

U.S. Securities and Exchange Commission
SMALL BUSINESS CAPITAL FORMATION ADVISORY COMMITTEE

May 28, 2020

The Honorable Jay Clayton
Chairman
U.S. Securities and Exchange Commission
100 F Street NE
Washington, DC 20549-1070

Dear Chairman Clayton:

On behalf of the SEC Small Business Capital Formation Advisory Committee, we are pleased to submit the below recommendations that were approved at the Committee's May 8, 2020 virtual meeting, during which we discussed the Commission's proposal titled [Facilitating Capital Formation and Expanding Investment Opportunities by Improving Access to Capital in Private Markets](#), Release No. 33-10763 (March 4, 2020) ("Capital Formation Proposal").

The Committee generally supports the proposed changes to the exempt offering framework set forth in the proposal, specifically:

1. Increasing annual offering limits, allowing issuers to raise up to:
 - \$5 million using Regulation Crowdfunding;
 - \$10 million using Rule 504 of Regulation D; and
 - \$75 million using Tier 2 of Regulation A.
2. Creating an exemption from general solicitation for "demo days" and similar pitch events under proposed Rule 148.
3. Creating new ways for issuers to test the waters to gauge market interest prior to incurring offering expenses by allowing:
 - Generic solicitation of interest materials for issuers to "test the waters" for an exempt offer prior to determining which exemption it will use; and
 - Regulation Crowdfunding issuers to "test the waters" prior to filing an offering document with the SEC.
4. Harmonizing what disclosures are provided to investors, including aligning the non-accredited investor financial disclosure requirements in Rule 506(b) offerings with the disclosure requirements of Regulation A.
5. Improving the utility of Regulation Crowdfunding by:
 - Increasing how much some individuals can invest by:

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- Removing limits on how much accredited investors can invest; and
- Basing non-accredited investor limits on the greater, not lesser, of their income or net worth;
- Allowing investors to pool their funds together in a special purpose vehicle to invest in a Regulation Crowdfunding offering; and
- Aligning the types of securities eligible for offer under Regulation Crowdfunding to correspond with the eligible securities in Regulation A offerings.

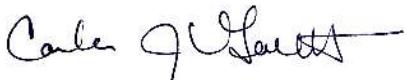
The Committee also encourages the Commission to clarify the basis for determining accredited investor status in Regulation Crowdfunding offerings.

6. Reducing the complexities across the offering framework by adopting an integration framework that consistently defines and clarifies integration, including by the new general principle and through the four proposed non-exclusive safe harbors. In addition, the Committee recommends that the Commission add more clarity around integration with respect to convertible notes and subsequent public offerings.

In addition to items included in the Capital Formation Proposal, the Committee encourages the Commission to:

- A. Consider adding a micro-offering exemption, as referenced in question 64 of the Capital Formation Proposal, with fewer reporting requirements and restrictions for issuers;
- B. Provide pathways for retail investors to invest in a wider range of small businesses through pooled investment vehicles; and
- C. Adopt a clear framework for unregistered finders (as recommended by the prior [SEC Advisory Committee on Small and Emerging Companies](#) and at [SEC Small Business Forums](#)) in light of their role as intermediaries in fostering capital formation for smaller businesses.

Respectfully submitted on behalf of the Advisory Committee,



Carla Garrett
Committee Chair



Jeffrey Solomon
Committee Vice Chair