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Capital Formation Advisory Committee Meeting

SPEECH

Remarks at the Small Business Capital Formation Advisory Committee Meeting

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Good morning. Let me begin by thanking all of you for being here and for your dedicated efforts. As I mentioned at our previous meeting, this Committee serves a critical function. Its members come from every corner of the country and represent a remarkably broad cross-section of investors, innovators, and advisers. I am grateful for your ongoing work to elevate the voices of America's entrepreneurs. And I am excited to discuss important policy matters related to the Commission's role in facilitating capital formation.

Today, this Committee will continue its discussion of potential enhancements to Regulation A and then engage in a deep dive on finders, who fill an essential void in the entrepreneurial ecosystem by identifying, and in certain circumstances soliciting, potential investors.

We know small businesses seeking to raise less than \$5 million in capital can struggle to attract funding from VC firms and institutions.[1] Larger investors are often inclined to step in at later stages of growth, leaving fledgling businesses and their founders with limited avenues to capital. So, after exhausting their own network of family members and friends, businesses in the earliest stage of growth sometimes engage a finder to identify angel investors who target smaller, higher-risk investment opportunities. These

finders may provide valuable introductions and facilitate access to much-needed capital. But the regulatory approach to this limited activity, when done outside of a registered broker-dealer, is quite opaque.

Commission staff have issued no-action letters over the years addressing very narrow circumstances under which persons have sought to act as finders without registering as a broker-dealer.[2] Gray areas remain. And a lack of regulatory certainty can deter conscientious participants from helping small businesses to secure financing at a formative stage.

So understandably, many have called on the Commission to provide greater clarity over the years. In 2017, the Treasury Department recommended that the SEC work with the Financial Industry Regulatory Authority (FINRA) and the states to formulate a new regulatory structure.[3] The SEC proposed an exemptive order with a request for comment in October 2020[4] but has since taken no further action. And the legal gray area that lingers can deprive small businesses of essential resources at a time when thirty-three percent of them launch with less than \$5,000 in funding — and nearly forty percent fail due to lack of capital.[5]

What's more, when regulatory uncertainty stands in the way of investment, it's not just capital that dries up, but jobs and ingenuity. Small businesses employ nearly half of America's workforce and represent an equal share of our GDP.[6] They create almost two out of every three new jobs.[7] And they exemplify a spirit of dynamism that has made America a place where a single idea sparked in a garage or a storefront can scale into something extraordinary. That's why discussions like this one matter — and it's why I am grateful for the chance to listen, to learn, and to work together toward a smarter, more sensible approach that can further catalyze capital formation for entrepreneurs.

Now, as we consider how to connect more small businesses with early-stage investors, I have been asked if, given the goal of revitalizing initial public offerings (IPOs), a clearer framework for finders would be counterproductive. Ultimately, companies that would benefit from a finder are seeking early-round seed funding, not the heavy capital infusion that an IPO can provide. Nevertheless, it is important that any recommendations that this Committee makes regarding finders do not risk further cannibalizing the public markets. And I encourage this Committee to keep that objective in mind as it explores regulatory solutions.

At the same time, we must be attuned to the distinct headwinds small businesses face and work to unlock, rather than undermine, capital raising in a manner consistent with the SEC's mission. Our task, as well as our responsibility, is to ensure that the agency's regulatory framework keeps pace with their ambition. And as we begin today's meeting, I'm confident that the insights and recommendations put forth by this Committee can help us do so.

So, I'd like to thank you once again for being here today. I very much welcome your perspectives, including those of our two presenters. And I look forward to a productive discussion ahead. Thank you.

[1] <https://www.sec.gov/info/smallbus/acsec/finders-and-other-financial-intermediaries-yadley.pdf> [_ \(https://www.sec.gov/info/smallbus/acsec/finders-and-other-financial-intermediaries-yadley.pdf\)](https://www.sec.gov/info/smallbus/acsec/finders-and-other-financial-intermediaries-yadley.pdf).

[2] See [SEC.gov | Division of Trading and Markets No-Action, Exemptive, and Interpretive Letters](https://www.sec.gov/division/trading-markets/no-action-exemptive-and-interpretive-letters/) [_ \(https://www.sec.gov/rules-regulations/no-action-interpretive-exemptive-letters/division-trading-markets-no-action#finders\)](https://www.sec.gov/rules-regulations/no-action-interpretive-exemptive-letters/division-trading-markets-no-action#finders); see also Paul Anka, SEC No-Action Letter, 1991 WL 176891 (July 24, 1991). The statements in the staff no-action letters represent the view of the staff of the Division of Trading and Markets. They are not a rule, regulation or statement of the Commission. The Commission has neither approved nor disapproved their content. These no-action letters, like all staff statements, have no legal force or effect: they do not alter or amend applicable law, and they create no new or additional obligations for any person.

[3] [A Financial System That Creates Economic Opportunities: Capital Markets](https://home.treasury.gov/system/files/136/A-Financial-System-Capital-Markets-FINAL-FINAL.pdf) [_ \(https://home.treasury.gov/system/files/136/A-Financial-System-Capital-Markets-FINAL-FINAL.pdf\)](https://home.treasury.gov/system/files/136/A-Financial-System-Capital-Markets-FINAL-FINAL.pdf).

[4] [34-90112.pdf](https://www.sec.gov/files/rules/exorders/2020/34-90112.pdf) [_ \(https://www.sec.gov/files/rules/exorders/2020/34-90112.pdf\)](https://www.sec.gov/files/rules/exorders/2020/34-90112.pdf).

[5] See Stephanie Ferguson Melhorn, Makinzi Hoover, and Isabella Lucy, Small Business Data Center, May 20, 2024, *available at* <https://www.uschamber.com/small-business/small-business-data-center> [_ \(https://www.uschamber.com/small-business/small-business-data-center\)](https://www.uschamber.com/small-business/small-business-data-center).

[6] *Id.*

[7] See The State of Small Business Now, U.S. Chamber of Commerce, April 10, 2023, *available at* <https://www.uschamber.com/small-business/state-of-small-business-now> [\(https://www.uschamber.com/small-business/state-of-small-business-now\)](https://www.uschamber.com/small-business/state-of-small-business-now).

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