VC does not have counter-party obligations
  - Cash for equity transactions; no complex financial instruments

Features of Venture Fund that Provide Investor Protection

- LPs conduct extensive due diligence on VC fund and venture principals before committing capital
  - 6-18 month process includes site visits, background checks, GP interviews, cash flow & returns analysis, off list reference calls with LP's & CEO's
- No Retail Investors – outside parties are accredited investors or qualified purchasers
- Ultimate valuation set by the market
  - Value of portfolio company established with liquidity event – priced by IPO or by acquirer not by venture capitalist

How Does Venture Capital Differ From Other Forms of Equity Investing?

Venture Capital and Buyout Firms Are Both Private Equity, But Have Little Else In Common

Venture capital

- Starts companies from seed stage
- Drives returns by growth, not debt
- Takes minority ownership stakes
- Has modestly sized funds with single purpose
- Invests in next generation technologies
- Creates jobs

Buyout

- Invests in established companies with predictable cash flows
- Drives returns by financial leverage and cost cutting
- Takes majority ownership stake
- Has big funds, often with multiple investment vehicles (e.g. sub debt, hedge, etc.)
- Invests in old-line businesses
- Often eliminates jobs

Venture Capital and Hedge Funds Are Mutually Exclusive, Unrelated Investment Vehicles

Venture capital

- Mostly sophisticated institutional investors (90+%)
- Most interests in fund sold directly to LPs
- Hold positions for 5-10 years on avg; no short-term liquidity
- No investor control over liquidity
- Invest in stock of small number of private companies
- Very limited participation in public markets (e.g. PIPEs) with no systemic influence
- Do not advise investors

Hedge funds

- Mostly "qualified" individual investors
- Interests often sold to investors by a broker
- Designed to meet short-term liquidity needs
- Investor has control over liquidity
- Invest in variety of vehicles and markets; short & long
- Actively participate in and can affect public markets
- Can advise investors
- Can receive carried interest on unrealized profits

A Few Things Venture Capital Does Not Do…

- Incur long-term debt or use leverage to drive returns
- Provide short-term liquidity at the option of its investors
- Pull meaningful dividends out of companies
- Charge transaction fees to its portfolio companies
- Take short positions
- Buy meaningful amount of public securities or derivatives
- Generate any counterparty risk
- Market itself through brokers to retail investors or act as a publicly-held entity

So What *Does* Venture Capital Do?

Venture Capital creates jobs while building a competitive America.

For more information please contact

National Venture Capital Association
1655 Fort Myer Drive
Arlington, VA 22209
703-524-2549

Jennifer Connell Dowling, jcdowling@nvca.org
Mark Heesen, mheesen@nvca.org

NVCA
National Venture Capital Association

24

REISA™
REAL ESTATE INVESTMENT SECURITIES ASSOCIATION

Real Estate Investment
Securities Association (REISA)

Two Meridian Plaza
10401 North Meridian Street
Suite 202
Indianapolis, IN 46290

main: 317.663.4180
fax: 317.815.0871
toll-free: 866.353.8422

www.reisa.org

November 12, 2010

Submitted via e-mail

Mr. Gerald J. Laporte
Chief, Office of Small Business Policy
Division of Corporation Finance
U.S. Securities and Exchange Commission
100 F Street, N.E.
Room 3650
Washington, D.C. 20549-3628

Re: SEC Small Business Forum, November 18, 2010

Dear Mr. Laporte:

The Real Estate Investment Securities Association (REISA) appreciates the opportunity to participate in the SEC Small Business Forum on the implications for Small Business Capital Formation. REISA is a trade organization serving the real estate securities industry. This includes all professionals active in offering, managing and distributing non-traded REITs, real estate partnerships, tenant-in-common interests (TIC), Delaware statutory trust interests (DSTs), real estate income and development funds, oil and gas interests, natural resources and alternative energy investments. The association was founded in 2003 and was renamed from the Tenant-In-Common Association (TICA) to REISA in 2009. REISA has over 500 members who are key decision makers that represent over 18,000 professionals throughout the nation including:

- Sponsors and Managers of Real Estate Offerings
- Broker-Dealers
- Securities Licensed Registered Representatives
- Registered Investment Advisers (RIAs)
- Accountants
- Attorneys
- Mortgage brokers
- Institutional lenders
- Qualified intermediaries

- Real estate agents
- Real estate brokers

REISA's volunteer committees serve to keep the association current and ensure members have input in initiatives implemented. REISA committees include:

- Capital Markets
- Due Diligence & Compliance
- Education & Marketing
- Ethics & Standards
- Legislative & Regulatory

REISA has followed with great interest the various rule and study proposals contained in the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (the "Dodd-Frank Act"). REISA would like to outline particular provisions of the Dodd-Frank Act, as well as other policies proposed, that would materially affect the business of REISA's members as well as stifling small business capital formation.

<u>Study and Rulemaking Regarding Obligations of Brokers, Dealers and Investment Advisers (Section 913 of the Dodd-Frank Act):</u>

Under the Investment Advisers Act of 1940 (the "Advisers Act"), investment advisers currently work under a fiduciary duty, which requires them to act solely in their clients' best interest when offering personalized investment advice. The Advisers Act specifically exempts broker-dealers from this language. Broker-dealers instead operate under a "suitability standard," which requires them to only recommend products that are "suitable" for their customers.

Broker-dealers are subject to FINRA regulation and the FINRA rules provide specific guidance regarding a determination whether or not an investor is suitable for a particular transaction. Specifically, broker-dealers are required to determine, on the basis of information obtained from the client, concerning the client's age, investment objectives, other investments, financial situation and needs, and any other information known to the broker-dealer that the client is in a financial position appropriate to enable the client to realize to a significant extent the benefits of the investment as described, including the tax benefits to the extent they are a significant aspect of the investment; the client has a fair market net worth sufficient to sustain the risks inherent in the investment in the amount proposed, including complete loss, and lack of liquidity of, of such investment; and the investment is suitable in type and amount for the client. This guidance allows a broker-dealer to have a certain level of certainty when dealing with its customers.

In addition, FINRA has been actively policing the actions of broker-dealers under Regulation D to protect against possible misconduct with private placements. A recent regulatory notice issued in April 2010 (FINRA Regulatory Notice 10-22) reminded brokers-dealers of their duty under federal law to conduct a reasonable investigation of private placement issuers and their products prior to selling securities to their customers.

The Dodd-Frank Act acknowledged that certain broker-dealer activities will not be deemed to violate the applicable standard of care, such as receipt of commissions or other standard forms of compensation, selling only proprietary or a limited range of products, and the ability to consent to material conflicts of interest so long as they are adequately disclosed. In addition, broker-dealers would not be subject to continuing duties of care or loyalty after providing personalized investment advice. REISA believes that these activities, which are closely aligned with the current activities of many of its broker-dealer members, are more properly conducted under a suitability standard rather than an absolute fiduciary standard.

REISA believes that the dual system of regulating financial advisory services provided to customers as it has been in place for the past 70 years continues to be the most beneficial system for investors and their financial well-being. The suitability standard for broker dealers has functioned well over the years in protecting investors' interests without opening brokers up to broad new areas of litigation. Broker-dealers provide a key service to investors in effecting sales of securities that are not easily duplicated on a fee for service basis or in an ongoing comprehensive financial advisory role.

Applying a fiduciary standard to brokers would be a regulatory overreach that would reduce small business capital formation and reduce or eliminate a large portion of REISA's members' traditional day-to-day business. Because private placements under Regulation D would likely be considered "illiquid" investments under a fiduciary standard of care, small businesses and real estate investments packaged as Regulation D offerings could be eliminated from the alternatives that could be recommended by REISA member broker-dealers to their clients, who are sophisticated, accredited investors.

Additionally, if a fiduciary standard were to be applied to broker-dealers, broker-dealers would need to expand the coverage of their Errors and Omissions insurance policies to include fiduciary duties in Regulation D private placements. REISA's broker-dealer members tell us that they anticipate a significant insurance premium increase to cover a shift to a fiduciary standard from the current suitability standard. For those broker-dealers who sell only a small number of Regulation D private placements, REISA is concerned that those broker-dealers may elect to not approve any Regulation D offerings to avoid the expected significant insurance premium increase and heightened liability in Regulation D offerings. The elimination of additional broker-dealers selling private placements will further reduce the amount of equity being raised in the private markets and available to small businesses for capital formation.

<u>Disqualifying Felons and Other "Bad Actors" from Regulation D Offerings (Section 926 of the Dodd-Frank Act):</u>

REISA believes that those who defraud or deceive investors should not be allowed to participate in the private placement market. However, the language contained in Section 926 of the Dodd-Frank Act leaves much open to interpretation and may prohibit persons from participating in private placements that are not "bad actors" but merely violated a technical rule or was otherwise swept up in a minor violation. Some of the open questions that the SEC must resolve in its rulemaking under Section 926 of the Dodd-Frank Act include the following:

- Clearly identify the persons who would disqualify an issuer or broker-dealer from taking advantage of Regulation D for capital raising activities. For example, would "persons" subject to this disqualification include officers or directors or just owners, and if owners would it be 10%, 20% or more beneficial owners or would it include only "control persons."
- Clearly define what is meant by a "final order" especially in a case where an order has been issued by a state regulator but such order is in the process of being challenged or otherwise appealed through judicial or administrative proceedings.
- Address the potential for misapplication of the standard of "any law or regulation that prohibits fraudulent, manipulative or deceptive conduct." There are states where minor and technical violations of rules or regulations, such as recordkeeping requirements or filing notices, are deemed to be fraudulent conduct and would therefore disqualify issuers from making use of Rule 506 for acts that would not normally fit within the definition of fraudulent or deceptive acts.
- Preclude the adoption of rules that would deem minor rule violations as "fraudulent, manipulative or deceptive conduct" in order to reduce or eliminate the use of Rule 506 for offerings in their state.
- Provide a mechanism by which an issuer may request a waiver from disqualification "upon a showing of good cause," particularly in light of the 10-year look back whereby a person may have entered into a settlement agreement with a state regulator prior to the enactment of the Dodd-Frank Act which would otherwise provide the basis for a disqualification now.

Adjusting the Accredited Investor Standard (Section 413 of the Dodd-Frank Act):

Section 413 of the Dodd-Frank Act modifies the accredited investor net worth test standard for individuals, effective immediately upon enactment to $1 million, *excluding* the value of the investor's primary residence. Although the dollar threshold for the net worth test was not increased, by excluding the value of an investor's primary residence, the Dodd-Frank Act has effectively tightened the eligibility standards for individuals to meet the test for accredited investors. The SEC staff's published guidance noted that when determining net worth for accredited investor purposes, the value of an individual's primary residence, as well as the related amount of any mortgage or other indebtedness secured by such residence, must be excluded. In addition, the SEC staff indicated that, pending future SEC rulemaking as a result of the Dodd-Frank Act, any indebtedness secured by the residence in excess of the home's value should be considered a liability and deducted from the investor's net worth.

The exclusion of the primary residence from the calculation of net worth has caused substantial harm to REISA's members, excluding potentially 1 out of every 2 investors in the Regulation D private offering market. In addition, given its immediate effect, it has had negative implications for ongoing private offerings whereby an investor who invested at the beginning of a continuing offering as an accredited investor may no longer be eligible to make an additional investment in the same offering after the passage of the Dodd-Frank Act's immediate implementation of the revised accredited investor standard when the only change for an investor is the exclusion of the value of the primary residence as part of the calculation of its net worth. These changes have eliminated millions of dollars in legitimate investor equity for private placements for REISA members, which in turn has the effect of impeding job creation and capital formation in this country without providing additional meaningful protection for investors.

Notwithstanding REISA's position above, REISA believes that if the value of the primary residence is to be excluded, then it should be excluded on both the asset and the liability side of the equation. The deduction of the mortgage debt in excess of the value of the primary residence makes what was intended to be a simple calculation a much more difficult and subjective calculation that has the potential to change on a daily basis, force investors to incur additional expenses to obtain a third party appraisal on their primary residence and determine the outstanding balance on their mortgage in order to determine whether or not there should be a deduction to their net worth. REISA believes that in order to best protect its members, the simpler the determination the better and that both the value and the mortgage debt should be excluded from the calculation.

In addition, REISA disagrees with the recommendation by the North American Securities Administrators Association to add additional qualifications to the accredited investor test for "invested assets" if the investor must qualify for this test under all circumstances. REISA would support the concept of three Accredited Investor tests in which at least one qualification must be met: (1) net worth, (2) income <u>or</u> (3) invested assets. REISA believes that an "invested assets" test is duplicative because the broker-dealer suitability analysis and the investment adviser's fiduciary duty standard already requires investors to be rejected from qualifying to invest in a private placement if they do not meet the diversification/concentration and portfolio allocation tests particular to that investor's individual situation.

<u>Carried Interest Tax Changes</u>

A modification to the long-standing tax treatment accorded to "carried interest," or "profits interest," earned by partners in certain partnerships has been proposed. Under the proposal, carried interest would be taxed under ordinary income tax rates (the top ordinary tax rate is currently 35% but scheduled to rise to 39.6% next year) as opposed to the rate applicable to long term capital gains (currently 15% but set to rise to 20% next year).

REISA recommends that Congress reject efforts to raise capital gains taxes on the commercial real estate sector by treating the carried interest earned by partners in partnerships as ordinary income rather than long-term capital gains income. Taxing carried interest at the higher, ordinary income rates would harm the already weakened commercial real estate sector by further reducing transaction volume.

<u>Commercial Real Estate Lending and Capital Markets Loosening</u>

While the financial crisis has eased for many lenders and investors, it remains very much a growing disaster for the commercial real estate market, whose worst days may still be ahead. The central problem is that thousands of commercial real estate loans are set to mature in the next few years, meaning the debt will need to be refinanced – but there is still virtually no way to refinance most of these loans. An average of $300 billion a year in CRE loans will mature every year for the next decade, and there is a total of $3.5 trillion of CRE debt currently outstanding.

The credit markets for commercial real estate are still largely frozen – with banks not lending on new transactions but only temporarily extending existing loans at maturity. This problem is compounded by economic factors such as low office rental rates, high retail vacancies and CMBS delinquencies, which have driven down commercial property values. The inability to refinance CRE debt could produce a wave of loan defaults, which would jeopardize U.S. economic recovery and inflict new damage upon recently healed financial markets

While REISA's member investment companies would be particularly overwhelmed by a series of defaults, the effects would also be felt in the industries where real estate supports 9 million jobs – such as construction, planning, engineering, building management, landscaping, leasing, brokerage, mortgage lending, and accounting and legal services. By revenue, commercial real estate constitutes an estimated 13% of U.S. GDP. The commercial real estate crisis also affects all Americans whose pension funds invest directly or indirectly in $160 billion of commercial real estate equity.

REISA continues to believe that Congress, the Obama Administration and federal financial regulators must act quickly to address the crisis in commercial real estate by implementing the following:

- The Treasury or financial regulators should establish a federally backed credit facility for originating new CRE loans, possibly by expanding the FDIC's existing public-private investment fund program (the "PPIP Legacy Loans Program") or through a new, privately funded guarantee program.

    (1) One option would involve adapting the PPIP's model (using private capital with leverage from the federal government) to fund a pipeline of new, solidly underwritten CRE loans instead of acquiring legacy loans. This would provide an important source of liquidity to the industry at the whole loan level.

    (2) Another option would entail creating a new, federally chartered, privately funded guarantee facility for newly issued CMBS or whole loans. After an initial period of support from TARP and the Fed, the program would be self-funded by a fee charged to securities issuers, the same way the FDIC insures bank deposits. Such an entity would create an insurance pool to stand behind these securities, creating a stable secondary market into which banks can sell newly originated loans.

- Congress should encourage non-U.S. debt and equity investment in U.S. real estate by amending or repealing the outdated Foreign Investment in Real Property Tax Act (FIRPTA), which applies to equity investments. FIRPTA is the only major provision of U.S. tax law that subjects non-U.S. investors to taxation on capital gains realized from investment in U.S. assets. This law discourages foreign investment in U.S. real estate and drives non-U.S. investors to markets in Brazil, China and India.

- Congress and the Administration must continue to apply pressure upon banks and loan servicers to extend performing loans, based on cash-flow analysis. Members of Congress and the Obama Administration have been diligent this year about encouraging residential mortgage lenders and servicers to modify and extend the terms of at-risk loans as a way to avoid a wave of foreclosures, with several hearings exploring the issue. The same approach must be brought to the lenders and servicers that support commercial real estate, with lenders' risks acknowledged by focusing on performing loans.

REISA appreciates the opportunity to participate in the SEC Small Business Forum and looks forward to continuing the dialogue with respect to enhancing small business capital formation.

Sincerely,

Richard B. "Rick" Chess President – REISA	William H. Winn Legislative/Regulatory Chair REISA	Deborah S. Froling Legislative/Regulatory Task Force - REISA
Managing Partner Chess Law Firm, PLC	President Passco Companies LLC	Partner Arent Fox LLP

December 21, 2010

Mr. Gerald J. Laporte
Chief, Office of Small Business Policy
Division of Corporate Finance
Securities and Exchange Commission
100 F Street NE, Room 3650
Washington, D.C. 20549

Re: SEC Government-Business Forum on Small Business Capital Formation— SBE Council Recommendation

Dear Mr. Laporte:

Thank you for hosting the Forum on Small Business Capital Formation in November. As a follow up to the forum, the Small Business & Entrepreneurship Council (SBE Council) would like to submit the following comments/suggestions for review and consideration.

Small Business Offering Exemption – Problem & Solution

Overview

The U.S. Security and Exchange Commission (SEC) has an opportunity to make modest but important modifications to current securities regulations that would support American entrepreneurship while protecting the interests of investors. When the Securities Acts of 1933 and 1934 were passed, information, transparency, technology and social networks were severely limited. Today, however, the Internet has introduced real-time information, forced transparency and a greater desire to collaborate and innovate. Unfortunately, today's regulatory framework only allows the super elite to participate as investors/lenders to businesses, which effectively locks out the average American from helping businesses in their own community.

How can the SEC help turn ideas into viable companies? *By allowing them to access modest amounts of seed capital from individuals in a regulated manner*.

The vast majority of start-ups need less than $1 million in capital to build their model. Following start-up, many viable firms need much more capital for scale. However, even when entrepreneurs first begin to raise capital, current regulations create barriers that stifle all but a select few from successfully building businesses because:

1. The costs of registration and compliance require the size of the offering to be significantly larger than $1 million and;
2. Current regulations restrict who and how can be solicited to participate in the offering.

Additional Background

Let's look at:

- Current exemptions to understand how they are a barrier to lending/investing;
- New ways that people are gaining funding for ventures that exist on the margins of current regulations;
- A proposal for a regulatory safe harbor that protects investors through ample oversight while opening meaningful access to seed capital.

Rule	**Barrier**	**Why is it a Barrier**
Intrastate Offering Exemption	Doesn't allow for offerings across state borders	Nearly irrelevant today as commerce freely crosses state borders and new businesses that used to be considered mom & pop (i.e.: laundry, grocery, etc) are now incorporating to become interstate chains and are leveraging online channels that provide reduced costs thru economies of scale.
Private Offering Exemption	Prohibits any form of public solicitation	Given the existence of the Internet, how can any offering today not be a public one? The means to provide access to deals (via social networks, the internet and media) is just too great to "keep them private" and hence this rule is not only unrealistic but also unenforceable.
Regulation A	Must provide purchasers with an offering circular that is similar to a prospectus and must be reviewed by the SEC	Most entrepreneurs are not MBA's with graduate degrees. They have a solution to a problem, and need a small amount of capital to get from proof of concept to going concern. This infant stage should not require a circular, but capital to see if it is viable. Compliance with this regulation at an early stage of life is impossible, as start-ups don't have the time, money or "financial history" for the materials required. To be competitive when starting companies, time is a critical resource.
Regulation D: Rule 504	No public solicitation	See "Private Offering Exemption" above
Rule 505	Only 35 non-accredited investors allowed. No form of advertising or public	This limit may have made sense in 1934, but is unnecessarily restrictive today. With the rise of sites like www.kickstarter.com,

	solicitation.	www.profounder.com, and www.indeegogo.com, "crowd-funding" models are up and running successfully and are tiptoeing around regulations by terming the funding as "donations". We would propose creating ways to provide regulation in other ways that achieves the goal of protecting individual investors while creating an open and fair market for providing seed capital. There needs to be flexibility for people who want to fund an idea but only want to do so with a small amount to be allowed to participate as well.
Rule 506	No public solicitation. You must provide non-accredited investors disclosure documents that are the same as those used in registered offerings.	The time and costs to put together the documents that are "the same as those used in registered offerings" creates an insurmountable barrier to entry to entrepreneurs and discourages them from seeking capital or creating new businesses.
Accredited investor exemption	Only available to accredited investors. No form of advertising or public solicitation	While the accredited investor segment is a great target, in reality they only fund a small percent of ideas. Many great ideas never get anywhere because the people who are given the right to invest are unable to see every viable idea or may choose not to invest.
California Limited Offering Exemption	Restricted to California. Only open to qualified purchasers	We need standardized regulation to enable modest capital raises that is uniform among all 50 states and territories.
Rule 701	Allows sales of securities to compensate employees	This is a barrier because friends and family of those employees should be allowed to invest as well.

We need to adapt the rules meant to protect individual investors, while providing a way to connect entrepreneurs with the seed funding they need from individuals in their communities and social networks. This regulatory modification would create jobs, tax revenue and economic growth. The mechanisms are there to protect the unaccredited investor including the fact that all securities transactions are subject to the antifraud provisions of the federal securities laws. However we believe that current rules make it nearly impossible for most start-ups to conduct initial funding rounds of less than $1 million.

New Ways Individuals and Organizations are Raising Money Online

Over the past five years the amount of money directed thru microfinance organizations like Kiva and Kickstarter has reached $350 million. That's $350 million that people are essentially giving away to individuals and organizations they believe in. These people, many of whom are non-accredited, understand that a little money, from a large number of people, can go a long way in terms of helping a disadvantaged or underprivileged person, or a struggling artist or capital constrained entrepreneur. And almost a third of these funds were directed at projects outside of the USA at a time when we should be helping to spur our own economy.

Kiva and Kickstarter actively advertise and solicit for funds. Recently, www.profounder.com launched its site using Revenue Based Financing to crowdsource loans from friends, family and the general public. Because there is essentially no return, these investments go unaccounted. However, after $350 million there are no complaints about fraud. Why? Because the people making the investments, both accredited or not, understand the social and financial impact that their small investments are making and are willing to give away their money to further a cause.

If in fact $350 million has successfully funded startups, would not providing the mechanism (and incentive) for people to invest with the possibility of a financial return serve to increase the amount of capital flowing into the hands of the entrepreneurs?

Proposed Solution

A new small offering safe harbor/regulation modification should be simple and follow the spirit of the 1933 and 1934 rules:

- No fraud.
- Limit risk and exposure for unaccredited investors.
- Ensure transparency and standards based reporting.
- Limit the amount of seed capital a company can raise.

With the Internet, people have much greater access to information to make informed decisions as well as the ability to communicate with associates regarding investment opportunities. Additionally, the companies that would use this funding method for seed capital are small enough and transparent enough to prevent fraud.

It is a sad commentary on the state of the U.S. economy and the degree to which our competitiveness is lagging when *more money has been raised outside the U.S. securities market than inside over the past 5 year*. We can change this by:

- Creating an exemption for small business offerings (debt or equity) of less than $1,000,000.
- Limit the maximum contribution by *any one individual* to no more than 10% of their prior year's stated income or up to $10,000/individual. ($10,000 also matches banking, foreign exchange, and other established financial limits).
- Require a set of standardized and automated procedures for these financing offerings (debt or equity) to reduce time and expense for all parties while maintaining transparency. We suggest using a modified SCOR form. Especially for those companies that are just ideas and don't have financials yet.

- Have investors take an online “test” on the risks involved in private offerings before being allowed to invest. It would contain questions like, “This offering requires that I do/do not understand that all/some/none of my capital is at risk.” (Where the answers can be constantly moved to prevent gaming. For instance, Answer A on one exam would be “this offering requires that I understand that all of my capital is at risk” while on the next person’s exam that would be answer C. This is a simple trigger.)
- Allow the creation of channels/sites where ideas, individuals, companies and investors can meet, be vetted by the organizations hosting those channels and entrepreneurial funding can take place. The SEC could even go so far as to require the registration of these channels/sites for transparency purposes.

Modifying the rules would allow entrepreneurs to seek capital where they otherwise are currently locked out. Crowd-funding is a term that is only beginning to be used but it is a methodology that the SEC should open up so that it can be a part of the solution for capital markets that addresses the capital needs of entrepreneurs.

Please do not hesitate to contact me, or the SBE Council, if we may answer questions or provide further input.

Respectfully Submitted by:

Woodie Neiss
Member
SBE Council Advisory Committee
2944 Hunter Mill Road
Suite 204
Oakton, VA 22124
(703)-242-5840

SOCIETY OF CORPORATE SECRETARIES & GOVERNANCE PROFESSIONALS

November 12, 2010

Mr. Gerald J. Laporte
Chief, Office of Small Business Policy
Securities and Exchange Commission
Washington, D. C. 20549

Dear Mr. Laporte:

We are honored to be invited to present the views of the Society of Corporate Secretaries and Corporate Governance Professionals (the “Society”) on Small Business Capital Formation sponsored by to the Office of Small Business Policy (the “Office”) of the Securities and Exchange Commission (“SEC”).

Background of the Society

Founded in 1946, the Society is a professional membership association of over 3,100 attorneys, accountants and other governance professionals who serve more than 2,000 companies of most every size and industry. Most of the Society’s members are in fact business organizations that identify themselves as small or mid-cap companies. Given the nature of their responsibilities as governance professionals and, in many cases, securities lawyers, our members work each day to understand and implement the regulations that govern the access to the capital markets. Although the large preponderance of these regulations are helpful, a selected group of them redound to the detriment of these smaller business organizations either because they are proportionately more costly to these smaller business organizations or more difficult to comply with, compared with the benefits gained from compliance.

The Society supports many of the recommendations made at past Forums, and we have identified below those proposals that our members believe are most important for SEC action. Given the extensive background considered by the Office in the past, we have not reiterated here the rationale for these proposals. It is our hope that, despite the number of times that these proposals have been recommended to the Commission through the annual Forum, the following proposals will be acted upon in the coming months.

- The SEC should increase the public equity float threshold for being a smaller reporting company from having a public float of less than $75 million to at least less than $250 million.

- The SEC should exempt companies with a public float of less than $250 million from Section 404(b) of the Sarbanes Oxley Act.

- The SEC should adopt a new private offering exemption from the registration requirements of the Securities Act that does not prohibit general solicitation and advertising for transactions with purchasers who do not need all the protections of the Securities Acts registration requirements.

- The SEC should eliminate the one-third of market capitalization limit for primary offerings by smaller public companies in General Instruction I.B.6(a) of Form S-3 and General Instruction I.B.5(a) of Form F-3.

- The SEC should shorten the integration safe harbor in Regulation D from six months to 90 days, and further consider shortening such period to 30 days, as recommended by the April 2006 Final Report of the SEC Advisory Committee on Smaller Public companies.

In addition to the above, the Society also believes the staff should consider small and mid-cap companies in connection with its rulemaking under the Dodd-Frank Wall Street Reform and Consumer Protection Act. At a minimum:

- The SEC should apply scaled regulation to Section 1502 “Conflict Minerals” Disclosure that requires all reporting companies to disclose annually whether “conflict minerals” (including gold) in products manufactured by their companies originated in the Democratic Republic of the Congo or an adjoining country.

- The SEC should exempt smaller reporting companies from the requirements of Section 14A of the Exchange Act, notwithstanding the instruction to new Rule 14a-21, for the reason that such companies would nevertheless be compelled to include CD&A disclosure or risk an unfavorable shareholder vote.

We note that many of these recommendations have been identified by the Office and by the presenters and organizations in previous years. We believe that that these proposals will have a meaningful benefit on the access to the capital markets for smaller companies. As a result, our recommendation is that they should be adopted as soon as possible.

Very truly yours,

Society of Corporate Secretaries & Corporate Governance Professionals

By: Steven Shapiro
Co-Chair, Small and Mid-Cap Companies Committee

cc: Anthony Barone