

36th Annual  
SEC Government-Business  
**FORUM**

ON  
Small Business  
Capital Formation

NOVEMBER 30, 2017  
AUSTIN, TX



**Final Report**

2017 SEC Government-Business Forum on  
Small Business Capital Formation

**FINAL REPORT**

Published March 2018

*The SEC conducts the Government-Business Forum on Small Business Capital Formation annually. The recommendations contained in this report are solely the responsibility of Forum participants from outside the SEC, who were responsible for developing them. The recommendations are not endorsed or modified by the SEC and do not necessarily reflect the views of the SEC, its Commissioners or any of the SEC's staff members.*

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## SUMMARY OF PROCEEDINGS

### Background

As mandated by the Small Business Investment Incentive Act of 1980, the U.S. Securities and Exchange Commission conducts an annual forum that focuses on small business capital formation.<sup>1</sup> This gathering, called the “SEC Government-Business Forum on Small Business Capital Formation,” has assembled every year since 1982. A major purpose of the Forum is to provide a platform to highlight perceived 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.

The SEC coordinated with the Herb Kelleher Center for Entrepreneurship, Growth, and Renewal (the “Herb Kelleher Center”) at the McCombs School of Business at The University of Texas at Austin to plan, organize and host the 2017 Forum. The event was held at the AT&T Executive Education and Conference Center on the campus of The University of Texas at Austin, on Thursday, November 30, 2017. The program included opening remarks, a panel discussion and two breakout groups.

### Planning and Organization

The SEC’s Office of Small Business Policy invited other federal government agencies, the North American Securities Administrators Association (“NASAA,” the organization representing state securities regulators), and small business and professional organizations concerned with small business capital formation to participate in planning the 2017 Forum (the “Forum Planning Group”). These individuals and their professional affiliations are listed on pages 4 through 6.

The members of the Forum Planning Group also assisted in preparing the agenda and in recruiting speakers.

### Participants

Invitations to attend the Forum were sent to previous participants and to members of business and professional organizations concerned with small business capital formation based locally in Texas, as well as nationally. The SEC issued two press releases to inform the public about the time, date and location of the Forum. The University of Texas also issued a press release announcing that the Forum would be held in Austin.

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<sup>1</sup> 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)).

Opening remarks and the morning panel discussion were accessible through a live webcast on the SEC’s website. A written transcript of the opening remarks by the SEC Chairman and Commissioners, as well as the morning panel discussion, has been posted on the SEC website. Links to the webcast and written transcript are set forth below under the section “Records of Proceedings and Previous Forum Materials.” The breakout group sessions were not webcast, but were accessible by telephone conference call to pre-registered participants.

Approximately 100 attendees were physically present for the Forum proceedings in Austin, Texas, plus 15 panelists and moderators, including SEC staff.

## **Proceedings**

The agenda for the 2017 Forum is reprinted starting on page 8. Dean Jay Hartzell of the McCombs School of Business and the SEC Commissioners delivered opening remarks at the Forum’s morning proceedings. The Commissioners’ remarks are reproduced starting on page 10. After these remarks, a panel discussion was conducted on how capital formation options are working for small businesses. The panel was moderated by William H. Hinman, Director of the SEC’s Division of Corporation Finance, and Sebastian Gomez Abero, Chief of the Office of Small Business Policy.

The remainder of the 2017 Forum was devoted to two breakout group meetings: one on exempt securities offerings (including micro-offerings), which was moderated by Gregory C. Yadley; and another on smaller registered and Regulation A securities offerings, which was moderated by Paul R. Tobias. The breakout groups were open to all pre-registered participants, who took part either in person or by telephone conference call.

Each breakout group was asked to formulate no more than ten recommendations, in no specific order of priority. At the final plenary session of the Forum, each breakout group then submitted a final draft of their ten recommendations to the SEC staff, resulting in a list of 20 recommendations. After the Forum, these 20 recommendations were circulated by e-mail to all participants in the two breakout groups in the form of an electronic ballot, asking them to specify whether, in their view, the SEC should give high, medium, low or no priority to each recommendation. This poll resulted in the prioritized list of 20 recommendations starting on page 16.

## **Records of Proceedings and Previous Forum Materials**

A video recording of the Forum’s morning proceedings, including the opening remarks and panel discussion, is available on the SEC’s website at [https://www.sec.gov/video/webcast-archive-player.shtml?document\\_id=113017sbf](https://www.sec.gov/video/webcast-archive-player.shtml?document_id=113017sbf).

A transcript of these morning proceedings is available on the SEC’s website at <https://www.sec.gov/info/smallbus/sbforum113017-transcript.pdf>.

The Forum program, including the biographies of the Forum panelists and moderators, is available on the SEC's website at <https://www.sec.gov/info/smallbus/sbforum113017-program.pdf>.

The final reports and other materials relating to previous Forums, dating back to 1993, may be found on the SEC's website at <https://www.sec.gov/info/smallbus/sbforumreps.htm>.

## PLANNING GROUP

### *Moderator*

Sebastian Gomez Abero  
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Chris Tyrrell  
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*Chairman of Crowdfund Intermediary  
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Tampa, Florida  
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Middle Market and Small Business*

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SEC DIVISION OF CORPORATION FINANCE**

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P. Amy Reischauer, Special Counsel

Jennifer G. Riegel, Special Counsel

## AGENDA

2017 SEC Government-Business Forum on Small Business Capital Formation

In coordination with the  
Herb Kelleher Center at the  
McCombs School of Business at  
The University of Texas at Austin  
November 30, 2017

**9:00 a.m. Call to Order**

Sebastian Gomez Abero, Chief, Office of Small Business Policy, SEC Division of Corporation Finance

**Opening Remarks**

Jay Hartzell, Dean, McCombs School of Business, The University of Texas at Austin

**Introductions of Chairman and Commissioners**

William H. Hinman, Director, SEC Division of Corporation Finance

**Remarks**

SEC Chairman Jay Clayton  
SEC Commissioner Kara M. Stein  
SEC Commissioner Michael S. Piwowar

**9:30 a.m. How Capital Formation Options Are Working for Small Businesses, Including Small Businesses in Texas**

**Moderators:**

William H. Hinman, Director, SEC Division of Corporation Finance  
Sebastian Gomez Abero, Chief, Office of Small Business Policy, SEC Division of Corporation Finance

**Panelists:**

Mark Elenowitz, Founder and CEO, TriPoint Global Equities, New York, New York  
Jan Goetgeluk, CEO, Virtuix, Austin, Texas  
Youngro Lee, CEO, NextSeed, Houston, Texas  
Antonio Madrid, Co-Founder, The Native, Austin, Texas  
Catherine V. Mott, CEO, BlueTree Capital Group, Wexford, Pennsylvania  
Michael S. Pieciak, Commissioner, Vermont Department of Financial Regulation, Montpelier, Vermont  
Annemarie Tierney, Vice President and Head of Strategy and New Markets, NASDAQ Private Market, New York, New York  
Paul R. Tobias, Partner, Vinson & Elkins, L.L.P., Austin, Texas

- 11:00 a.m. Break**
- 11:10 a.m. Two Breakout Groups Assemble to Develop Recommendations**
- ▶ **Exempt Securities Offerings (including Micro-Offerings)**  
**Moderator:**  
Gregory C. Yadley, Partner, Shumaker, Loop & Kendrick, L.L.P.,  
Tampa, Florida
  - ▶ **Smaller Registered and Regulation A Securities Offerings**  
**Moderator:**  
Paul R. Tobias, Partner, Vinson & Elkins, L.L.P., Austin, Texas
- 12:30 pm. Lunch Break**
- 2:00 p.m. Breakout Groups Reassemble to Develop Recommendations**
- 3:30 p.m. Break**
- 3:45 p.m. Plenary Session to Develop Next Steps**
- Moderators:**  
Paul R. Tobias, Partner, Vinson & Elkins, L.L.P., Austin, Texas  
Gregory C. Yadley, Partner, Shumaker, Loop & Kendrick, L.L.P.  
Tampa, Florida
- 4:30 p.m. Networking Reception at Nearby Restaurant**

## OPENING REMARKS OF SEC CHAIRMAN JAY CLAYTON

SEC Government-Business Forum on Small Business Capital Formation  
November 30, 2017

Thank you, [Bill and Sebastian]. Welcome everyone to the 36th annual Government-Business Forum on Small Business Capital Formation. We have made it a priority to reach out to investors and small businesses across the country—including in Texas—and I am delighted that this year’s Forum is being held in Austin. The Texas capital is known for its lively music scene, but the crowd is gathered here today because Austin is known as the “rock star” of small business cities.<sup>2</sup> Austin has received a number of accolades in recent months, including being named the number one place in America to start a business, the top city for “small business vitality,” and the top city for launching a technology startup.<sup>3</sup>

We were excited to take this year’s Forum outside of the nation’s capital, and we have received a warm welcome and generous support from the Herb Kelleher Center at the McCombs School of Business at The University of Texas at Austin. I want to extend our sincere thanks to them for co-hosting this event in the Great State of Texas. I also want to express my gratitude to all of our panelists and moderators and to the staff of the Division of Corporation Finance, as this Forum would not be possible without all of you.

This annual Forum provides an opportunity to hear directly from the small business community about their experiences raising capital, interacting with investors, and navigating our regulatory system. It also provides an opportunity to receive their recommendations on how to improve small business capital formation and the regulatory environment for these companies.

The Forum furthers several of the principles that I believe should guide the SEC. The Commission has a tripartite mission—to protect investors, maintain fair, orderly and efficient markets, and facilitate capital formation. One of my priorities is for the Commission to focus on facilitating capital-raising opportunities for all companies, but importantly, small- and medium-sized businesses. Small businesses contribute significantly to U.S. job creation. In fact, America’s 30 million small businesses generate 62 percent of new net jobs.<sup>4</sup> And hearing views directly from the small business community provides us with greater insight into how our capital markets may better facilitate capital formation—without compromising important investor protections. This enables us to better work with other regulators to enhance the opportunities for small businesses in all areas of the United States to grow and create jobs.

Enhanced small business capital formation also provides the seeds for more diverse investment opportunities for Main Street investors, or as I call them, “Mr. or Ms. 401(k).” At a

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<sup>2</sup> Pollard M. and Frauenheim E., *Why Austin is the Rockstar of Small Business Cities*, *Fortune* (Oct. 10, 2016), available at <http://www.fortune.com/2016/10/10/austin-small-business/>.

<sup>3</sup> *Id.*

<sup>4</sup> U.S. Small Business Administration, Office of Advocacy, *Frequently Asked Questions About Small Business* (August 2017), available at <https://www.sba.gov/sites/default/files/advocacy/SB-FAQ-2017-WEB.pdf>.

time when greater responsibility is shifting to Main Street investors to save for their own retirement, I believe serving the long-term interests of Mr. or Ms. 401(k)—including providing more investment opportunities—is an important guiding principle for the SEC. Providing more opportunities for investors to diversify their investments in companies at an earlier stage in their development allows Main Street investors to participate in the growth opportunities these companies offer.

There are many new capital raising options available to small and emerging companies, and you will hear from our panelists, who have first-hand experience with them. At the SEC, we are actively looking at additional measures to facilitate small business capital formation and ways to remove obstacles or reduce regulatory burdens, again without compromising important investor safeguards.

I have noted my concern that our public capital markets are relatively less attractive to growing businesses than in the past. I believe a key to restoring vibrancy in our public markets is recognition that a one size regulatory structure does not fit all. Recently, Congress and the SEC have taken significant steps to further develop a capital formation ecosystem that includes a scaled disclosure regime. Now, for example, a small company may begin with a Regulation A mini-public offering of up to \$50 million, then move to a fully registered public offering as a smaller reporting company, and eventually develop into a larger, more seasoned issuer. This is a potentially significant development and I believe there remains room for improving our approach to the regulation of capital formation over the life cycle of a company—to be clear, improvements that also serve the best interests of long-term retail investors. In the coming months I anticipate that the Commission will consider adopting rules to expand the definition of “smaller reporting company” to permit additional companies to avail themselves of scaled disclosure requirements.

I am very pleased to announce that the SEC’s Office of Small Business Policy recently updated the small business website on [sec.gov](http://sec.gov). I encourage small businesses and their advisors to visit the new website, which provides easily accessible and user-friendly resources on the various capital raising options available to small businesses, including exemptions from registration.

Additionally, we are taking steps to fill the position of the Advocate to head the Commission’s new Office of the Advocate for Small Business Capital Formation. The Advocate will be a powerful voice for small businesses across the country, providing assistance, conducting outreach to better understand their concerns and recommending improvements to the regulatory environment. The Advocate also will be responsible for organizing this annual Forum and will become a member of our Small Business Capital Formation Advisory Committee. I anticipate that the Commission will select the Advocate in the near future.

These are just a few examples of our efforts to facilitate companies’ access to capital while protecting investors. But we can and will do more to advance our capital formation mission. Today’s panel discussion and recommendations will be useful to us as we continue that work. Thank you again for participating.

**REMARKS OF  
SEC COMMISSIONER KARA M. STEIN**

SEC Government-Business Forum on Small Business Capital Formation  
November 30, 2017

Good morning. Welcome to the SEC’s annual Government–Business Forum on Small Business Capital Formation. I would like to start by thanking Chairman Clayton for his decision to hold this annual forum outside the Capital Beltway and in Austin, Texas. I would also like to thank Sebastian Gomez Abero, Anthony Barone and the entire SEC team who worked hard to bring this forum to Texas. Most importantly, I would like to thank the University of Texas–Austin and the McCombs School of Business for hosting us.

This is the 36<sup>th</sup> year the SEC has held this forum.<sup>5</sup> It is meant to be a way for the public to engage with the Commission on issues that are impacting small businesses and capital formation. In other words, what issues are currently affecting small companies and the investors who support those companies? Hearing firsthand from many of you about small business capital formation, both the opportunities and the challenges, provides us with invaluable input as we think about how to improve things going forward.

That is why I am so pleased that this year’s forum is being held here at the University of Texas–Austin, not far from “Silicon Hills,” one of the preeminent environments for startups and other small businesses in Texas. Just yesterday, I had the opportunity to meet with an Austin-based incubator—the Capital Factory—and a few of its member companies to discuss capital formation from their perspectives. I also was able to speak with a member of the Austin Tech Alliance to discuss the organization’s recent efforts regarding “tech-forward” policies.

In many ways, greater Austin and its multitude of small businesses represent the future of both our economy and our capital markets. That’s why it is so important to hear from you about our recent and proposed policy actions.

As most of you know, a company’s capital raising is not an event that occurs in isolation. The company is part of a larger capital raising ecosystem. That ecosystem is inhabited by other companies, investors, and a multitude of service providers.

Many of the Commission’s efforts or rules are designed to facilitate trust between these market participants—the small businesses seeking to raise capital, the investors who wish to support their growth, and their service providers.

Part of our thinking needs to take into account the diversity of companies and their investors.<sup>6</sup> How can we help small business owners in different parts of the country to

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<sup>5</sup> The forum was established pursuant to the Small Business Investment Incentive Act of 1980.

<sup>6</sup> See 2016 Government-Business Forum on Small Business Capital Formation Opening Remarks, Commissioner Kara M. Stein (Nov. 17, 2016), *available at* <https://www.sec.gov/news/statement/stein-opening-remarks-small-business-forum.html> (discussing data that suggested the geographic concentration of users of some of the

meaningfully provide input on the policies that may directly affect them? How can small businesses in different parts of the country effectively understand the options they have to raise capital? How can investors in different parts of the country participate in the growth of these small businesses with a sense of security?

Today's forum is focused on hearing from diverse voices outside the confines of Washington, D.C. We need to continue to hear the views of those outside the Capital Beltway, where the cars that cost the most money, and have the loudest horns, are often the most prized.

I hope that this is a trend that continues, because outreach is critical to understanding how to help our capital markets continue to be the deepest and most vibrant in the world.<sup>7</sup>

During today's event, I encourage everyone to consider making recommendations that encourage the confidence of small companies in our markets. I also urge everyone to consider recommendations that would enhance the trust of investors. When investors are protected, their willingness to invest increases, which positively impacts the overall funding environment for our small and emerging businesses.

Thank you, and I look forward to today's forum.

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Commission's recent regulations and asking how we can make sure small business owners across the country are aware of these tools). *See also* U.S. Securities-Based Crowdfunding under Title III of the JOBS Act, Vladimir Ivanov & Anzhela Knyazeva (Feb. 28, 2017), *available at* [https://www.sec.gov/dera/staff-papers/white-papers/RegCF\\_WhitePaper.pdf](https://www.sec.gov/dera/staff-papers/white-papers/RegCF_WhitePaper.pdf).

<sup>7</sup> *See, e.g.*, SEC Launches Nationwide Search to Hire Agency's First-Ever "Advocate for Small Business Capital Formation," Chairman Jay Clayton, Commissioner Kara M. Stein & Commissioner Michael S. Piwowar, *available at* <https://www.sec.gov/news/public-statement/commission-public-statement-9-13-17>.

**REMARKS OF  
SEC COMMISSIONER MICHAEL S. PIWOWAR**

SEC Government-Business Forum on Small Business Capital Formation  
November 30, 2017

Thank you very much, Bill [Hinman], for your kind introduction. Thank you also for your outstanding service to the Commission and our capital markets over the past several months.

As Chairman [Jay] Clayton's inspired choice for Director of the Division of Corporation Finance (the "Division"), Bill has already proven himself to be worth his weight in gold, or perhaps his weight in crude oil is the appropriate metaphor down here in Texas. Bill's knowledge and expertise in the area of capital formation have long been valued in the private sector. Now, we in the regulatory sector are benefitting from his efforts.

A case in point is the Division's expansion this past summer, on its own authorities, of our regime for the confidential submission and non-public review of voluntary draft registration statements.<sup>8</sup> Another example is our adoption in September of new interpretive guidance to assist companies in their efforts to comply with the pay ratio disclosure requirement mandated by Section 953(b) of the highly partisan Dodd-Frank Act.<sup>9</sup> Not my favorite legislative mandate—understatement of the year—but I believe the guidance is the best possible effort to reduce the costs of compliance until Congress repeals this gift to politically connected special interests. A third item is Bill's successful shepherding of our proposed amendments to modernize and simplify the disclosure requirements of Regulation S-K, per our mandate under the Fixing America's Surface Transportation Act (the "FAST Act").<sup>10</sup> As I mentioned in my remarks at our October open meeting, these amendments "respond effectively to our mandate under the FAST Act to prune the regulatory orchard [and] shear away dead limbs and overgrown branches, thereby improving the fruitfulness and health of the trees."<sup>11</sup>

I am delighted at the warm welcome we have received from the University of Texas, including from my friend and Dean of the McCombs School of Business, Jay Hartzell, for this year's Small Business Forum. As I mentioned in my remarks in 2014<sup>12</sup> and 2015,<sup>13</sup> I have advocated that we take this event *out* of the Beltway. It is much more appropriate that we take it on the road to dynamic regions like Texas, where small business capital formation actually takes place and where "Remember the Alamo!" doesn't just mean waiting in line at Reagan-National Airport for a rental car.

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<sup>8</sup> <https://www.sec.gov/corpfin/announcement/draft-registration-statement-processing-procedures-expanded>.

<sup>9</sup> <https://www.sec.gov/news/press-release/2017-172>.

<sup>10</sup> <https://www.sec.gov/news/press-release/2017-192>.

<sup>11</sup> <https://www.sec.gov/news/public-statement/piwowar-statement-101117>.

<sup>12</sup> <https://www.sec.gov/news/public-statement/2014-stmt1120msp>.

<sup>13</sup> <https://www.sec.gov/news/statement/remarks-to-the-sec-government-business-forum-11192015.html>.

As you may be aware, both the Senate and the House of Representatives have recently recognized the value of this Forum by passing bills that would require the Commission to respond to each of the Forum's annual recommendations.<sup>14</sup> While the ultimate passage of these bills remains in the offing, please know that I will personally give careful consideration to this year's recommendations. You can hang your hat on that!

Thank you very much for your attention and for your continued support of our Small Business Forum.

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<sup>14</sup> See H.R. 1312, 115<sup>th</sup> Cong. (2017); S. 416, 115<sup>th</sup> Cong. (2017).

## CONSOLIDATED FORUM RECOMMENDATIONS<sup>15</sup>

*Set forth below are the 20 recommendations of the 2017 SEC Government-Business Forum on Small Business Capital Formation, consolidated from the two breakout groups of the Forum held on November 30, 2017. The two breakout groups covered the following topics: Exempt Securities Offerings (including Micro-Offerings); and Smaller Registered and Regulation A Securities Offerings. At the final Plenary Session of the Forum, the moderators of the two breakout groups presented the ten recommendations of their respective breakout group.*

*The recommendations are presented below in the order of priority established as the result of a poll of all participants in the breakout groups.<sup>16</sup> The priority ranking is intended to provide guidance to the SEC as to the importance and urgency the poll respondents assigned to each recommendation.*

*For additional clarity with respect to the interest in each broad area of discussion, the recommendations are also subsequently presented by the breakout group from which they originated.<sup>17</sup>*

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<sup>15</sup> The SEC conducts the SEC Government-Business Forum on Small Business Capital Formation, but does not endorse or modify any of the recommendations of the Forum. The recommendations are solely the responsibility of the Forum participants, 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.

<sup>16</sup> In the poll, the participants were asked to respond whether the SEC should give "high," "medium," "low" or "no" priority to each of the 20 recommendations. Of the 68 participants, 39 responded, a 57% response rate. Each "high priority" response was assigned five points, each "medium priority" was assigned three points, each "low priority" response was assigned one point and each "no priority" or blank response was assigned zero points. The total number of points assigned to each recommendation is shown in brackets after the text of the recommendation, as is the average assignment of points for the recommendation. The average assignment of points was determined for each recommendation by dividing the total number of points for a recommendation by the number of responses received (39).

<sup>17</sup> Of the 39 respondents to the poll, 26 participated in the Exempt Securities Offerings (including Micro-Offerings) Breakout Group and 18 participated in the Smaller Registered and Regulation A Securities Offering Breakout Group. Of the 39 respondents, 5 respondents reported participating in both breakout groups.

## *Consolidated Forum Recommendations*

*Priority  
Rank*

- 1 Consistent with the recommendations of the SEC Advisory Committee on Small and Emerging Companies, the SEC should:
  - a. maintain the monetary thresholds for accredited investors; and
  - b. expand the categories of qualification for accredited investor status based on various types of sophistication, such as education, experience and training, including without limitation persons holding FINRA licenses or CPA or CFA designations, passing a test that demonstrates sophistication, or status as managerial or key employees affiliated with the issuer. [145; 3.72]
  
- 2 The SEC should issue guidance for broker/dealers, transfer agents, and clearing firms, regarding Regulation A securities and OTC securities. The SEC should revise Regulation A, as follows:
  - a. mandate blue sky preemption for secondary trading of Regulation A Tier 2 securities;
  - b. allow at-the-market offerings;
  - c. allow all reporting companies to use Regulation A;
  - d. increase the maximum offering amount in any twelve month period from \$50 million to \$75 million for Regulation A Tier 2 offerings;
  - e. consider overriding advance notice requirements of state regulators in Regulation A offerings and limiting state filing fees for these offerings;
  - f. require any portal that is conducting Regulation A offerings to be a registered portal similar to the requirements under Regulation Crowdfunding, and adhere to disclosure requirements including compensation and Section 17(b) of the Securities Act of 1933. [134; 3.44]
  
- 3 The SEC should lead a joint effort with FINRA to provide clear guidance to participants in Regulation Crowdfunding offerings. [126; 3.23]
  
- 4(a) To improve access for investors and portals in Regulation Crowdfunding offerings, the SEC should give consideration to the following.
  - a. Raise the investor's investment limit (cap) by:
    - i. removing the cap for investments by accredited investors;
    - ii. raising the cap for non-accredited investors by making the limit

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- applicable to each specific investment rather than an aggregate limit;  
and
- iii. rationalizing the cap for entities by entity type, not income.
- b. Allow portals to receive compensation on different terms than the investor (e.g., warrants to purchase on the same terms as the investors) as well as to co-invest in offerings they list.
  - c. Rationalize Regulation Crowdfunding requirements for debt offerings and small offerings under \$250,000, for example, by:
    - i. limiting the ongoing reporting obligations to actual noteholders (not to the general public); and
    - ii. scaling regulation to reduce accounting, legal and other costs that now are relatively inelastic, regardless of the size of the offering. [122; 3.13]
- 4(b) To improve access for issuers to Regulation Crowdfunding offerings, the SEC should give consideration to the following:
- a. increase the offering limit for Regulation Crowdfunding offerings to \$5,000,000 within a twelve-month period;
  - b. promote simplification of the capitalization table by allowing the use of special purpose vehicles (SPVs) to aggregate investors with appropriate conditions (e.g., democratically-organized SPVs, SPVs organized by a registered investment advisor, etc.); and
  - c. allow issuers to “test the waters” prior to filing. [122; 3.13]
- 6 Small or intermittent finders should be exempt from the requirement to register as broker-dealers. [116; 2.97]
- 7 The SEC should clarify the relationship of exempt offerings in which general solicitation is not permitted—such as in Section 4(a)(2) and Rule 506(b) offerings—with Rule 506(c) offerings involving general solicitation in the following ways:
- a. the facts and circumstances analysis regarding whether general solicitation is attributable to purchasers in an exempt offering in which general solicitation is not permitted (as set forth in the 2007 Regulation D Proposing Release) applies to a Rule 506(c) offering, whether completed, abandoned or ongoing, just as it does to a registered public offering; and
  - b. Rule 152 applies to a Rule 506(c) offering so that an issuer using Rule

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506(c) may subsequently engage in a registered public offering without adversely affecting the Rule 506(c) offering exemption. [108; 2.77]

- 8 The SEC should permit an alternative trading system to file a Form 211 with FINRA and review the FINRA process to make sure that there is no undue burden on applicants and issuers (e.g. the Form 211 should be processed within 3 days on a non-merit basis). [107; 2.74]
- 9 The definition of smaller reporting company and non-accelerated filer should be revised to include an issuer with a public float of less than \$250 million or with annual revenues of less than \$100 million, excluding large accelerated filers. [100; 2.56]
- 10 With regard to venture exchange legislation, Congress and the SEC should look to existing alternative venture exchanges serving small public companies and work within the existing framework, rather than mandate a primary trading venue, in order to promote competition between secondary trading marketplaces. [99; 2.54]
- 11A The SEC should mandate appropriate disclosure of short positions. Additionally, the SEC should enforce Regulation SHO and Regulation T for all IPOs. [98; 2.51]
- 11B Proxy advisory firms should be brought under SEC registration so that the SEC may oversee how these firms make recommendations and mitigate conflicts of interest. [98; 2.51]
- 13 Withdraw the “Proposed Rule: Amendments to Regulation D, Form D and Rule 156” published in the Federal Register, Vol 78, No. 142 (July 24, 2013) pp. 44806 - 44855. [96; 2.46]
- 14 SEC should lead a joint effort with NASAA and FINRA to implement the basic principles of the American Bar Association Task Force on Private Placement Brokers. To achieve this goal, join NASAA and FINRA in developing a timeframe for quarterly or other regular meetings—with specified benchmarks—until a mutually agreeable regime of finder and limited intermediary registration and regulation or exemption is achieved. [92; 2.36]
- 15 The SEC should recognize that quick response (“QR”) codes suffice in lieu of a hyperlink to a prospectus or offering circular after the offering has gone effective or been qualified. [86; 2.20]
- 16 Study and propose a revised regulatory regime for true peer-to-peer lending platforms for small businesses and consumers, using current European regulatory and other models as reference. [85; 2.18]

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- 17      The SEC should expand the disclosure requirements of stock promotion activity. The SEC should update Section 17(b) of the Securities Act to require better transparency when companies engage promotional or investor relations firms pre- and post-offerings. [84; 2.15]
- 18      The SEC should amend unlisted trading privileges (“UTP”) rules to allow small and medium size public companies the option to consolidate secondary trading to one or more trading platforms. [82; 2.10]
- 19      The SEC should allow for flexibility in tick sizes. Among the options to consider are to make the pilot program permanent, and/or consider other alternatives to address the narrowing spreads in an effort to move away from one-size fits all decimalization. [79; 2.03]
- 20      To promote greater liquidity, the SEC should provide greater clarity with respect to which courts and authorized governmental entities may act to satisfy the exemption from registration for exchange transactions under Securities Act Section 3(a)(10), and communicate the same to broker-dealers. [68; 1.74]

## FORUM RECOMMENDATIONS BY BREAKOUT GROUP

*Set forth below are the recommendations of participants in each of the two Forum breakout groups in order of priority, as discussed in footnote 16 of the preceding section.*

| <b><i>Priority Rank</i></b> | <b><i>Exempt Securities Offerings (including Micro-Offerings)<br/>Breakout Group Recommendations</i></b>  |
|-----------------------------|---|
| 1                           | Consistent with the recommendations of the SEC Advisory Committee on Small and Emerging Companies, the SEC should: <ul style="list-style-type: none"><li>a. maintain the monetary thresholds for accredited investors; and</li><li>b. expand the categories of qualification for accredited investor status based on various types of sophistication, such as education, experience and training, including without limitation persons holding FINRA licenses or CPA or CFA designations, passing a test that demonstrates sophistication, or status as managerial or key employees affiliated with the issuer. [145; 3.72]</li></ul>   |
| 2                           | The SEC should lead a joint effort with FINRA to provide clear guidance to participants in Regulation Crowdfunding offerings. [126; 3.23]   |
| 3A                          | To improve access for investors and portals in Regulation Crowdfunding offerings, the SEC should give consideration to the following. <ul style="list-style-type: none"><li>a. Raise the investor's investment limit (cap) by:<ul style="list-style-type: none"><li>i. removing the cap for investments by accredited investors;</li><li>ii. raising the cap for non-accredited investors by making the limit applicable to each specific investment rather than an aggregate limit; and</li><li>iii. rationalizing the cap for entities by entity type, not income.</li></ul></li><li>b. Allow portals to receive compensation on different terms than the investor (e.g., warrants to purchase on the same terms as the investors) as well as to co-invest in offerings they list.</li><li>c. Rationalize Regulation Crowdfunding requirements for debt offerings and small offerings under \$250,000, for example, by:<ul style="list-style-type: none"><li>i. limiting the ongoing reporting obligations to actual noteholders (not to the general public); and</li><li>ii. scaling regulation to reduce accounting, legal and other costs that now are relatively inelastic, regardless of the size of the offering. [122; 3.13]</li></ul></li></ul> |

*Exempt Securities Offerings (including Micro-Offerings)  
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- 3B To improve access for issuers to Regulation Crowdfunding offerings, the SEC should give consideration to the following:
- a. increase the offering limit for Regulation Crowdfunding offerings to \$5,000,000 within a twelve-month period;
  - b. promote simplification of the capitalization table by allowing the use of special purpose vehicles (SPVs) to aggregate investors with appropriate conditions (e.g., democratically-organized SPVs, SPVs organized by a registered investment advisor, etc.); and
  - c. allow issuers to “test the waters” prior to filing. [122; 3.13]
- 5 Small or intermittent finders should be exempt from the requirement to register as broker-dealers. [116; 2.97]
- 6 The SEC should clarify the relationship of exempt offerings in which general solicitation is not permitted—such as in Section 4(a)(2) and Rule 506(b) offerings—with Rule 506(c) offerings involving general solicitation in the following ways:
- a. the facts and circumstances analysis regarding whether general solicitation is attributable to purchasers in an exempt offering in which general solicitation is not permitted (as set forth in the 2007 Regulation D Proposing Release) applies to a Rule 506(c) offering, whether completed, abandoned or ongoing, just as it does to a registered public offering; and
  - b. Rule 152 applies to a Rule 506(c) offering so that an issuer using Rule 506(c) may subsequently engage in a registered public offering without adversely affecting the Rule 506(c) offering exemption. [108; 2.77]
- 7 Withdraw the “Proposed Rule: Amendments to Regulation D, Form D and Rule 156” published in the Federal Register, Vol 78, No. 142 (July 24, 2013) pp. 44806 - 44855. [96; 2.46]
- 8 SEC should lead a joint effort with NASAA and FINRA to implement the basic principles of the American Bar Association Task Force on Private Placement Brokers. To achieve this goal, join NASAA and FINRA in developing a timeframe for quarterly or other regular meetings—with specified benchmarks—until a mutually agreeable regime of finder and limited intermediary registration and regulation or exemption is achieved. [92; 2.36]
- 9 Study and propose a revised regulatory regime for true peer-to-peer lending

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***Exempt Securities Offerings (including Micro-Offerings)  
Breakout Group Recommendations***

platforms for small businesses and consumers, using current European regulatory and other models as reference. [85; 2.18]

- 10 To promote greater liquidity, the SEC should provide greater clarity with respect to which courts and authorized governmental entities may act to satisfy the exemption from registration for exchange transactions under Securities Act Section 3(a)(10), and communicate the same to broker-dealers. [68; 1.74]

**Priority Rank**

***Smaller Registered and Regulation A Securities Offerings  
Breakout Group Recommendations***

- 1 The SEC should issue guidance for broker/dealers, transfer agents, and clearing firms, regarding Regulation A securities and OTC securities. The SEC should revise Regulation A, as follows:
- a. mandate blue sky preemption for secondary trading of Regulation A Tier 2 securities;
  - b. allow at-the-market offerings;
  - c. allow all reporting companies to use Regulation A;
  - d. increase the maximum offering amount in any twelve month period from \$50 million to \$75 million for Regulation A Tier 2 offerings;
  - e. consider overriding advance notice requirements of state regulators in Regulation A offerings and limiting state filing fees for these offerings;
  - f. require any portal that is conducting Regulation A offerings to be a registered portal similar to the requirements under Regulation Crowdfunding, and adhere to disclosure requirements including compensation and Section 17(b) of the Securities Act of 1933. [134; 3.44]
- 2 The SEC should permit an alternative trading system to file a Form 211 with FINRA and review the FINRA process to make sure that there is no undue burden on applicants and issuers (e.g. the Form 211 should be processed within 3 days on a non-merit basis). [107; 2.74]
- 3 The definition of smaller reporting company and non-accelerated filer should be revised to include an issuer with a public float of less than \$250 million or with annual revenues of less than \$100 million, excluding large accelerated filers. [100; 2.56]

***Smaller Registered and Regulation A Securities Offerings  
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Rank***

- 4 With regard to venture exchange legislation, Congress and the SEC should look to existing alternative venture exchanges serving small public companies and work within the existing framework, rather than mandate a primary trading venue, in order to promote competition between secondary trading marketplaces. [99; 2.54]
- 5A The SEC should mandate appropriate disclosure of short positions. Additionally, the SEC should enforce Regulation SHO and Regulation T for all IPOs. [98; 2.51]
- 5B Proxy advisory firms should be brought under SEC registration so that the SEC may oversee how these firms make recommendations and mitigate conflicts of interest. [98; 2.51]
- 7 The SEC should recognize that quick response (“QR”) codes suffice in lieu of a hyperlink to a prospectus or offering circular after the offering has gone effective or been qualified. [86; 2.20]
- 8 The SEC should expand the disclosure requirements of stock promotion activity. The SEC should update Section 17(b) of the Securities Act to require better transparency when companies engage promotional or investor relations firms pre- and post-offerings. [84; 2.15]
- 9 The SEC should amend unlisted trading privileges (“UTP”) rules to allow small and medium size public companies the option to consolidate secondary trading to one or more trading platforms. [82; 2.10]
- 10 The SEC should allow for flexibility in tick sizes. Among the options to consider are to make the pilot program permanent, and/or consider other alternatives to address the narrowing spreads in an effort to move away from one-size fits all decimalization. [79; 2.03]

## BREAKOUT GROUP PARTICIPANTS

*The participants identified below took part either in person or by telephone conference call in the Forum breakout groups on November 30, 2017. These participants formulated the Forum recommendations set forth beginning on page 16 and were later given an opportunity to participate in a poll to prioritize the recommendations.*

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