



U.S. Securities and
Exchange Commission



REPORT ON THE
42ND ANNUAL

small. business

FORUM

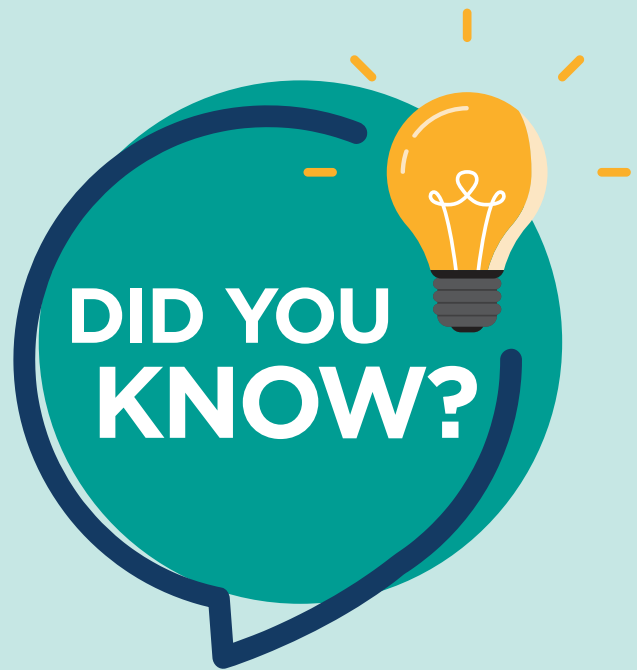
04.24.23 - 04.27.23

The U.S. Securities and Exchange Commission (SEC) annually hosts the Government-Business Forum on Small Business Capital Formation. The recommendations contained in this report were developed by the 2023 Forum participants. The recommendations are not endorsed by the SEC and, as with the remarks of SEC Commissioners and staff published in this report, do not necessarily reflect the views of the SEC, its Commissioners, or any of the SEC's staff members.

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

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» 61.7M

Americans are **EMPLOYED BY A SMALL BUSINESS** (46.4% of U.S. employees)

75% «

of entrepreneurs have experienced
CHALLENGES OBTAINING CAPITAL

» **PARTICIPANTS from ACROSS THE ECOSYSTEM**
weighed in on issues facing small businesses

Founder Consultant Investor
Mentor Accountant Business Leader
Advocacy/Trade Associate
Researcher Community/Nonprofit Leader
Professional Adviser Student Entrepreneur
CDFI Government Attorney Academia
Compliance

ABOUT THE FORUM

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

The SEC's [Office of the Advocate for Small Business Capital Formation](#) leads the event, in collaboration with each of the Commissioners and other offices and divisions across the agency.

Participants in the Forum bring a breadth of perspectives to the policy deliberations, approaching capital raising from a variety of backgrounds, geographies, and life cycle stages.²

ENGAGING PUBLIC PARTICIPANTS ACROSS THE SMALL BUSINESS ECOSYSTEM

Participants



441 attendees



45 U.S. States and Territories



303 registrants identifying as a women- or minority-owned business or its investor

Engagement



40 tweets from @SECgov



556k Twitter impressions



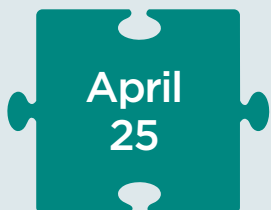
1,291 total views across the 4-day, 6-hour event

PERSPECTIVES ON SMALL BUSINESS CAPITAL-RAISING AT EVERY STAGE

The 42nd Small Business Forum took place over four 90-minute virtual sessions April 24-27, featuring appearances by each of the Commissioners and 12 speakers with in-depth knowledge of the issues facing small business across the country. Each session focused on a different stage of the capital-raising lifecycle.



Exploring the Early-Stage Landscape:
Trends and Strategies in Capital Raising



Building Entrepreneurial Ecosystems:
Laying the Groundwork to Support
Small Businesses and Their Investors



Investing in Small Businesses:
Successes and Challenges Facing
Smaller Funds



Accessing the Public Markets:
Becoming and Staying a Public
Reporting Company

POLICY RECOMMENDATIONS

A hallmark of the Forum is the opportunity for participants to develop policy recommendations to improve capital raising. Based on feedback from prior Forums, and consistent with prior years' events, we invited participants to submit recommendations in advance, as well as "chat" them in during the live event. Doing so fostered an inclusive environment where all voices could be heard while being efficient with participants' time.

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

Alongside each recommendation is a response from the Commission, noting any corresponding policy initiatives that have been made public.³ The Commission will consider Forum recommendations alongside other public comments for relevant policy initiatives.



18 hours of open polls
across **4** days



42 policy topics submitted
by the public



20 recommendations
prioritized for delivery to the
Commission and Congress



DAY 1: EXPLORING THE EARLY-STAGE LANDSCAPE

Capital Raising Trends and Strategies

Agenda

- 1:00 P.M. Welcome Remarks from Sebastian Gomez Abero, SEC Small Business Advocacy Team
- 1:05 P.M. Remarks from SEC Chair Gary Gensler
- 1:10 P.M. Remarks from SEC Commissioner Hester M. Peirce
- 1:15 P.M. Introduction by Amy Reischauer, SEC Small Business Advocacy Team
- 1:20 P.M. Panel Discussion
Moderator: Julie Zelman Davis, SEC Small Business Advocacy Team
Panelists: Jennifer Garcia, Latino American Business Action Network
Edna Martinson, Boddle Learning
Laura Simão, Lendistry Capital Partners
- 2:00 P.M. Q&A with Panelists, moderated by Amy Reischauer, SEC Small Business Advocacy Team
- 2:25 P.M. Closing Remarks from Kim Dinwoodie, SEC Small Business Advocacy Team
- 2:30 P.M. Voting to Prioritize Policy Recommendation Submissions

WE ASKED...

How have
you raised
capital?



PARTICIPANTS SAID...

#1

ANGEL INVESTORS

(68% of respondents)

58% said **Friends and Family** and
48% said **Grants, Loans, or Other Non-Dilutive Funding**

Panel Speakers



JENNIFER GARCIA
Chief Operating Officer
Latino Business Action Network
San Francisco, CA

Angel investors play an important role that's arguably more important for diverse founders. If Latinos are a reflection of my family, we don't have the tios and tias – the aunts and uncles – that are going to fund me... They don't have the sophisticated networks to introduce them to the VC that's just going to write them [a] check just because we went to the same school. We just don't have that network. So angel investors really do play an important role for these early-stage founders.

Jennifer is Chief Operating Officer for Latino Business Action Network (LBAN), a nonprofit organization that promotes Latino entrepreneurship in the United States. Under her leadership, LBAN facilitates the Business Scaling Program at Stanford University, building an ecosystem of over 1,000 Latino and Latina mentors, capital providers, and corporate partners. In addition to her role at LBAN, Jennifer founded Fluential Leadership, a company working with small-to-medium-sized businesses to develop and execute growth strategies. Prior to LBAN, Jennifer spent 12 years at Bloomberg L.P., where she held numerous leadership positions, including managing the Asset and Investment Management Product Specialist Team and the fixed income and foreign exchange electronic trading teams. Jennifer is the Co-Author of *Hispanic Stars Rising – The New Face of Power*, which showcases successful Latino leaders.



It's so easy for somebody to say, go read this book and you'll know everything you need to know about VC, but it's a lot harder when you're in it, and you just wish somebody could look at this term sheet and... explain line to line, but I [didn't] have money to hire a lawyer so that was definitely a challenge. [I did] lots of Googling and trying to talk to other founders.



EDNA MARTINSON
Co-Founder
Boddle Learning
Tulsa, OK

Edna launched Boddle Learning during the Covid-19 pandemic, and today the AI-enabled, interactive, educational gaming platform has helped 4 million elementary-age students across the U.S. tackle learning gaps and improve math proficiency. Boddle's first investors are located in the Midwest/Southwest, including venture funds focused on building technology companies in America's heartland. Edna emigrated from Ghana and was recently recognized in the Forbes 30 under 30 Class of 2023.



LAURA SIMÃO

Head of Lendistry Capital Partners and Public-Private Partnerships

Lendistry Capital Partners

New York, NY



The key is really to look for an ethical and responsible capital provider that can stay with you for the long run.

Laura is a seasoned impact investor with over 15 years of experience. Most recently, she served as a Vice President in the Urban Investment Group within Goldman Sachs Asset Management and the head of the access to capital component of Goldman Sachs' 10,000 Small Businesses. A recognized investor and thought leader, Laura has been tapped to advise senior government officials at the federal, state, and local levels on creating strategies, policies and designing ecosystems that leverage public and private sector resources to create opportunities and equitable access to capital to entrepreneurs. She has led the design and execution of several public-private partnerships and investment funds to support minority entrepreneurs, including in New York City and Chicago.



Highlights from Panel Discussion

- » VC isn't right for every company and there's a wide spectrum of capital options. It's important to really think about the right type of capital for your business model. When you're an early-stage entrepreneur, there's more than one way to define success in terms of fundraising.
- » There's a tightening in capital, and diverse founders will experience it the most. As micro funds and emerging funds managers experience challenges with second funds, it affects minority communities.
- » We're living through a unique period of time and public-private initiatives, including with the State Small Business Credit Initiative program.
- » Navigating the fundraising world is challenging. There is significant value in having someone to translate terminology and resources to help.
- » Access to capital hinges on access, including access to people who understand all the pieces. How do we connect capital providers and VCs and business owners? How do organization leaders, founders and business owners extend access to each other?
- » Minority founders don't have the same level of access to friends and family with the ability to write large checks, so angel investors really do play an important role for early-stage founders. When markets tighten, Angels play an important role because they continue to back new founders.
- » Investors tend to invest in people and products they identify with, so policies based on wealth have an impact on which entrepreneurs receive capital. It's important to understand the impact the ability to qualify as an accredited investor has on diverse founders. It's also important to think about those that want to be investors – investing in early-stage companies that you believe in is a major source of wealth generation.

Participants' Policy Recommendations



Expand the accredited investor definition to achieve greater diversity among startup investors and entrepreneurs

COMMISSION RESPONSE

As indicated on the Spring 2023 Regulatory Agenda,⁴ the Division of Corporation Finance is considering recommending that the Commission propose amendments to Regulation D, including updates to the accredited investor definition, to improve protections for investors. The Commission will consider this Forum recommendation in connection with this initiative.



Expand the accredited investor definition to include additional measures of sophistication

COMMISSION RESPONSE

In 2020, the Commission adopted amendments to the definition of “accredited investor” under Regulation D of the Securities Act of 1933 (Securities Act) that added ways for individuals to qualify as accredited investors and participate in private offerings (Accredited Investor Adopting Release).⁵ This included amendments allowing natural persons to qualify as accredited investors based on certain professional certifications, designations, or credentials. The amended rule includes a nonexclusive list of attributes that the Commission will consider in determining which professional certifications and designations or other credentials qualify a natural person for accredited investor status. In a related order, the Commission designated holders in good standing of the Series 7 (Licensed General Securities Representative), Series 65 (Licensed Investment Adviser Representative), and Series 82 (Licensed Private Securities Offerings Representative) licenses as accredited investors.⁶ The Commission may designate additional qualifying professional certifications, designations, and other credentials by order.

The Spring 2023 Regulatory Agenda indicates that the Division of Corporation Finance is considering recommending that the Commission propose amendments to Regulation D, including updates to the accredited investor definition, to improve protections for investors. The Commission will consider this Forum recommendation in connection with this initiative.



Harmonize the annual reporting requirements for issuers that utilize different exempt pathways, such as Regulation Crowdfunding and Regulation A

COMMISSION RESPONSE

The Commission regularly evaluates ways to improve its capital raising rules. In 2020, the Commission adopted amendments to Regulation Crowdfunding and Regulation A designed to improve the workability of those exemptions in order to allow for efficient capital raising by issuers while continuing to provide important investor protections.⁷ The Commission will consider this Forum recommendation as well as the effects of the recent rule amendments in connection with its regulatory initiatives, consistent with relevant statutes.



Expand the accredited investor definition to include any person who invests not more than 10% of the greater of his/her annual income or net assets

COMMISSION RESPONSE

The Spring 2023 Regulatory Agenda indicates that the Division of Corporation Finance is considering recommending that the Commission propose amendments to Regulation D, including updates to the accredited investor definition, to improve protections for investors. The Commission will consider this Forum recommendation in connection with this initiative.



Do not revise the accredited investor definition to make it more difficult to qualify based on wealth thresholds

COMMISSION RESPONSE

The Spring 2023 Regulatory Agenda indicates that the Division of Corporation Finance is considering recommending that the Commission propose amendments to Regulation D, including updates to the accredited investor definition, to improve protections for investors. The Commission will consider this Forum recommendation in connection with this initiative.



DAY 2: BUILDING ENTREPRENEURIAL ECOSYSTEMS

Laying the Groundwork to Support Small Businesses and Their Investors

Agenda

- 1:00 P.M. Welcome Remarks from John Cavanagh, SEC Small Business Advocacy Team
- 1:05 P.M. Remarks from SEC Commissioner Caroline A. Crenshaw
- 1:10 P.M. Introduction by Sebastian Gomez Abero, SEC Small Business Advocacy Team
- 1:15 P.M. Panel Discussion
Moderator: Courtney Haseley, SEC Small Business Advocacy Team
Panelists: Betty Francisco, Boston Impact Initiative
Ian Hathaway, Far Out Ventures
Brian Hollins, Collide Capital
- 2:00 P.M. Q&A with Panelists, moderated by Sebastian Gomez Abero, SEC Small Business Advocacy Team
- 2:25 P.M. Closing Remarks from Sarah Kenyon, SEC Small Business Advocacy Team
- 2:30 P.M. Voting to Prioritize Policy Recommendation Submissions

WE ASKED...

What are the biggest barriers to access capital?

PARTICIPANTS SAID...



#1 Connections to **NETWORKS** and Investors

Information, Education and Knowledge
and Laws, Policies, and Regulations
were the next biggest barriers

Panel Speakers



BETTY FRANCISCO

Chief Executive Officer
Boston Impact Initiative
Boston, MA

Betty is CEO of Boston Impact Initiative, a social impact investment fund investing to close the racial wealth divide in New England. She is also co-founder of Amplify Latinx – a social venture working to build Latinx economic and political power in Massachusetts. Named one of the 100 Most Influential People in Boston last year by Boston Magazine, Betty serves on the Board of Directors of Beth Israel Lahey Health, Nellie Mae Education Foundation, The Boston Foundation, and Roxbury Community College.



Surround yourself with a community – a community of support, a community you value, a community that you want to help bolster – and amplify it.



Build relationships as early as possible. Instead of dots, [investors] want to see lines.



IAN HATHAWAY

Co-Founder and General Partner
Far Out Ventures
Santa Barbara, CA

Ian is Co-Founder and General Partner of Far Out Ventures, a pre-seed and seed stage investor in marketplace, vertical SaaS, and fintech companies. Previously, he was Senior Vice President at Techstars, where he led the firm's investment strategy and fund analytics, and launched the Techstars pre-accelerator program. Ian has been an advisor to leaders in technology, finance, and venture, including Index Ventures, Google, and Goldman Sachs. He is also co-author of the Startup Community Way, a book about entrepreneurial ecosystems.



BRIAN HOLLINS

Founder and Managing Partner

Collide Capital

Brooklyn, NY



[T]he best ecosystems are fostered by a pure desire to help others win. It sets a culture and a precedent from the jump that leads to a beautiful flywheel of folks having a genuine interest in supporting the greater cause.

Brian is Founder and Managing Partner of Collide Capital, a venture firm investing in a diverse array of founding teams. He is also Founder and CEO of Takeoff Institute, a non-profit equipping Black undergrads with the necessary resources to launch a successful career, and is a Founding Board Member of BLCK VC, an investor ecosystem for Black investors looking to make a career in venture. Previously, Brian worked at Goldman Sachs where he helped launch the Emerging Entrepreneurs Coverage group to extend resources and capital to early-stage founders and deploy over \$100 million of capital as a software investor for GS Growth Equity.



Highlights from Panel Discussion

- » While successful entrepreneurial ecosystems share many tangible and intangible ingredients, each ecosystem is unique and depends on the kind of startup community that exists within it. Importantly, cultural capital differs from one community to another, and ecosystems require more than financial capital to grow.
- » It is critical that ecosystems are adaptable and acknowledge the interdependence of different stakeholders. Coalition-building and intentional outreach are vital, as are conscious efforts to build bridges among various capital allocators and other actors within the community, while recognizing the different niches such actors fill in supporting and collaborating with startups.
- » When individuals are intentional about building and identifying cultures and communities that they care about, the benefits are more bountiful to both the individual and the entire entrepreneurial ecosystem. Giving freely first, with a long-term lens of commitment to a community, is an approach that benefits everyone in the ecosystem.
- » It remains more difficult for emerging fund managers of color to raise money than fund managers from traditional backgrounds, which continues to create frictions for the flow of capital into the ecosystems that support underrepresented founders.
- » Funneling capital into companies in underrepresented communities remains a challenge, and we need more diverse fund managers who come from the communities we are trying to reach. Diversifying the capital allocators is critical to collaborating with the diverse startups in need of support and is instrumental in driving investment into diverse led companies.

Participants' Policy Recommendations



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

COMMISSION RESPONSE

Fair and efficient capital markets are important to protecting underrepresented founders and investors. To that end, the Commission regularly evaluates ways to improve its capital raising rules, and the Spring 2023 Regulatory Agenda includes an initiative to consider amendments to Regulation D, the most frequently used of the Commission's rules related to exempt offerings. As always, the Commission will carefully balance concerns relating to the impact on companies participating in the U.S. capital markets (including those led by underrepresented founders) with all of our statutory mandates including investor protection, and weigh the public comments to achieve the appropriate balance. Ensuring investor confidence in capital markets and disclosure is a crucial ingredient in capital formation, including capital formation for small business and underrepresented entrepreneurs. The Commission will consider this Forum recommendation in connection with its regulatory initiatives.



Collaborate with market experts to establish a regulatory framework for finders that includes an exemption from broker-dealer registration and helps facilitate small business capital formation

COMMISSION RESPONSE

In October 2020, the Commission proposed an exemptive order that would permit natural persons to engage in certain limited activities involving accredited investors without registering with the Commission as a broker-dealer.⁸ In connection with that proposal, the Commission requested public comment on all aspects of the proposed exemption. Finalizing the proposal is not included in the Spring 2023 Regulatory Agenda.⁹



Support entrepreneurs, including underrepresented founders, who lack the technical assistance to understand how to access capital from investors

COMMISSION RESPONSE

The Commission supports efforts to provide and improve accessibility of educational and technical resources to support entrepreneurs and their investors. In 2021, the SEC's Office of the Advocate for Small Business Capital Formation, in partnership with other SEC offices and divisions, launched a new [Capital Raising Hub](#)¹⁰ on sec.gov that serves as a centralized portal for educational resources for entrepreneurs and their investors on how to comply with securities laws when raising capital. Resources are tailored to be accessible for various levels of familiarity with capital raising rules and regulations, from very early entrants to the capital raising framework to more experienced users seeking guidance on specific rules. The Capital Raising Hub is directly accessible under the "Education" tab on the SEC's homepage and is continuously expanded in response to feedback from small businesses and their investors. The Capital Raising Hub has received over 84,000 visits since its launch and includes:

- [Cutting Through the Jargon](#)¹¹ glossary of key terms that makes the language of capital raising more accessible to small businesses and their investors.
- [Navigate Your Options](#)¹² interactive tool that explores regulatory pathways available to raise capital, through which users answer a series of questions to identify the most relevant pathways to raise capital based on their specific needs.
- [Capital Trends Maps](#)¹³ that provide data on where capital is being raised across the country under various offering pathways.
- [Building Blocks](#)¹⁴ that provide a suite of educational materials that break down fundamental securities law concepts into plain language.

The SEC's Office of the Advocate for Small Business Capital Formation, in partnership with other SEC offices and divisions, has engaged with small businesses, investors, and thought leaders in the market to highlight these new educational resources, and will continue to seek engagements with diverse audiences across the country. The Commission welcomes continued engagement and ideas to improve the resources.



Improve the exempt offering framework to reduce concentration and increase diversity – access to capital should not be practically limited to only rich people the company knows

COMMISSION RESPONSE

The Commission regularly evaluates ways to expand and diversify access to capital. In 2020, the Commission adopted a set of rule amendments designed to facilitate capital formation and increase opportunities for investors by expanding access to capital for small and medium-sized businesses and entrepreneurs across the United States.¹⁵ This included amendments to improve certain exemptions from registration that allow for investment by non-accredited investors, such as Regulation A and Regulation Crowdfunding. The Commission in 2020 also adopted amendments to the accredited investor definition that added additional ways for individuals to qualify as accredited investors and participate in exempt offerings.¹⁶ The Division of Corporation Finance staff welcomes additional data on the effect of these amendments, including on investor protection.

In addition, the Commission welcomes ideas for how our federal securities laws can support entrepreneurial ecosystems across the country while maintaining investor protection. In connection with any such recommendations, the Division of Corporation Finance staff is interested in any additional data on how any potential rule changes arising therefrom would affect the risks to different investors.

The Spring 2023 Regulatory Agenda indicates that the Division of Corporation Finance is considering recommending that the Commission propose amendments to Regulation D, including updates to the accredited investor definition, to improve protections for investors. The Commission will consider this Forum recommendation in connection with its regulatory initiatives.



Create a new private fund exemption to allow states to foster intrastate and regional funds focused on community-based investing that is open to non-accredited investors

COMMISSION RESPONSE

The Commission regularly evaluates ways to expand and diversify access to capital, including through private funds. Further, the Commission supports collaboration among the SEC's Division of Investment Management, Division of Corporation Finance, and Office of the Advocate for Small Business Capital Formation to explore ways to enhance community-based investing. The Commission and staff will consider this Forum recommendation in connection with these efforts.



DAY 3: INVESTING IN SMALL BUSINESSES

Successes and Challenges Facing Smaller Funds

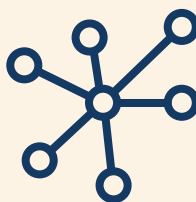
Agenda

- 1:00 p.m. Welcome Remarks from Courtney Haseley, SEC Small Business Advocacy Team
- 1:05 p.m. Remarks from SEC Commissioner Mark T. Uyeda
- 1:10 p.m. Overview of SSBCI Equity/Venture Capital Program from Karl Fooks, Outreach Manager and SME for VC Programs, U.S. Department of the Treasury
- 1:15 p.m. Introduction by Julie Zelman Davis, SEC Small Business Advocacy Team
- 1:20 p.m. Panel Discussion
Moderator: John Cavanagh, SEC Small Business Advocacy Team
Panelists: Rita Astoor, Carta
Jay Bockhaus, Center on Rural Innovation's Innovation Funds
Dana Guthrie, Gateway Capital Partners
- 2:00 p.m. Q&A with Panelists, moderated by Julie Zelman Davis, SEC Small Business Advocacy Team
- 2:25 p.m. Closing Remarks from Elizabeth Sukut, SEC Small Business Advocacy Team
- 2:30 p.m. Voting to Prioritize Policy Recommendation Submissions

WE ASKED...

What are the greatest challenges facing smaller fund managers?

PARTICIPANTS SAID...



#1 Access to a
NETWORK
of Investors

Regulatory Barriers to Entry
and Lack of Track Record
were the next greatest challenges

Panel Speakers



RITA ASTOOR

Head of Venture Capital Business Development and Product Advisor

Carta Initiative

San Francisco, CA

There are so many overlapping rules that fit together like a puzzle to support emerging managers entering this space, I think making it as easy as possible for them to understand exactly what they need to do to comply and be able to get off the ground is going to continue to be so important.

Rita is Head of Venture Capital Business Development and a Product Advisor at Carta. She leads the business development strategy and operations for Carta's investment management products, engaging with law firms, tax and audit providers, banks, asset managers, and other partners across the venture ecosystem. She also works with the product team to help solve client and industry needs. Prior to joining Carta, Rita was an investment funds associate at law firms Latham & Watkins LLP and Norton Rose Fulbright US, LLP. Rita is also a Lecturer at UC Berkeley School of Law.



There is no shortage of great ideas coming out of small communities in the United States, but there is an opportunity gap in terms of capital and resources available to develop those ideas into scalable startups.



JAY BOCKHAUS

Managing Partner

Center on Rural Innovation's Innovation Funds

Westport, CT

Jay is Managing Partner of the Center on Rural Innovation's Innovation Funds, which invest in growth businesses located across rural communities in the United States. Prior to joining the Center on Rural Innovation, Jay served as Executive Advisor to the Chairman at Emigrant Bank and led investments in several small growth businesses. He has over 20 years of investment and management experience in media, sports, and banking industries. Jay also serves as the Treasurer for Venture for America, through which he actively mentors entrepreneurs building startups across the country.



Financial returns and social
returns aren't mutually exclusive.

DANA A. GUTHRIE

Managing Partner
Gateway Capital Partners
Milwaukee, WI

Dana is Managing Partner at Gateway Capital, a venture capital firm focused on Wisconsin-based, early-stage startups. Prior to her current role, Dana founded and managed Alchemy Angel Investors, an angel investment network. She founded Alchemy while being employed full-time at a Fortune 500 company and managing a multi-million dollar, global product offering. Dana is also a two-time patent recipient.



Highlights from Panel Discussion

- » The capital raising environment—in particular, the amount of investment into private companies and corresponding valuations—has deteriorated markedly over the past year.
- » Fewer emerging managers are raising funds, and for those that are, the fundraising period is growing longer and yielding smaller fund sizes.
- » Institutional limited partners are concentrating new allocations in more established managers and the family offices and high net worth individuals upon whom emerging managers often rely for funding, are not receiving sufficient returns from existing investments that they are able to then reinvest.
- » Given current market conditions, emerging managers with fundraising already secured have opportunities to make investments at attractive valuations.
- » Investment opportunities in portfolio companies located outside traditional hubs (e.g., Silicon Valley, New York, Boston) are becoming more attractive, given lower operating expenses, lower costs of living and the entrenchment of remote working arrangements.
- » Significant success stories help draw attention to venture capital opportunities available in “flyover” states.
- » Diversity in fund management leads to diversity in investments.
- » Policy tweaks, along with educational initiatives related to applicable regulation, can greatly support emerging managers.

Participants’ Policy Recommendations



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

COMMISSION RESPONSE

The Commission supports efforts to improve diversity among fund managers and entrepreneurs who raise capital. As described above, in 2021, the SEC’s Office of the Advocate for Small Business Capital Formation, in partnership with other SEC offices and divisions, launched and continues to update and expand the [Capital Raising Hub](#) on sec.gov that serves as a centralized portal for several educational resources to support entrepreneurs and their investors, including content to help support underrepresented emerging fund managers, their investors, and their portfolio companies.¹⁷

In addition, the SEC’s Office of the Investor Advocate has sought to engage with diverse communities, including investors from historically underserved, rural, or Native American communities, veterans, and investors with disabilities.¹⁸ The Office of the Investor Advocate has also actively sought to include the voices of minority and underserved investors including by holding events designed to obtain their feedback on policy-related topics.¹⁹ The Commission will consider this Forum recommendation in connection with these and other initiatives.



Allow non-accredited investors to participate in venture capital funds

COMMISSION RESPONSE

The Commission regularly evaluates ways to expand and diversify access to capital, consistent with investor protections including through private funds. The Commission has previously sought public comment on whether retail investors should be allowed greater exposure to growth-stage issuers through pooled investment funds in light of the potential advantages of investing through such funds, including the ability to have an interest in a diversified portfolio.²⁰

As described above, in 2020, the Commission adopted a set of rule amendments designed to facilitate capital formation and increase opportunities for investors by expanding access to capital for small and medium-sized businesses and entrepreneurs across the United States.²¹ This included amendments to improve certain exemptions from registration that allow for investment by non-accredited investors, such as Regulation A and Regulation Crowdfunding. Furthermore in 2020, the Commission also adopted amendments to the definition of “accredited investor” under Regulation D of the Securities Act that added ways for individuals to qualify as accredited investors and participate in private offerings.²² These amendments allow investors to qualify as accredited investors based on defined measures of professional knowledge, experience, or certifications in addition to the existing tests for income or net worth, and were intended to more effectively identify individual (and institutional) investors that have the knowledge and expertise to participate in these markets. The Commission will consider this recommendation in connection with its regulatory initiatives.



Increase the number of investors allowed in 3(c)(1) funds (private funds structured in the traditional manner under Section 3(c)(1) of the Company Act above 100 investors

COMMISSION RESPONSE

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

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



Increase the number of investors and the capital limit for funds structured under Section 3(c)(1), including traditional 3(c)(1) funds as well as Qualified Venture Capital Funds to achieve greater diversity among startup investors and entrepreneurs

COMMISSION RESPONSE

As noted above, a 3(c)(1) fund is a type of pooled investment vehicle that is excluded from the definition of “investment company” under the Company Act because it has no more than 100 beneficial owners and otherwise meets criteria outlined in Section 3(c)(1) of the Company Act.

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

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

Any amendments to Section 3(c)(1) to change the number of investors allowed or the \$10 million cap²³ would require Congressional action.



Incentivize investors to invest in funds that support startup founders

COMMISSION RESPONSE

One prong of the Commission’s mission is to facilitate capital formation. In 2021 the SEC’s Office of the Advocate for Small Business Capital Formation, in partnership with other SEC offices and divisions, launched and continues to update and expand the [Capital Raising Hub](#) on sec.gov. The Hub serves as a centralized portal for several educational resources to support entrepreneurs and their investors. It includes content to help support emerging fund managers, their investors, and their portfolio companies.²⁴ The Commission will consider this Forum recommendation in connection with this and other initiatives.



DAY 4: ACCESSING THE PUBLIC MARKETS

Becoming and Staying a Public Reporting Company

Agenda

- 1:00 P.M. Welcome Remarks from Dave Gessert, SEC Small Business Advocacy Team
- 1:05 P.M. Remarks from SEC Commissioner Jaime Lizárraga
- 1:15 P.M. Introduction by Jenny Riegel, SEC Small Business Advocacy Team
- 1:20 P.M. Panel Discussion
Moderator: Jenny Choi, SEC Small Business Advocacy Team
Panelists: Kristen Grippi, Evercore
Hillary Holmes, Gibson, Dunn & Crutcher
Tim Hwang, FiscalNote
- 2:00 P.M. Q&A with Panelists, moderated by Jenny Riegel, SEC Small Business Advocacy Team
- 2:15 P.M. Closing Remarks from Sebastian Gomez Abero, SEC Small Business Advocacy Team
- 2:30 P.M. Voting to Prioritize Policy Recommendation Submissions

WE ASKED...

What are the greatest challenges facing smaller public companies seeking capital?

PARTICIPANTS SAID...



#1 Burden of
REPORTING
Requirements

Cost of Compliance and Trading Volume
were the next greatest challenges

Panel Speakers



KRISTEN GRIPPI

Senior Managing Director

Evercore

New York, NY



There are many great companies, but not all of them make great stocks. In an IPO, you need to sell your company as a stock, and there are specific metrics and stories that investors look for.

Kristen is Senior Managing Director and Head of Equity Capital Markets at Evercore, where she leads the team responsible for sourcing, structuring, and marketing IPOs, private placements, follow-ons, and convertible offerings for clients across all industry sectors. Previously, Kristen led the Industrials Equity Capital Markets Group and Equity Syndicate at Goldman Sachs. Prior to covering industrials clients, Kristen worked with companies in the financial institutions and financial technology sectors for nearly 10 years. With 23 years of experience working in Equity Capital Markets and Growth Capital, Kristen has advised on over 500 bookrun transactions, including IPOs and follow-on offerings.



For companies thinking of going public someday, my advice is to start acting like a public company as much as possible. That will give you the best optionality to execute when the markets are there or when you're ready, whether it's now or it's four years from now.



HILLARY HOLMES

Partner

Gibson, Dunn & Crutcher

Houston, TX

Hillary is a partner in the Houston office of Gibson, Dunn & Crutcher, Co-Chair of the firm's Capital Markets practice group, and a member of the firm's Securities Regulation and Corporate Governance, Energy, M&A, and ESG practice groups. Her practice focuses on capital markets, securities regulation, and corporate governance. Hillary represents issuers and underwriters in many forms of capital raising transactions, including IPOs, registered offerings of debt or equity, private placements, joint ventures, structured investments, and sustainable financings. Hillary has received recognition as a leading capital markets lawyer and dealmaker in the United States, having led complex transactions and capital raising strategies for companies of all sizes.



TIM HWANG

Chairman, CEO, and Co-Founder

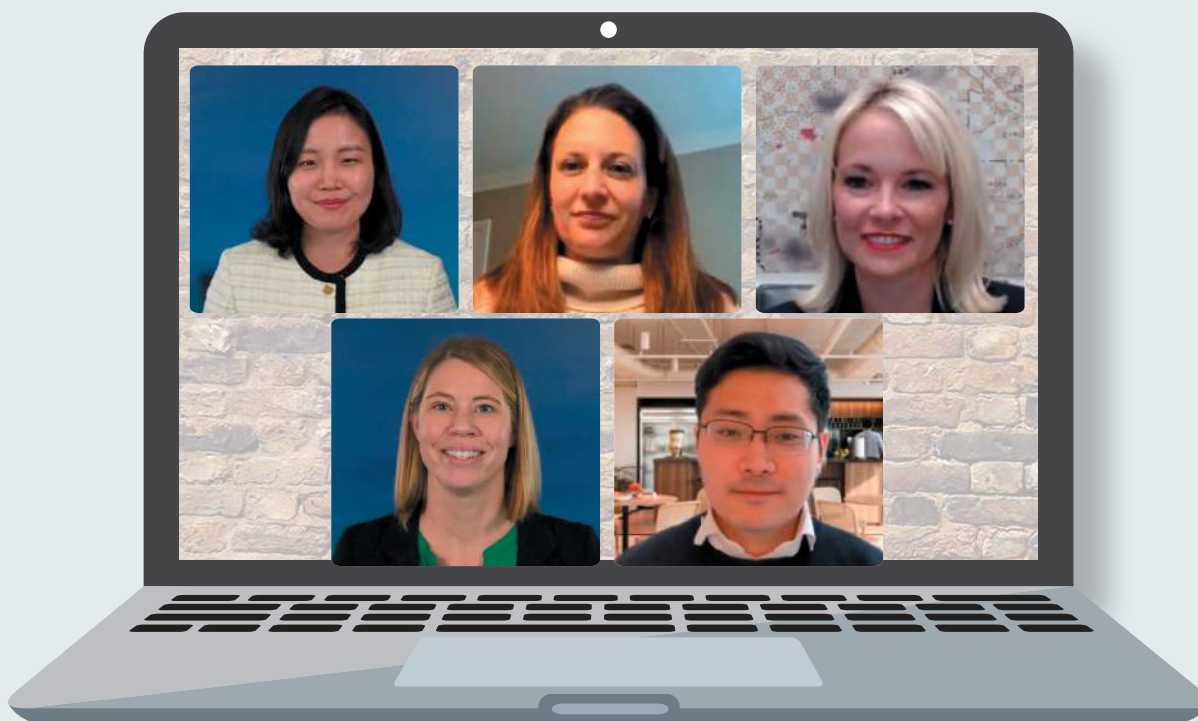
FiscalNote

New York, NY



The process of going public is just the beginning of a new journey, as we accelerate our efforts to help companies and organizations around the world turn insights into action and leverage the resources of the public markets to enter our next phase of growth.

Tim is Chairman, CEO, and Co-Founder of FiscalNote, a global technology and media company that delivers policy news in an evolving world. While at FiscalNote, Tim has raised more than \$230 million in venture capital and acquisition financing. Tim served on the Montgomery County Board of Education, where he oversaw a \$4B budget and 22,000 public employees. Profiled in numerous national publications, including Forbes 30 Under 30 and Business Insider's Top 25 Hottest Startups, Tim also serves as a World Economic Forum Technology Pioneer, and as a trustee or board member for several regional and national non-profit organizations.



Highlights from Panel Discussion

- » Going public is a time- and resource-consuming process, and companies need to evaluate whether it is the right pathway for them.
- » Companies that successfully go public prepare for the process well in advance and focus on determining whether it aligns with their business strategy. In advance of an IPO, taking proactive steps to function like a public company, including having the right staff to properly forecast and close quarters in a timely fashion, develop proper controls, maintain good records, and invest in good governance, can serve companies well in the long run.
- » The benefits of IPOs can include higher valuation, the ability to raise additional capital, broader investor base, and the ability to attract better talent.
- » Depending on market conditions, investors may favor growth potential over profitability when investing in newly public companies.
- » One challenge that smaller companies face at the IPO phase is a lower materiality threshold due to their small size, which can have an impact on various aspects of the company, including disclosure, risk and liability management, and financial statement requirements for their acquisitions.
- » As smaller companies tend to face liquidity and research coverage challenges, it is important that they proactively seek out research analysts and reputable investors in their sector in advance of the IPO to understand what investors look for. Having more research analysts that cover your company can lead to more liquidity, which is why it's important to set up a goal of courting good analysts by offering to do events like non-deal roadshows with them or present at their conferences to increase your company's visibility.
- » Liquidity and trading volume challenges may lead smaller companies to get more creative with capital-raising, including looking at preferred securities, PIPEs, and convertible securities, which can be more complex and require more resources to navigate the applicable regulations.
- » Due to the liquidity and trading volume challenges, smaller companies face trouble with attracting investors that need to invest certain amounts without affecting the stock price.

Participants' Policy Recommendations



Revise Exchange Act Section 12(g) to increase the number of holders that are non-accredited investors and increase the asset threshold

COMMISSION RESPONSE

The Spring 2023 Regulatory Agenda indicates that the Division of Corporation Finance is considering recommending that the Commission propose amendments to the “held of record” definition for purposes of Section 12(g) of the Securities Exchange Act of 1934 (Exchange Act). The Commission will consider this Forum recommendation in connection with any such release and any other relevant initiatives.



Before considering any changes that increase the smaller public company requirements, narrowly tie any changes to an identified problem so smaller public companies can have a stable and predictable regulatory environment

COMMISSION RESPONSE

Over the years, the Commission has sought to promote capital formation and reduce compliance costs for smaller public companies while maintaining investor protections. This includes a long-standing practice of providing scaled disclosure and other accommodations for these smaller companies, and careful consideration of any potential disproportionate effects of new rule requirements on such companies. Consistent with this practice, the Commission will consider this Forum recommendation in connection with ongoing regulatory initiatives.



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

COMMISSION RESPONSE

The Commission has heard from issuers, exchanges, and other market participants that a one-size-fits-all approach to market structure does not work for many public issuers, particularly small and medium sized companies. To accommodate a venture market for smaller public companies, the Commission issued a statement on market structure innovation that invited exchanges and other market participants to submit proposals designed to improve the secondary market structure for exchange-listed equity securities that trade in lower volumes, commonly referred to as “thinly-traded securities,”²⁵ which are often also smaller-capitalization securities.

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



Revise the proposed 2022 Climate-Related Disclosure rules to exempt smaller reporting companies, non-accelerated filers, emerging growth companies, and other midsize companies. If any of these issuers are subject to the rules, scale and delay the rules

COMMISSION RESPONSE

On March 21, 2022, the Commission proposed rules to enhance and standardize climate-related disclosures for investors.²⁶ The proposed amendments include certain disclosure accommodations, including an exemption from Scope 3 emissions disclosure requirements for smaller reporting companies and a longer transition period to comply with the proposed rules for smaller reporting companies. The Commission received almost 15,000 comment letters in response to the proposal, including over 4,000 unique comment letters. The Commission will consider these comments and this Forum recommendation in connection with these proposed rules.



Improve public trading for small companies by requiring more disclosures about short selling, institutional holdings, insider and affiliate holdings and transactions, paid stock promotion, and information about the security from transfer agents

COMMISSION RESPONSE

In connection with short sale disclosure, self-regulatory organizations, including NYSE, Nasdaq, and FINRA, currently provide short selling information on their websites, and the Commission currently provides information on failures to deliver securities that may result from sales, including short sales. On February 25, 2022, the Commission proposed a new rule and related form designed to provide greater transparency through the publication of short sale-related data to investors and other market participants.²⁷ Under the rule, institutional investment managers that meet or exceed a specified reporting threshold would be required to report, on a monthly basis using the proposed form, specified short position data and short activity data for equity securities. The Commission will continue to consider the comments received and this Forum recommendation in connection with this initiative.

The Commission currently has rules regarding the disclosure of insider and affiliate holdings and transactions, and the federal securities laws require persons who promote a security to fully disclose the receipt and amount of consideration from an issuer, underwriter or dealer. The Commission will consider this Forum recommendation in connection with ongoing regulatory initiatives.

In 2015, the Commission published an Advance Notice of Proposed Rulemaking and Concept Release outlining various issues related to the transfer agent regulatory regime and potential rulemaking to address those issues.²⁸ The Commission will continue to consider the comments received and this Forum recommendation in connection with this initiative.

FORUM ADVISORY PLANNING GROUP

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

Government & Regulatory Representatives

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Prior Forum Participants

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M25

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Roanhorse Consulting

Jordan Walker
Co-Founder
Yac

Greg Yadley
Partner
Shumaker, Loop & Kendrick, LLP

SEC OFFICIALS' REMARKS

Opening Remarks

SEBASTIAN GOMEZ ABERO



Hello and welcome to the SEC's 42nd annual Small Business Forum. My name is Sebastian Gomez, and I am part of the SEC's Small Business Advocacy team. I am so glad you are joining us this week. This long-standing SEC event brings together small businesses, their investors, advisors, and others who care deeply about the importance of small businesses to innovation and our economy. Among those registered, more than one-third identified as founders, entrepreneurs, and business leaders, while another one-third identified themselves as investors. Among them over 20% are individuals who own or invest

in women-owned businesses, more than 25% are individuals who own or invest in minority-owned businesses, and more than 15% are individuals who own or invest in businesses located in rural areas.

Over the next four days, you will hear from thought leaders with in-depth knowledge of the issues facing small businesses and their investors.

- Today we will focus on the landscape for early-stage companies, including trends and strategies in capital raising.
- Tomorrow we will hear about building vibrant entrepreneurial ecosystems to support entrepreneurs and their investors.
- Wednesday we will turn to the successes and challenges facing smaller funds that play such an important role investing in a wide array of small business.
- Thursday, we will close the Forum with a focus on the public markets with a conversation about becoming and staying a public reporting company.

I am hoping that you, in our audience, will jump in and engage with us this week. Please chime in with questions and comments in the chat. For those who already shared policy recommendations, thank you! If you have not shared your policy ideas with us, there is still time. Please send us those ideas at smallbusiness@sec.gov. Finally, I hope you stay through the end of each day to help shape the policy that impacts access to capital for small businesses and their investors. Each day we will conclude by asking you to vote to prioritize the recommendations that we have received from the public. This will determine the recommendations that are sent to Congress and the Commission in the report from the Forum.

Before turning it over to Amy [Reischauer], I want to provide the standard SEC disclaimer for all the SEC staff that will participate this week. The views that we express are our own, and may not represent the views of other staff, the Commissioners or the Commission.

I also want to extend a big thank you to our panelists for sharing their insights with us, to our SEC Chair and Commissioners for their support, and to the Small Business Advocacy team for their unwavering and tireless work for small businesses and their investors. You will meet many of our team members throughout the week. It takes a village to put together an event like this and a lot of the work happens behind the scenes. Specifically, I want to recognize Amy [Reischauer], Kim [Dinwoodie] and Lizzie [Sukut] who have worked around the clock to make this event happen.

Without anything further, Amy, I turn it over to you.

CHAIR GARY GENSLER



Thank you, Amy [Reischauer], for that kind introduction. Welcome to the SEC's 42nd Annual Government-Business Forum on Small Business Capital Formation.

As is customary, I would like to note that my views are my own, and I'm not speaking on behalf of the Commission or SEC staff.

I am the son and grandson of small business owners. My grandparents on one side opened and ran a grocery store and on the other side a bar, both in Baltimore. My dad, Sam Gensler, started a small business repairing vending machines. It grew into a small vending machine business that served hundreds of other small businesses in the process, such as small diners and bars.

In this sense, my family's business was part of a larger community of small businesses, whose owners were as diverse as the city of Baltimore.

The SEC's Office of the Advocate for Small Business Capital Formation serves an important role at the Commission. It represents America's small businesses—like so many families across America.

Entrepreneurs and small businesses are integral to our capital markets.

Over the last 25 years, small businesses have created nearly two out of every three new jobs. They account for a substantial amount of goods, services, and innovation.

“Over the last 25 years, small businesses have created nearly two out of every three new jobs.³⁰”

Even though public companies listed on the stock market may dominate the daily news, more than 99 percent of U.S. businesses are small businesses. Their employees make up nearly half of the American workforce.³¹

As small businesses grow, they often migrate from borrowing in bank markets to capital markets. Having that breadth and depth in our markets facilitates capital formation. That's why, consistent with our mission and Congressional mandate, we are working to make them as efficient as possible.

At the SEC, our job is to serve investors building for a better future and companies of every size raising money to fund innovation. We do this while working to make our markets more efficient, competitive, transparent, fair—and worthy of the public's trust. Further, we work to ensure that markets serve investors and issuers—not the other way around.

Many of the projects the SEC is working on today are focused on increasing the efficiency, integrity, and resiliency of the markets to lower costs for all businesses raising capital and increase returns for investors.

As you discuss the various topics this week, from the early-stage landscape and building entrepreneurial ecosystems to investing in small business and accessing the public markets, please let us know your ideas and policy recommendations.

We greatly benefit from your perspective, and this forum will inform a report that will be delivered to Congress. Further, your perspective may help the Commission consider policies to benefit American small businesses, like my dad and grandad's, and support your efforts to innovate and create jobs.

I'll now turn it back over to Amy.

COMMISSIONER HESTER M. PEIRCE



Good afternoon. Thank you to the Office of the Advocate for Small Business Capital Formation for hosting the 42nd Annual Small Business Forum and to our panelists for participating. I am excited for this forum and today's discussion on early-stage companies. My views are my own and not necessarily those of the SEC or my fellow Commissioners.

My most recent visit to Ohio took place during the height of ramp season. Ramps are an edible wild vegetable. They grow spontaneously in large patches on forest floors. During the short growing season, ramp aficionados spread out across forest hillsides to forage as the plant's oniony smell wafts about them and makes their mouths water for the meal ahead. As with all things, ramps make me think about capital markets. Unlike the plentiful ramp patches that are there for the (sustainable) picking,³² an early-stage entrepreneur in need of funds rarely finds plentiful patches of capital waiting for her to harvest. Foraging for capital can be a discouraging, time-consuming task with little to show for all the work.

The Forum offers us an opportunity to hear directly from founders, investors, and other members of the public about ways we can improve the capital options for small businesses. This panel, with its focus on the early-stage landscape, is particularly important. Early-stage entrepreneurs often abandon a stable job to take on the risks of starting a new business that will meet a need that others in their community have. With a disruptor's mindset, they are ready to take on the many challenges of getting their companies off the ground. Sometimes they fail, and often they pick themselves up, dust themselves off, and start a new business. Such resilient, optimistic, problem-solving people are essential to society.

The least the rest of us can do is offer early-stage entrepreneurs a regulatory structure that gives them a fighting chance. Too often, however, the needs of these fledgling companies get lost in the press of other business at the SEC. Or, worse, the early-stage landscape suffers under the regulatory misconception that it is a bastion of fraud. Regulators who think that failure is synonymous with fraud might not be eager to facilitate early-stage capital formation.

A more accurate picture of the landscape can help form the basis for good policy. Good policy enables a wide range of investors to participate safely in the growth of early-stage companies. An educated, informed, inquisitive investor with realistic expectations, an appropriate mix of optimism and skepticism, and a properly diversified portfolio of investments can participate safely in early-stage investing.

“Good policy enables a wide range of investors to participate safely in the growth of early-stage companies.”

The ranks of investors willing to commit time and capital to new companies are thin, and I hope this panel will help elucidate why. Is the uneven geographic distribution of patches of capital—a problem documented by the 2022 Small Business Advocate Report³³—a concern to the panelists? How did the panelists or the businesses with which they work find their first investors? As this year’s Small Business Advocate Report also noted, “[i]ndividuals with a mentor are 5X more likely to plan to start a business than those” without one.³⁴ Do the panelists find that having local investors facilitates continuing mentorship as founders build their businesses?

Regulation can prevent patches of capital from growing in places they otherwise might. Wealth and income measures largely determine the eligible pool of accredited investors. I emphatically object to telling Americans that a whole sector of the economy is off-limits, but measures short of discarding the accredited investor paradigm probably have broader appeal. For example, allowing investors who had passed a sufficiently rigorous test, taken high-quality investing courses, or had relevant professional degrees would expand the accredited investor pool. Other potential options include allowing anyone to invest some percentage of her investment portfolio in private companies—a technique already used in the crowdfunding rules—and allowing people assisted by a sophisticated financial intermediary to invest. What would happen to capital availability in their communities if the SEC raised the income and net-worth thresholds for inflation, or otherwise narrowed the accredited investor definition? What do panelists think of expanding the accredited investor pool by adding new measures of sophistication or pursuing one of the other ideas I just mentioned?

In addition to amending our accredited investor regime, we can take other steps to make it easier for early-stage founders. What do panelists think of a micro-offering exemption that would allow companies to raise \$250,000 or \$500,000 without registering with the SEC or the states? Now that more companies are relying on Regulation Crowdfunding, should we consider ways to make it an even more practical solution for early-stage companies? Or do the panelists think that a sensible regulatory framework for finders would be helpful in matching investors with companies?

Thank you for participating in this year’s Small Business Forum. Just as ramps do, the Forum comes around every spring. Whereas the aroma of ramps—strong as it is—does not linger, I hope this week’s conversations will waft through the rest of the year and spur continued collaboration among policymakers, entrepreneurs, and investors throughout the year to come. I look forward to the discussion.

COMMISSIONER CAROLINE A. CRENSHAW



Welcome to day two! This is a great event, and I want to thank the staff of the Office of the Advocate for Small Business Capital Formation for all the work they put in to make this happen. I also want to thank everyone who has taken time out of their normal, and extremely busy, schedules to participate in the Annual Small Business Forum. We appreciate that you're here today. I look forward to the discussion and I encourage participants to continue to engage the Commission throughout the year and across our regulatory processes. Time and schedules permitting, speak to as many of us at the

Commission as you can. The more interactions and perspectives that we have as an agency from this community, the better.

Recently, in one of those continuing dialogues, someone reminded me of the importance of disaggregating the term "small business" and recognizing that the term is a reference to a broad spectrum. A spectrum that includes businesses first launching operations, using personal savings and money from friends and family, thinking about accessing capital markets for the first time; and also companies that have been operating for decades with dozens of employees, rely primarily on revenue, and focus on a specific locality or region. The pertinent issues, challenges, and opportunities for any small business depend upon where on that spectrum it is.

Earlier this year, I spoke about re-thinking our safe harbor for registration exemptions to better calibrate them for use by small-, medium-, or early stage- businesses, rather than unlimited use by the largest private companies that rival the size of many S&P 500 companies – or companies that no longer exist on the spectrum of small businesses. I, of course, welcome perspectives on this topic and also encourage recommendations and discussions on how else we can improve access and inclusivity in financial markets.

I am focused on how to get the most resources to the part of the spectrum where entrepreneurs, and particularly entrepreneurs that do not share the same background as those in Silicon Valley and Wall Street, are tapping into a capital market for the first time. What do those entrepreneurs need the most and what role can the Commission play? As one of today's panelists detailed in a book, startup communities and entrepreneurial ecosystems are complex, non-linear, and often unpredictable. Actors, including governments, within those communities and ecosystems must be adaptive. And part of the thesis is that complex systems, such as a startup community, must be driven from the bottom-up rather than the top-down. I agree with that entirely, and that is why

“[S]tartup communities and entrepreneurial ecosystems are complex, non-linear, and often unpredictable. Actors, including governments, within those communities and ecosystems must be adaptive. And part of the thesis is that complex systems, such as a startup community, must be driven from the bottom-up rather than the top-down.”

events like this are so important – to give voice to those who are working at the grassroots. I firmly believe that engagement and refinement are, and should always be, a core characteristic of Commission processes. Please come in and talk to us about your ideas, and your thoughts about our ideas.

I am glad that there will be a discussion on Thursday about accessing the public markets. It is a conversation that needs to be had, here and elsewhere. There are several ways to access the public markets and, to quote one of our panelists again, it is important to think about this question holistically.

In that vein, I want to highlight the benefits of public markets to smaller reporting companies and their investors – given that a lot of time and ink is spent on the costs. Public markets provide transparency that increases investor confidence, price transparency, and liquidity. In addition to informational efficiencies, there is a baseline of comparability in public market disclosure requirements that investors can rely upon with a high level of certainty and confidence, adding in capital raising from a broad pool of investors. Further, the SEC has implemented a scaled or tiered disclosure system to better tailor and adapt the benefits and costs, where appropriate.

So I look forward to Thursday's agenda as well and I'd like to thank you one more time for your engagement and I will get out of the way of today's important discussions.

COMMISSIONER MARK T. UYEDA



Good afternoon. It is a pleasure to address this Forum on Small Business Capital Formation. Today's panel will focus on the successes and challenges facing smaller funds, including barriers to entry for emerging fund managers. This topic is not new. In fact, last year's Forum also included a panel on emerging fund managers and their role in diversifying capital.³⁵ One policy recommendation arising out of that panel was for the Commission to "[s]upport underrepresented emerging fund managers – specifically minorities and women..."³⁶

The Commission responded to that recommendation by stating that it "supports efforts to improve diversity among fund managers and entrepreneurs who raise capital."³⁷ The Commission pointed to its Small Business Capital Raising Hub, an educational resource to assist small businesses in their capital raising efforts.³⁸ The Commission also recognized that its Small Business Capital Formation Advisory Committee had submitted similar recommendations in 2020 and 2021, and that other Commission advisory committees had submitted recommendations on this topic.³⁹

With such a large number of recommendations, the Commission ought to take concrete actions to support such objectives. One pathway for success is for the Commission to carefully consider the impact of its rules on small businesses and emerging fund managers.

For example, in February 2022, the Commission proposed a rule that would impose significant new burdens on private fund advisers.⁴⁰ Commenters have noted that private equity is a highly competitive industry, and that the proposal is likely to place disproportionately large burdens on advisers to small funds and first-time funds.⁴¹ One comment letter cited data that more women- and minority-owned firms are associated with smaller and first-time funds.⁴² Accordingly, the proposal may have the effect of stifling the ability of emerging fund managers – including women- and minority-owned managers – to operate successfully.

One change that the Commission could make to ease the burden on emerging fund managers is to have a longer transition period to comply with new rules. For instance, the Commission recently adopted final proxy vote disclosure rules on Form N-PX for executive compensation.⁴³ Under the final rules, emerging fund managers who file on Schedule 13F because they hold more than \$100 million in equity securities would be required to file Form N-PX for the very first time. Yet emerging advisers with several hundred million in assets under management were treated no differently than the largest advisers with trillions of assets under management. Any new rule or modification often requires further clarification to implement. Emerging fund managers should be able to have extra time to allow these questions to be resolved before mandating compliance.

“Small businesses are the heart of the American economy and the Commission must work to ensure that capital is available to them.”

One might wonder how the Commission's expanding private fund adviser regulations comport with its expressed support for efforts to improve diversity among fund managers, especially since the response to the Commission's proposals from smaller fund managers has been resoundingly clear: the increased burdens will make it more costly to operate and will disincentivize institutional investors from allocating capital to emerging fund managers.

This Forum is an important venue for stakeholders to convey thoughtful policy recommendations to the Commission. I am hopeful that participants in today's panel will highlight the likely impact of the Commission's proposals on emerging fund managers.

Small businesses are the backbone of our economy, and private fund advisers play an important role in providing capital to those businesses. Greater diversity in the private fund space can help expand the numbers and types of businesses for which funding is necessary to flourish.

I appreciate the efforts of the Office of the Advocate for Small Business Capital Formation in making this year's Forum a success. I also want to thank the Forum's panelists for contributing to an important conversation, and I look forward to seeing the recommendations that emerge from today's discussion.

COMMISSIONER JAIME LIZÁRRAGA



Good afternoon and thank you to Jenny and today's panelists for your time and input. It's a pleasure to address the 42nd Annual Small Business Forum, which as you know fulfills a congressional mandate as part of the Small Business Investments Incentive Act of 1980. And that mandate is to conduct an annual Forum to review current issues and programs relating to small business capital formation – a very important part of what we do here and an important priority for me.

I am particularly interested the insights from today's discussion on accessing public markets becoming and staying a public reporting company because I think it will be very important informing what we do as part of our capital formation mission.

I am particularly interested in hearing about the successes and the challenges of becoming a public company and the factors that can help smaller company succeed as public companies. I've said many times before, but it can be very difficult for the smallest businesses, particularly those from under-represented communities that are still outside of an entrepreneurial system, to navigate our very complex securities laws that are often written in very inaccessible jargon. So I challenge forum participants today to try to think outside of the box in seeing how it's possible to encourage broad-based growth in our public markets from all types of small businesses and in a way that doesn't sacrifice our investor protection packet.

“[I]t can be very difficult for the smallest businesses, particularly those from under-represented communities that are still outside of an entrepreneurial system, to navigate our very complex securities laws that are often written in very inaccessible jargon.”

You've also heard before, all of us have heard before, the gap that we've seen in capital raise, in private versus public markets. It really is a stark gap. In just a space of one year, between July 2021 and June 2022, almost a 4 1/2 trillion dollars was raised for 2 private offerings. By comparison, in the public markets for IPOs, only around 126 billion was raised during the same period. And it's an important set of numbers because over half, around 58 percent, of Americans report having invested in our public markets.

So because of that, we need to ensure that our public markets are as robust as possible. To me, the financial security of working families who invest in our markets -- whether it's for saving for children's education, buying a home, for their retirement -- that critically depends on our work.

And for these families that channel their hard-earned savings into our capital markets, we want to ensure that they have access to a wide range of companies, all the while having the confidence that their investments will come with all of the disclosures and all of the legal protections that are the hallmark of our public markets.

Thank you again for allowing me to participate here and I very much look forward to hearing today's discussion.

INTERAGENCY REMARKS

U.S. Department of the Treasury

KARL FOOKS, OUTREACH MANGER AND SME FOR VC PROGRAMS



Hello. Today's presentation will provide a brief update on the State Small Business Credit Initiative (SSBCI) Equity Venture Capital Programs (VCP). My name is Karl Fooks. I'm part of the outreach team for the U.S. Department of Treasury's State Small Business Credit Initiative, and along with my colleagues Eric Cromwell and Dan Shmishner, I provide outreach on the SSBCI Equity Venture Capital programs.

For those of you not familiar with SSBCI, this was a program reauthorized by the 2021 American Rescue Plan Act. It provides \$1 billion of funding to states, territories, the District of Columbia, and tribal governments for these jurisdictions to operate small business financing programs.

The SSBCI Capital Program guidelines, allow for allow for jurisdictions to design and adapt small business financing programs to reflect the name of their local and regional economies. There are five broad platforms of SSBCI capital programs; capital access programs, equity venture capital programs, loan participation programs, loan guarantee programs, and collateral support programs.

The application of broad federal parameters is required in the design of a jurisdiction's SSBCI capital 10 program. First of all, the private lenders and investors participate participating in these programs must have their own capital at risk. These programs must be able to demonstrate that they can cause and result in one dollar a private financing at a minimum for every dollar of SSBCI capital provided.

In addition, the jurisdictions had to be able to demonstrate that their program designs could crowd in \$10 of private financing for every one dollar of SSBCI capital deployed.

The eligible small businesses have to meet certain business size and transaction size requirements. And the jurisdictions also had to address how the capital programs would create access to capital for underserved communities.

Specifically for the equity programs there are two broad deployment types; a fund investment program, in which the SSBCI capital is pooled with private capital in a venture capital fund and this venture capital fund invests in small businesses.

A direct investment program, by contrast, the SSBCI capital is invested directly into a small business alongside other private investors also investing in that business. These private investors could include local venture capital funds operating in that jurisdiction's ecosystem.

\$3B

SSBCI funds
allocated to Venture
Capital Programs

46

Jurisdictions with
SSBCI Venture
Capital Programs

47

Direct Investment
SSBCI Venture
Capital Programs

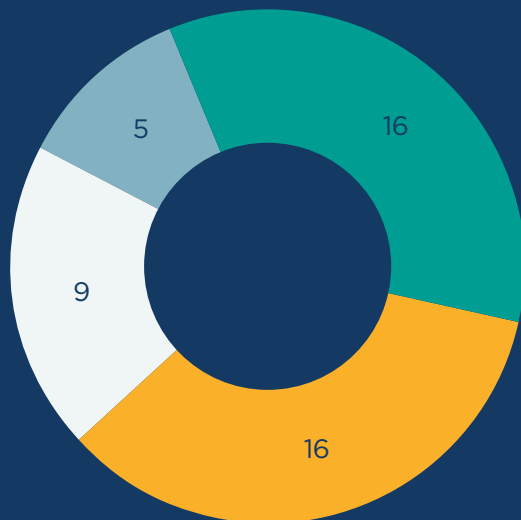
36

Fund Investment
SSBCI Venture
Capital Programs

*Data based on 46 state and territory programs
approved or proposed as of 2/10/23*

Of the 46 applications reviewed or approved that included venture capital programs, these jurisdictions allocated a total of \$3 billion to the various equity programs. This breaks down into 47 direct programs and 36 fund programs.

Number of Jurisdictions by Size of Allocation to VCPs

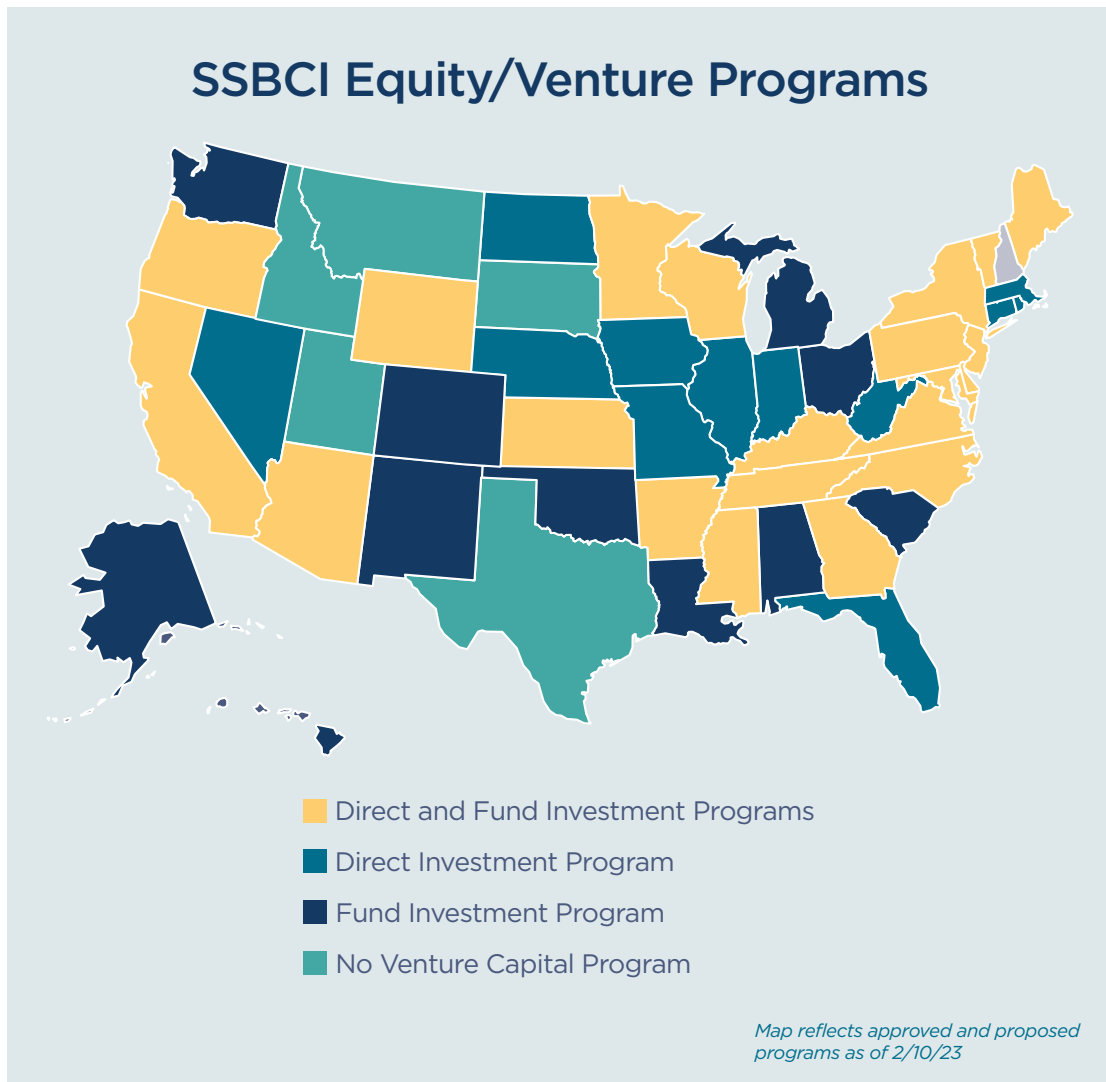


■ Less than \$25M ■ \$50M to \$100M
■ \$25M to \$50M ■ Greater than \$100M

Data based on 46 state and territory programs approved or proposed as of 2/10/23

As a result, the scale of these programs is fairly significant: 9 programs are \$100 million or larger; 70 percent of approved programs to date are between 25 million and 100 million in size; and a handful are less than 25 million.

I can see by the map a majority of the U.S. is covered by these various equity venture capital programs. Yellow represents jurisdictions that have both a direct and a funded program. Blue are jurisdictions with just a direct program. Green are jurisdictions with only a fund program. And gray represents jurisdictions that chose not to operate a venture capital program.



Further information on each of these individual jurisdictions their programs and their contact information can be found at the link provided at the bottom of the slide. In addition, you can go to the SSBCI website and on the landing page you will see a link to the state programs and contacts.

Thank you very much for this opportunity to provide an update.

ABOUT THE OFFICE OF THE ADVOCATE FOR SMALL BUSINESS CAPITAL FORMATION

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

Meet the Team



AMY
REISCHAUER



JOHN
CAVANAGH



JENNY
CHOI



JULIE ZELMAN
DAVIS



KIM
DINWOODIE



DAVE
GESSERT



COURTNEY
HASELEY



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ENDNOTES

- 1 The SEC conducts the Forum annually and prepares this report in accordance with the Small Business Investment Incentive Act of 1980 [15 U.S.C. 80c-1 (codifying section 503 of Pub. L. No. 96-477, 94 Stat. 2275 (1980))].
- 2 Participants voluntarily submitted the presented information in connection with their registration online. The report solely includes submitted data, without inclusion of non-responses.
- 3 The SEC responds to the Forum recommendations pursuant to the Small Business Investment Incentive Act of 1980, as amended by the Economic Growth, Regulatory Relief and Consumer Protection Act of 2018. 15 U.S.C. 80c-1. Section 503 of the Economic Growth, Regulatory Relief and Consumer Protection Act of 2018 [Pub. L. 115- 174, 132 Stat. 1296 (2018)] amended Section 503 of the Small Business Investment Incentive Act of 1980 to add this requirement in new paragraph (e). The responses do not include any Commission initiatives that are not yet public. Where a Forum recommendation relates to an initiative as to which the Commission has solicited or expects to solicit public comment, the recommendation will be considered as part of that initiative, along with other comments received.
- 4 See Office of Information and Regulatory Affairs, Office of Management and Budget, U.S. Securities and Exchange Commission Agency Rule List (Spring 2023),) available at https://www.reginfo.gov/public/do/eAgendaMain?operation=OPERATION_GET_AGENCY_RULE_LIST¤tPub=true&agencyCode=&showStage=active&agencyCD=3235&csrf_token=B7F12FC16EA1D20F5F4EA5954CCBD95199E1A3F318F25CB7029D35FA24BDD398CEA1784E5BAC03AA1E4BF814C2BCD38E6A0.
- 5 See “Accredited Investor Definition,” Release Nos. 33-10824; 34-89669; File No. S7-25-19 (Aug. 26, 2020), available at <https://www.sec.gov/rules/final/2020/33-10824.pdf>.
- 6 See “Order Designating Certain Professional Licenses as Qualifying Natural Persons for Accredited Investor Status,” Release No. 33-10823 (Aug. 26, 2020), available at <https://www.sec.gov/rules/other/2020/33-10823.pdf>.
- 7 See “Facilitating Capital Formation and Expanding Investment Opportunities by Improving Access to Capital in Private Markets,” Release Nos. 33-10884; 34-90300; IC-34082; File No. S7-05-20 (Nov. 2, 2020), available at <https://www.sec.gov/rules/final/2020/33-10884.pdf>.
- 8 See “Notice of Proposed Exemptive Order Granting Conditional Exemption from the Broker Registration Requirements of Section 15(a) of the Securities Exchange Act of 1934 for Certain Activities of Finders,” Release No. 34-90112; File No. S7-13-20 (Oct. 7, 2020), available at <https://www.sec.gov/rules/exorders/2020/34-90112.pdf>.
- 9 We note that the Consolidated Appropriations Act of 2023 amended Section 15 of the Securities Exchange Act of 1934 to add a new subsection 15(b)(13) that provides an exemption to allow an “M&A Broker” to effect certain securities transactions in connection with the transfer of ownership of a privately-held company without registering as broker-dealer, subject to certain conditions. The statutory exemption became effective on March 29, 2023.
- 10 See <https://www.sec.gov/education/capitalraising>.
- 11 See <https://www.sec.gov/education/glossary/cutting-through-the-jargon>.
- 12 See <https://www.sec.gov/education/capitalraising/navigator#1>.
- 13 See <https://www.sec.gov/education/capitalraising/trends>.
- 14 See <https://www.sec.gov/education/capitalraising/building-blocks>.
- 15 See “Facilitating Capital Formation and Expanding Investment Opportunities by Improving Access to Capital in Private Markets,” *supra* note 7.
- 16 See “Accredited Investor Definition,” *supra* note 5.
- 17 See *supra* note 10.

- 18 See Office of the Investor Advocate, “Report on Objectives Fiscal Year 2024,” (June 29, 2023) available at <https://www.sec.gov/files/fy24-oiad-sar-objectives-report.pdf>; see also Office of the Investor Advocate, “Report on Activities Fiscal Year 2021,” (Dec. 16, 2021) available at https://www.sec.gov/files/FY21_OIAD_SAR_ACTIVITIES_REPORT_FINAL_508.pdf.
- 19 See Office of the Investor Advocate, “Report on Activities Fiscal Year 2022,” (June 28, 2021) available at <https://www.sec.gov/file/fy22-oiad-sar-activities-report.pdf>.
- 20 See “Concept Release on Harmonization of Securities Offering Exemptions,” Release Nos. 33-10649; 34-86129; IA-5256; IC-33512; File No. S7-08-19 (Jun. 18, 2019), available at <https://www.sec.gov/rules/concept/2019/33-10649.pdf>.
- 21 See “Facilitating Capital Formation and Expanding Investment Opportunities by Improving Access to Capital in Private Markets,” *supra* note 7.
- 22 See “Accredited Investor Definition,” *supra* note 5.
- 23 The Company Act generally requires the Commission to index the \$10 million cap for inflation, rounded to the nearest \$1 million, every five years. See Company Act, Section 3(c) (1)(C) available at [https://uscode.house.gov/view.xhtml?req=\(title:15%20section:80a-3%20edition:prelim\)](https://uscode.house.gov/view.xhtml?req=(title:15%20section:80a-3%20edition:prelim)).
- 24 See *supra* note 10.
- 25 See “Commission Statement on Market Structure Innovation for Thinly Traded Securities,” Release No. 34-87327; File No. S7-18-19 (Oct. 17, 2019), available at <https://www.sec.gov/rules/policy/2019/34-87327.pdf>.
- 26 See “The Enhancement and Standardization of Climate-Related Disclosures for Investors,” Release Nos. 33-11042; 34-94478; File No. S7-10-22 (Mar. 21, 2022), available at <https://www.sec.gov/rules/proposed/2022/33-11042.pdf>.
- 27 See “Short Position and Short Activity Reporting by Institutional Investment Managers,” Release No. 34-94313; File No. S7-08-22 (Feb. 25, 2022), available at <https://www.sec.gov/rules/proposed/2022/34-94313.pdf>.
- 28 See “Transfer Agent Regulations,” Release No. 34-76743; File No. S7-27-15 (Dec. 22, 2015), available at <https://www.sec.gov/rules/concept/2015/34-76743.pdf>.
- 29 The SEC’s Small Business Advocacy team convenes the advisory planning group to participate in Forum planning pursuant to 15 U.S.C. 80c-1(b).
- 30 See U.S. Chamber of Commerce, “The State of Small Business Now,” (Apr. 10, 2023) available at <https://www.uschamber.com/small-business/state-of-small-business-now>.
- 31 *Id.*
- 32 See Anthony Brown, “Careful Ramp Harvesting is Traditional and Sustainable,” *Cherokee One Feather* (Mar. 21, 2011) available at <https://theonefeather.com/2011/03/21/careful-ramp-harvesting-is-traditional-and-sustainable/>.
- 33 See Office of the Advocate for Small Business Capital Formation, “Annual Report: Fiscal Year 2022,” (Dec. 2022) at 16, available at <https://www.sec.gov/files/2022-oasb-annual-report.pdf> (“Advocate Report”) for a map which shows that in 2022, Washington, California, New York, Texas, and Florida had 24,980 Reg. D deals while the bottom 45 states had 17,392 deals. According to the U.S. Census Bureau, in 2022, the top five states had a combined population of 118,766,674, while the bottom 45 states had a population of 214,520,883. See Kristina Barrett, “Growth in U.S. Population Shows Early Indication of Recovery Amid COVID-19 Pandemic,” *U.S. Census Bureau* (Dec. 22, 2022) available at <https://www.census.gov/newsroom/press-releases/2022/2022-population-estimates.html#:~:text=22%20C%202022%20%E2%80%93%20After%20a%20historically,components%20of%20change%20released%20today>. That amounts to the top five states top five states having approximately 35.6% of the total US population while still having 58.9% of the total Reg. D deals. This was around a 159.3% higher rate of deals per person than those in the remaining 45 states.
- 34 *Id.* at 24.

- 35 See Securities and Exchange Commission, “41st Annual Small Business Forum,” (modified Apr. 6, 2023) *available at* <https://www.sec.gov/oasb/sbforum2022>.
- 36 See “Report on the 41st Annual Small Business Forum,” (July 27, 2022) at 16, *available at* <https://www.sec.gov/files/2022-oasb-annual-forum-report.pdf>.
- 37 *Id.*
- 38 See *supra* note 10.
- 39 See “Report on the 41st Annual Small Business Forum,” *supra* note 36.
- 40 See “Private Fund Advisers; Documentation of Registered Investment Adviser Compliance Reviews,” Release No. IA-5955; File No. S7-03-22 (Mar. 24, 2022), *available at* <https://www.sec.gov/rules/proposed/2022/ia-5955.pdf>.
- 41 See “Comment Letter of American Investment Council,” (Apr. 25, 2022) *available at* <https://www.sec.gov/comments/s7-03-22/s70322-20126669-287340.pdf>.
- 42 *Id.*
- 43 See “Enhanced Reporting of Proxy Votes by Registered Management Investment Companies; Reporting of Executive Compensation Votes by Institutional Investment Managers,” Release Nos. 33-11131; 34-96206; IC-34745; File No. S7-11-21 (Dec. 22, 2022), *available at* <https://www.govinfo.gov/content/pkg/FR-2022-12-22/pdf/2022-24292.pdf>.



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