

REPORT ON THE
38th Annual
Government-Business
Forum on Small Business
Capital Formation

AUGUST 14, 2019 | OMAHA, NEBRASKA

U.S. SECURITIES AND EXCHANGE COMMISSION



The U.S. Securities and Exchange Commission conducts the Government-Business Forum on Small Business Capital Formation annually. The recommendations contained in this report were developed and drafted by the 2019 Forum participants. The recommendations are not endorsed or modified 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 2019 Forum materials are available online. Scan here to learn more.



Digital copies of the prior reports and other materials relating to previous Forums, dating back to 1993, are available online. Scan here to learn more.

MESSAGE FROM THE ADVOCATE



This year marks the first year of the SEC’s newest office: the Office of the Advocate for Small Business Capital Formation. It also marks the first year in which our new team planned and executed the SEC’s Annual Government-Business Forum on Small Business Capital Formation, an important event in which members of the public and private sectors gather to craft suggestions for securities policy impacting emerging companies and their investors.

In the pages that follow, you will find a record of this year’s Forum, including an executive summary of the Forum and the recommendations adopted by the participants. What is hard to capture in the four corners of this report is the enthusiasm brought by the talented and thoughtful participants who had an opportunity to talk openly and candidly about successes in capital formation, as well as ways that our securities law framework could be calibrated to work better for both companies and investors in the small business ecosystem. With many rulemaking initiatives currently underway at the SEC that are focused on striking the right balance by fostering capital formation and maintaining appropriate investor protections, including the [recent rulemaking](#)¹ that seeks comment on ways to harmonize the exempt offering framework, there could not be a more exciting time for passionate capital formation advocates to convene.

On behalf of our Office, thank you to our Commissioners, speakers, panelists, and participants for an exceptionally productive and informative Forum. We also thank the [Heider College of Business at Creighton University](#)² for partnering with us on this event, sharing their expertise, facilities, and welcoming us with warm hospitality. Our office will forever be Blue Jays fans. And equally important, thank you to the hardworking staff at the SEC for making this event such a success.

Sincerely,
MARTHA LEGG MILLER

A handwritten signature in black ink that reads "Martha Legg Miller". The signature is fluid and cursive, with the first letters of each name being capitalized and prominent.

Advocate for Small Business Capital Formation

“[T]he thing we really have to battle here is the imposter syndrome that can be crippling for us here in the middle of the country. This idea that somehow there’s this knowledge or this base, this magic secret sauce that’s happening on the coast that we don’t have access to [but] that’s the key to success . . . when really we have all the ingredients here and we have really amazing talent.”

JOHN WIRTZ
Co-founder and Chief Product Officer
Hudl, Lincoln, NE



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“I think that . . . the cost affiliated with conforming to the rules are written for high net worth individuals. [B]ut the deals [in Indian Country] are so small that it’s cost prohibitive to [comply]. And I think it’s suppressing really entrepreneurial thoughts in more creative areas that are smaller projects.”

HEATHER DAWN THOMPSON
Founder and Lead Manager of
Native American Capital's Tribal Opportunity
Zones Venture Group, Rapid City, South Dakota



EXECUTIVE SUMMARY



The U.S. Securities and Exchange Commission’s 38th Annual Government-Business Forum on Small Business Capital Formation was hosted on August 14, 2019 in partnership with the Heider College of Business at Creighton University in Omaha, Nebraska. The full agenda for the event is included in [Appendix A](#).

BACKGROUND

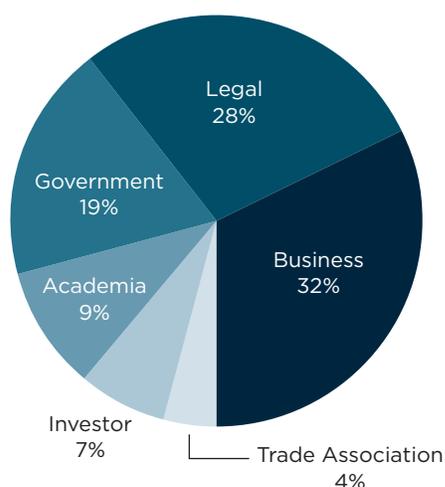
The SEC has conducted the Forum annually since 1982.³ The Forum is a unique event where members of the private and public sectors converge to identify and highlight issues they experience in accessing capital and investing in small business and then formulate solutions on which the SEC and Congress can take action. Holding this event in the self-described “Silicon Prairie”—an entrepreneurial frontier in the heartland of the country—provided fresh perspectives on capital formation. This year marks the third year in a row that the SEC has taken the Forum outside of Washington, DC to engage new voices in the capital formation conversation.

This year the SEC’s new Office of the Advocate for Small Business Capital Formation took over organization and execution of the Forum for the first time.⁴ The Office invited other federal government agencies, the North American Securities Administrators Association (NASAA, the organization representing state securities regulators), and professional organizations active in small business capital formation to participate in planning the 2019 Forum, including assisting with the agenda for the event and recruiting of speakers. The members of the Forum advisory planning group are listed in [Appendix B](#).

OBJECTIVES

The Forum seeks to bring members of the private and public sectors of the small business community together to discuss small businesses' experiences in accessing capital and investors' experiences in investing in small businesses, highlighting successes and areas for policy improvement. The Forum provides an opportunity to hear fresh perspectives on capital formation, with the benefit of also highlighting local entrepreneurial ecosystems outside of Washington, DC. Throughout the event, members of the small business community have the opportunity to engage in thoughtful discussions about capital formation issues and collaboratively formulate recommendations to address those issues.

REGISTERED PARTICIPANT ROLES



PARTICIPANTS

The Forum is open to members of the public, with representation including entrepreneurs and small business leaders, investors, market participants, and other thought leaders within the small business capital formation ecosystem. Participants are welcomed to attend in person or engage remotely via webcast and teleconference technology, which has offered an increasingly popular means to engage with audiences across the country who may be unable to travel to the event. This year the SEC communicated with the public about the event through multi-channel marketing, including traditional press releases, web content, social media, local press, and outreach via Creighton University and local entrepreneurial ecosystem leadership.

PROCEEDINGS

The Forum started with opening remarks during the plenary session from the SEC's Advocate for Small Business Capital Formation Martha Legg Miller, Chairman Jay Clayton, Commissioner Robert J. Jackson, Jr., Commissioner Hester M. Peirce, Commissioner Elad L. Roisman, Commissioner Allison Herren Lee, and Dean Anthony R. Hendrickson of the Heider College of Business. Copies of the remarks are included in [Appendix C](#).



“CAPITAL FORMATION SUCCESS STORIES FROM THE SILICON PRAIRIE” PANEL⁵

After opening remarks, a regional panel discussed capital formation success stories from the Silicon Prairie. The panelists engaged in a thoughtful dialogue about various aspects of capital formation in the Midwest, including:

- the importance of creating your own entrepreneurial community and not seeking to replicate other communities’ models for success;
- the role of proximity in angel investing;
- angel investors’ interest in participating in passive pooled vehicles;
- “traditional” investment opportunities in established companies versus small, emerging business investments;
- the benefits of investor diversification and matching of risk tolerance profiles for less liquid investments;
- the challenges with marketing to investors over the internet—an important and often inaccessible tool in exempt offerings—despite its ubiquitous role in other elements of small business operations;
- cost of compliance, even in the exempt framework, which are often too high or burdensome for many companies;
- revisiting the exemptions to address the gaps in funding between earlier-stage (e.g., under \$1-3 million) and larger capital raises (e.g., over \$20 million) in the so called “valley of death;”
- the unique challenges faced by Native American tribal communities fostering entrepreneurship, including challenges with the accredited investor definition; and
- the iterative aspirations for successful entrepreneurs, many of whom start with the ultimate goal of being acquired, and only on second and third entrepreneurial ventures begin envisioning an initial public offering as a potential path for success.



“HARMONIZATION: WHAT A CONCEPT!” PANEL⁶

A second panel explored options to harmonize the exempt offering framework, a timely topic given the open comment period on the SEC’s harmonization concept release.⁷ The panelists thoughtfully discussed a variety of topics, including:

- the scope of capital raising tools covered in the Commission’s concept release on the exempt offering framework and areas where the Commission is actively seeking marketplace feedback for future rulemaking activity;
- the role of private markets in fostering the next generation of potential public companies;
- the challenges companies and investors face in navigating the complex exemption framework, with the goal of harmonization being to simplify the system and reduce points of friction;
- the observation that most companies do not raise capital through a linear “life cycle” trajectory using exemptions in sequence, but rather that capital is often raised in simultaneous or adjacent raises using multiple exemptions;
- the importance of maintaining the elements of the exempt framework that are functioning well for marketplace participants, such as the private placement exemption and Rule 506(b) safe harbor;
- the prevalence of early comments regarding revising the accredited investor definition, which Director Bill Hinman noted may be an early “harmonization” rulemaking priority;
- opportunities to focus regulatory attention and liability on the actual sale of securities to investors rather than on the offering, which could align well with liability protections for investors while also simplifying compliance for issuers; and
- suitable means to provide retail investors with access to diversified funds investing in the private markets that provide appropriate risk mitigation and alignment of interests between investors and fund managers.

Opening remarks and the two morning panel discussions were accessible through a live webcast on the Commission’s website. A *written transcript*⁸ of the opening remarks and morning panel discussions is available online, along with an *archived video recording*.⁹

BREAKOUT GROUP MEETINGS

The remainder of the 2019 Forum was devoted to three breakout group meetings based upon stages of the capital raising life cycle, including (1) Small, Emerging Businesses, (2) Mature and Later Stage Private Companies, and (3) Small Reporting Companies. The afternoon breakout group sessions were accessible via teleconference technology.

The breakout groups began by utilizing online polling technology to identify the top capital formation issues facing small businesses within the breakout group’s market segment, many of which overlapped across market segments, indicating the scope of issues’ impact across the market. A table of the issues raised by participants is included below (with issues presented in alphabetical order).

SMALL, EMERGING BUSINESSES	MATURE AND LATER STAGE PRIVATE COMPANIES	SMALL REPORTING COMPANIES
access to capital	compliance costs	compliance costs
accredited investor limits	disclosures for unaccredited investors	corporate governance
complexity	finders	exempt offering revisions
compliance costs	secondary liquidity	secondary liquidity
lack of clarity		

After identifying top issues, participants in each of the breakout groups developed five recommendations for policy change to provide the Commission with strategic direction on areas for future action. Participants were keen to share their perspectives and contribute to the development of the policy priorities for capital formation. Before the conclusion of each session, breakout session attendees prioritized the session’s recommendations using online voting technology.

CONCLUSIONS

There is a clear demand for capital to support emerging companies across the spectrum of small businesses, from start-ups to smaller public companies. Both the plenary session speakers and breakout group participants highlighted where the securities laws work well and should be maintained, as well as areas in which there is room for improvement. It was also evident from the discussions that no single solution or tweak to a single aspect of the capital formation continuum will solve the pressing capital needs of growing businesses. Rather, regulators and lawmakers must continue to focus on supporting the entire ecosystem of companies, investors, and marketplace participants who make our country’s economy so vibrant.

“[O]verall, my perspective on the eligible pool of investors is that it’s very strong, but there are initiatives that we need to put in place to be able to grow the actual base of active angel investors from within that pool.”

STEPHANIE LUEBBE
Executive Director, Nebraska Angels
Lincoln, NE



FORUM PARTICIPANTS’ RECOMMENDATIONS AND THE COMMISSION’S RESPONSES



Forum participants during the morning panel discussion.

The recommendations of the Forum participants are presented below by breakout session group in their order of ranked priority.¹⁰ The priority ranking is intended to provide guidance to the Commission as to the importance and urgency the attendees of that session assigned to the respective recommendations.

The Commission’s responses to the Forum recommendations appear below, along with a list of any corresponding initiatives to which the recommendations relate.¹¹ As a general matter, 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. The Commission also may be pursuing initiatives that are responsive to Forum recommendations but that have not yet been made public, and any such initiatives are not reflected in the list below.

SMALL, EMERGING BUSINESSES

Companies within this segment of the market generally raise capital through some combination of bootstrapping, self-financing, bank debt, friends and family, crowdfunding, angel investors, and seed rounds. This funding is commonly used to get companies off the ground and through early prototypes.

Recommendation: Accredited Investor Definition

Revise the accredited investor definition as follows:

- For natural persons, in addition to the income and net worth thresholds in the definition, add a sophistication test as an additional way to qualify;
- Provide tribal governments parity with state governments; and
- Revise the dollar amounts to scale for geography, lowering the thresholds in states/regions with a lower cost of living.

PRIORITY 1
(TIE)

WEIGHTED
SCORE 4.3

Commission Response

As indicated on the Fall 2019 Unified Agenda of Federal Regulatory and Deregulatory Actions (Fall 2019 Unified Agenda),¹² the Division of Corporation Finance is considering recommending that the Commission propose amendments to expand the definition of accredited investor under Regulation D of the Securities Act of 1933 (Securities Act).

On June 18, 2019, the Commission published for public comment a concept release on ways to simplify, harmonize and improve the exempt offering framework to promote capital formation and expand investment opportunities while maintaining appropriate investor protections.¹³ Part of this initiative includes seeking public comment on whether current rules that limit who can invest in certain offerings should be expanded to focus on criteria other than wealth of the investor.¹⁴ The concept release also seeks comment on whether the Commission should consider rule changes to expand the types of entities that may qualify as accredited investors.

Staff in the Division of Corporation Finance will consider this Forum recommendation in connection with these initiatives.

Recommendation: Clarity and Education

Improve clarity and education on a variety of matters as follows:

- Use consistent terms in exempt offering rules for ease of understanding;
- Utilize bright line rules and examples to provide clarity for investors, small businesses, and lawyers; and
- Provide education on what is a security and what is not.

PRIORITY 1
(TIE)

WEIGHTED
SCORE 4.3

Commission Response

Staff in the Divisions of Corporation Finance, Investment Management, and Trading and Markets, Office of the Advocate for Small Business Capital Formation, and Office of Investor Education and Advocacy will consider this Forum recommendation in connection with ongoing initiatives.

Recommendation: Finders

The SEC, and possibly FINRA, should look into who finders are and what the different categories might be for participation in transactions. Rules should be explicit and clear for purposes of determining the categories of finders and what constitutes “engaging in the business of effecting transactions in securities” that triggers classification as a broker.

PRIORITY 3

WEIGHTED
SCORE 4.1

Commission Response

As indicated on the Fall 2019 Unified Agenda of Federal Regulatory and Deregulatory Long-term Actions (Fall 2019 Unified Agenda Long-term Actions),¹⁵ the Division of Trading and Markets is considering recommending that the Commission propose rules concerning the status of finders for purposes of Section 15(a) of the Securities Exchange Act of 1934 (the “Exchange Act”).

Staff in the Division of Trading and Markets will consider this Forum recommendation in connection with this initiative.

Recommendation: Pooled Investment Vehicles

Expand access to quality deals through new or alternative investment vehicles to allow non-accredited investors to participate on same terms as accredited investors.

PRIORITY 4

WEIGHTED
SCORE 4.0

Commission Response

In the Harmonization Concept Release, the Commission 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.

Staff in the Division of Investment Management will consider this Forum recommendation in connection with this initiative.

Recommendation: Crowdfunding

Revise Regulation Crowdfunding rules to allow accredited investors to make unlimited investments and raise the maximum limit on the overall deal.

PRIORITY 5

WEIGHTED
SCORE 3.9

Commission Response

Staff in the Divisions of Corporation Finance and Trading and Markets will consider this Forum recommendation, and the findings from the staff’s report on Regulation Crowdfunding,¹⁶ in connection with the earlier described initiative on ways to harmonize and improve the exempt offering framework under the Securities Act. The Harmonization Concept Release specifically seeks comment on the overall offering limit and individual investment limits contained in Regulation Crowdfunding. The staff also expects to continue consulting with FINRA regarding the implementation of Regulation Crowdfunding.

In addition, as indicated on the Fall 2019 Unified Agenda, the Division of Corporation Finance is considering recommending that the Commission propose amendments to Regulation Crowdfunding to address any staff recommendations resulting from the staff report to the Commission on the regulation.

MATURE AND LATER STAGE PRIVATE COMPANIES

Companies within this segment of the market are generally growing and looking for larger amounts of capital that can fund operations of scale, ventures into new verticals, and preparation for public markets. Most often these investors are institutional in nature, whether syndicate groups, venture capital, private equity, or even public funds.

Recommendation: Regulation A – Federal Preemption

Provide federal preemption for all resales of securities sold in a Regulation A Tier 2 offering, provided that the issuer is current in its Tier 2 reporting.

PRIORITY 1

WEIGHTED
SCORE 4.4

Recommendation: Regulation A – Exchange Act § 12(g)

Provide an unconditional exemption from Exchange Act § 12(g) for all Regulation A Tier 2 reporting companies, provided that the issuer is current in its Tier 2 reporting.

PRIORITY 2

WEIGHTED
SCORE 4.1

Commission Response

In the Commission’s 2015 final release adopting amendments to Regulation A, Commission staff undertook to study and submit a report to the Commission no later than five years following the adoption of these amendments on the impact of both the Tier 1 and Tier 2 offerings on capital formation and investor protection.¹⁷ The final release indicates that the report will include, but not be limited to, a review of: (1) the amount of capital raised under the amendments; (2) the number of issuances and amount raised by both Tier 1 and Tier 2 offerings; (3) the number of placement agents and brokers facilitating the Regulation A offerings; (4) the number of Federal, State, or any other actions taken against issuers, placement agents, or brokers with respect to both Tier 1 and Tier 2 offerings; and (5) whether any additional investor protections are necessary for either Tier 1 or Tier 2.¹⁸

Staff in the Division of Corporation Finance will consider these Forum recommendations, and the findings from the staff’s Report on Regulation A, in connection with the earlier described initiative on ways to harmonize and improve the exempt offering framework under the Securities Act. The Harmonization Concept Release specifically seeks comment on whether the Commission should extend federal preemption to additional offers and sales of securities and whether the conditional Section 12(g) exemption for Regulation A Tier 2 securities should be modified.

In addition, as indicated on the Fall 2019 Unified Agenda, the Division of Corporation Finance is considering recommending that the Commission propose amendments to Regulation A to address any staff recommendations resulting from the reviews of the regulation.

Recommendation: Finders

Codify the relief envisioned in the M&A Brokers No Action Letter¹⁹ to harmonize state and federal law and provide clear guidance on the circumstances in which a finder needs to be regulated, consistent with the ABA recommendations.²⁰

PRIORITY 3
(TIE)

WEIGHTED
SCORE 3.6

Commission Response

As indicated on the Fall 2019 Unified Agenda Long-term Actions, the Division of Trading and Markets is considering recommending that the Commission propose rules concerning the status of finders for purposes of Section 15(a) of the Exchange Act.

Staff in the Division of Trading and Markets will consider this Forum recommendation in connection with this initiative.

Recommendation: Pooled Investment Vehicles

Provide a series of Investment Company Act exemptions for diversified funds selling securities under Regulation A, Regulation Crowdfunding, and Regulation D (which will also provide a vehicle for non-accredited investor participation).

PRIORITY 3
(TIE)

WEIGHTED
SCORE 3.6

Commission Response

Although the Commission did not request public comment on providing potential exemptions under the Investment Company Act for offerings by pooled investment vehicles under Regulation A, Regulation Crowdfunding, and Regulation D in the Harmonization Concept Release, staff in the Division of Investment Management will consider this Forum recommendation in connection with this initiative.

Recommendation: Micro-Offerings

Provide a new exemption for investments of less than \$25,000 for up to 35 non-accredited investors, where all investors have access to the same disclosures about the issuer.

PRIORITY 5

WEIGHTED
SCORE 3.1

Commission Response

Staff in the Division of Corporation Finance will consider this Forum recommendation in connection with the earlier described initiative on ways to harmonize and improve the exempt offering framework under the Securities Act. The Harmonization Concept Release specifically seeks comment on whether the Commission should add a micro-offering or micro-loan exemption and, if so, what an appropriate aggregate offering limit would be.

SMALL REPORTING COMPANIES

Companies can access broad pools of investors when they conduct public offerings, allowing companies to raise large amounts of money to fund activities such as research and development, capital expenditures, or debt service. Public offerings also provide liquidity to early-stage investors and publicity for the company.

Recommendation: Proxy Process Reform

Reform the rules governing the proxy process to inspire confidence in the voting process, drive shareholder engagement, and bolster long-term value creation by:

- providing for effective oversight of proxy advisory firms under Rule 14a-2(b), with a focus on conflicts of interest, accuracy, transparency, and issuer-specific decision making;
- emphasizing the fiduciary duty that investment advisers owe to their clients, including when investment advisers rely on proxy advisory firms for vote recommendations; and
- amending the submission and resubmission thresholds for shareholder proposals under Rule 14a-8.

PRIORITY 1
(TIE)

WEIGHTED
SCORE 4.4

Commission Response

In November 2018, the SEC staff hosted a roundtable to engage with the public on the proxy process, including a discussion of the topic of investment advisers' use of proxy advisory firms.²¹ Chairman Clayton has asked the staff to look at the issues raised in the roundtable on this topic and formulate recommendations for the Commission's consideration.²²

In August 2019, the Commission issued guidance to assist investment advisers in fulfilling their proxy voting responsibilities.²³ At the same time, the Commission issued an interpretation clarifying that proxy voting advice provided by proxy advisory firms generally constitutes a solicitation under the federal proxy rules and provided related guidance about the application of the proxy solicitation antifraud rule to proxy voting advice.²⁴

On November 5, 2019 the Commission proposed amendments to its rules governing proxy solicitations to help ensure that investors who use proxy voting advice receive more accurate, transparent, and complete information on which to make their voting decisions.²⁵ The proposed amendments would, among other things, condition the availability of certain existing exemptions from the information and filing requirements of the federal proxy rules for proxy voting advice businesses upon additional disclosure and procedural requirements. These conditions include providing registrants and other soliciting persons an opportunity to review and provide feedback on proxy voting advice before it is issued and requiring proxy voting advice businesses to include disclosure of material conflicts of interest in their proxy voting advice.

On the same date, the Commission also proposed amendments to certain procedural requirements and the provision relating to resubmitted proposals under the shareholder-proposal rule.²⁶ The proposed amendments would, among other things, replace the current ownership requirements with a tiered

approach that would provide three options for demonstrating an ownership stake through a combination of amount of securities owned and length of time held. The proposed amendments would also raise the current resubmission thresholds of 3, 6, and 10 percent to 5, 15, and 25 percent, respectively and add a new provision that would allow companies to exclude shareholder proposals under certain circumstances where shareholder support for the matter has declined.

Staff in the Divisions of Corporation Finance and Investment Management have considered and will continue to consider this Forum recommendation in connection with these initiatives.

Recommendation: Significant Holdings of Publicly-Traded Equity Securities

Increase the disclosure requirements around significant holdings of publicly-traded equity securities by:

- mandating timely disclosure of significant short positions in all public issuers;
- extending Exchange Act § 13(f) to over the counter (OTC)-traded securities;
- prohibiting insiders and affiliates from holding shares in an objecting beneficial owner (OBO) account; and
- requiring disclosure of insider and affiliate transactions in securities of non-SEC reporting companies, in a manner similar to Forms 3, 4, and 5.

PRIORITY 1
(TIE)

WEIGHTED
SCORE 4.4

Commission Response

Staff in the Divisions of Corporation Finance, Trading and Markets, and Investment Management will consider this Forum recommendation and consult, as needed, with relevant stakeholders.

Recommendation: Accelerated Filer Definition

Align the definition of non-accelerated filers with the definition of smaller reporting companies (SRC), to include issuers with a public float of less than \$250 million or with annual revenues of less than \$100 million (and either no public float or a public float of less than \$700 million).

PRIORITY 1
(TIE)

WEIGHTED
SCORE 4.4

Commission Response

On May 9, 2019, the Commission proposed amendments to the “accelerated filer” definition in Rule 12b-2 of the Exchange Act that would have the effect of reducing the number of registrants that are subject to the Sarbanes-Oxley Act Section 404(b) attestation requirement. The proposed rules would, among other things, exclude from the accelerated and large accelerated filer definitions an issuer that is eligible to be an SRC and had no revenues or annual revenues of less than \$100 million in the most recent fiscal year for which audited financial statements are available. The proposal also discusses, as an alternative to the proposed amendments, excluding all SRCs from the accelerated filer definition.

Staff in the Division of Corporation of Finance will consider this Forum recommendation in connection with this initiative.

Recommendation: Promoter and Transfer Agent Disclosure

Require additional disclosure from paid promoters and transfer agents by:

- amending Securities Act § 17(b) and/or promulgating rules thereunder to require additional disclosure about paid stock promotion to make online information sources safer, deter misleading sales pressure and prevent fraudulent “pump-and-dump” schemes; and
- modernizing transfer agent regulations to increase the amount of information on the issuance, ownership and transfer history of shares available to broker-dealers and investors.

PRIORITY 4

WEIGHTED
SCORE 3.2

Commission Response

In December 2015, the Commission issued the Transfer Agent Regulations Advance Notice of Proposed Rulemaking and Concept Release, which discussed potential amendments to the transfer agent rules that the Commission is considering proposing and requested public comment on relevant concepts and issues.

On September 26, 2018, staff of the Division of Trading and Markets hosted a panel discussion as part of the roundtable program Combating Retail Investor Fraud (which was one in a series of roundtable discussions on Equity Market Structure). The panel discussed the issue of transfer agent practices in connection with restrictive legends on restricted securities.

As indicated on the Fall 2019 Unified Agenda, the Division of Trading and Markets is considering recommending that the Commission propose rule amendments to update the transfer agent rules.

Staff in the Division of Trading and Markets will consider this Forum recommendation in connection with this initiative.

Recommendation: OTC Securities Clearing And Depositing

Issue guidance and develop best practices concerning the clearing and depositing of OTC securities to ensure that low-risk OTC securities can be deposited and cleared within clear regulatory guidelines.

PRIORITY 5

WEIGHTED
SCORE 2.8

Commission Response

Staff in the Division of Trading and Markets will consider this recommendation and consult, as needed, with relevant stakeholders.

APPENDICES

Appendix A | **AGENDA**

- 9:00 a.m.** **Call to Order**
- » Martha Legg Miller, SEC Advocate for Small Business Capital Formation
- Remarks**
- » SEC Chairman Jay Clayton
 - » Commissioner Robert J. Jackson Jr.
 - » Commissioner Hester M. Peirce
 - » Commissioner Elad L. Roisman
 - » Commissioner Allison Herren Lee
- Opening Remarks**
- » Dean Anthony R. Hendrickson, Heider College of Business, Creighton University
- 9:30 a.m.** **Capital Formation Success Stories from the Silicon Prairie**
- Moderator**
- » Martha Legg Miller, SEC Advocate for Small Business Capital Formation
- Panelists**
- » Allie Esch, Principal, Dundee Venture Capital (*Omaha, NE*)
 - » Keith Fix, Founder and CEO, Retail Aware (*Omaha, NE*)
 - » Stephanie Luebbe, Executive Director, Nebraska Angels (*Lincoln, NE*)
 - » Claire McHenry, Deputy Director, Bureau of Securities, Nebraska Department of Banking and Finance (*Lincoln, NE*)
 - » Jeff Slobotski, Entrepreneur, Router Ventures, and Founder of Big Omaha and Silicon Prairie News (*Omaha, NE*)
 - » Heather Dawn Thompson, Founder and Lead Manager of Native American Capital's Tribal Opportunity Zones Venture Group (*Rapid City, SD*)
 - » John Wirtz, Co-founder and Chief Product Officer, Hudl (*Lincoln, NE*)
- 11:00 a.m.** **Break**

Appendix A | **AGENDA (continued)**

- 11:15 a.m. Harmonization: What a Concept!
Exploring Options to Reshape the Offering Framework**
- Moderators**
- » William Hinman, Division Director, SEC Division of Corporation Finance
 - » Martha Legg Miller, SEC Advocate for Small Business Capital Formation
- Panelists**
- » Bart Dillashaw, Founder, Enterprise Legal Studio
 - » Sara Hanks, CEO, CrowdCheck, Inc.
 - » Keith F. Higgins, Chair, Corporate and Securities Practice, Ropes & Gray LLP
 - » Jennifer A. Zepralka, Chief, Office of Small Business Policy, SEC Division of Corporation Finance
- 12:15 p.m. Instructions for Breakout Session Formulation of Issues and Recommendations**
- 12:30 p.m. Lunch**
- 2:00 p.m. Breakout Groups Assemble to Identify Capital Formation Issues and Develop Recommendations to Address Those Issues**
- » **Small, Emerging Businesses**
Moderator: Carla Garrett, Partner, Potomac Law Group
 - » **Mature and Later Stage Private Companies**
Moderator: Bart Dillashaw, Founder, Enterprise Legal Studio
 - » **Small Reporting Companies**
Moderator: Irina V. Fox, Associate Professor, Creighton University, School of Law
- 3:00 p.m. Break**
- 3:15 p.m. Breakout Groups Reassemble**
- 4:30 p.m. Vote to Prioritize Recommendations**
- 5:00 p.m. Networking Reception**

SEC Staff Team

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We would also like to acknowledge the teams that worked across the agency to help make this event possible, including the Office of Public Affairs, the Office of Information Technology, and the Office of Human Resources' SEC University.

Forum Advisory Planning Group

Chair **Martha Legg Miller**
Director, Office of the Advocate for Small Business Capital Formation
U.S. Securities and Exchange Commission, Washington, DC

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John Stanford
Co-Executive Director, Small Business
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“[C]losed-end funds could be an area, particularly funds of funds, where an investor could participate in a closed-end fund that was traded on an exchange and that invested in private equity funds and venture capital funds, and had a manager who was managing a pool of those assets.”

KEITH F. HIGGINS
Chair, Corporate and Securities Practice,
Ropes & Gray LLP





Remarks of Martha Legg Miller
SEC Advocate For Small Business Capital Formation

Good morning and welcome everyone. On behalf of the U.S. Securities and Exchange Commission, I am pleased to see each of you here today for the 38th annual Government-Business Forum on Small Business Capital Formation.²⁷ We are particularly grateful to the *Heider College of Business at Creighton University*²⁸ for hosting us and helping make this event a success. I am thrilled to see in the room today a mix of familiar and new faces joining us here in Omaha to shape the future of small business capital formation. The Forum is a unique event where members of the private and public sectors converge to identify and highlight issues they experience in accessing capital and investing in small businesses and then formulate solutions on which we can take action.

For those I have not yet had the opportunity to meet, I am Martha Miller, the SEC's new Advocate for Small Business Capital Formation—a long title proportionate to our big mission of working to support capital formation consistent with the SEC's mission. For those who are familiar with the Forum, you may have noticed a change this year: our new office has taken over planning and organizing this important event. We owe special thanks to Julie Davis, Jenny Riegel, and Malika Sullivan for the heavy lift of planning what I know will be a thought-provoking and productive day. Beyond the Forum, our office is responsible for advocating for policy solutions that encourage capital formation across the spectrum of small businesses and their investors, from the smallest start up scaling with seed capital all the way to a reporting company that has a public float under \$250 million.²⁹ We have received tremendous support from across the agency in operationalizing our start-up office in record time. The support that our office and this event have enjoyed from each of the Commissioners is a testament to their commitment to small businesses and their investors, and we are thrilled to have them all here today. I want to especially welcome the SEC's newest Commissioner, Allison Lee.

Before we move into the program, I will make an omnibus disclaimer on behalf of all speakers and presenters that the comments shared by any SEC employee or Commissioner represent their own individual perspectives and not necessarily the perspective of the Commission. I hope that by disclaiming for all up front, we can break for lunch five minutes early with the time saved.

As we began planning the 2019 Forum, we wanted to venture outside of DC to take in fresh perspectives on capital formation. Familiar with the *Maha Discovery Festival*,³⁰ an entrepreneurship conference formerly known as Big Omaha that takes place this week, we knew that this region was defining entrepreneurship with its own unique “Silicon Prairie” personality. The local Chamber of Commerce’s motto says it best: “We don’t coast.”³¹ It’s both a factual statement for a state situated in the heart of the country far from the coastal cities whose large VC deals and IPOs are often in the spotlight. “We don’t coast” is also an apt metaphor for a community framing its identity through the power of hard work, not content to drift along aimlessly.

“Capital formation and investing in promising new companies is critical to the future of our economy, from creating new jobs, to developing new solutions to emerging problems, to seeding companies that may one day ring the opening bell as a public company.”

That intentional, build-it-yourself mentality reflects the region’s pioneer roots, when people came to Nebraska to start a new adventure, whether by settling on the prairie or by venturing further west into uncharted territory. A century later, Nebraska entrepreneurs and innovators filled American homes with their novel and practical inventions, from food products like the first boxed cake mix, microwave TV dinners, Raisin Bran and the Reuben sandwich; to time saving inventions like pink foam hair curlers to style hair overnight, the ski lift to get up the mountain faster, and even Cliff’s Notes to make studying a breeze; to life saving inventions like the 911 system of emergency communications we now use nationwide. This is a

region where ideas take root and innovators figure out how to scale, evidenced by the pervasiveness of the aforementioned inventions. Today Omaha is perhaps known best for the College World Series, its famous steaks, and the Oracle of Omaha, Warren Buffett.

I highlight these elements of Nebraska’s entrepreneurial spirit to shine a light on the importance of entrepreneurial ecosystems. In a world where technology bridges many geographic boundaries, entrepreneurship still is largely a local phenomenon, occurring in early stages through networks of founders, funders and talent who operate in proximity through relationships of trust, experience, and accountability.³² After welcoming remarks from our Commissioners, we will hear from leaders in the regional entrepreneurial ecosystem, starting with remarks from Dean Hendrickson of the Heider College of Business. After that we will kick off a panel titled “Capital Formation in the Silicon Prairie” to hear from local experts about how companies and investors are finding success in building and growing companies here in the prairie states.



SEC Commissioners and “Harmonization: What a Concept” panelists.

We will then proceed with a panel titled “Harmonization: What a Concept!” to delve into the current concept release on harmonization of the exempt offering framework.³³ Our rulemaking leadership will take you behind the Emerald Curtain on the ideas being discussed—an apt metaphor in the hometown of the Wizard from L. Frank Baum’s classic story.³⁴ We look forward to hearing from Bill Hinman, Director of the Division of Corporation Finance, and his team, alongside leaders from the field who will share insights into the breadth of this rulemaking initiative. Our speakers from both panels this morning will lay the groundwork for your thoughtful discussion this afternoon of the capital formation issues facing small businesses and their investors and formulation of recommendations to address those issues.

We are fortunate to have with us today a wide range of businesses, their investors, and other market participants in the small business ecosystem, and we want to kick off this afternoon’s discussion with hearing your views on the most significant capital formation issues. For example, what are the issues that small businesses have with securing access to capital? What are the issues facing entrepreneurial investors? We hope this discussion of the issues will help guide, focus, and prioritize your discussion of recommendations to address the issues identified in small business capital formation.

Participants may join breakout sessions along three tracts, depending on the stage of capital formation of interest: (1) seed and early stage capital, (2) growth and mature capital, and (3) public capital for smaller reporting companies. We have shifted the structure of the breakout sessions to encourage discussion among Forum participants based upon your expertise with niches within the capital formation lifecycle, although we welcome you to move between rooms.

Capital formation and investing in promising new companies is critical to the future of our economy, from creating new jobs, to developing new solutions to emerging problems, to seeding companies that may one day ring the opening bell as a public company. The nature of what it means to raise capital, thrive and scale has changed in the past few decades. Today you can help us craft a vision for what the securities framework should look like to ensure that we are well positioned for a vibrant future ahead.

In closing, for fans of professional football, you may be familiar with Peyton Manning's famous shouting of "OMAHA, SET HUT!" from the line of scrimmage.³⁵ While somewhat mysterious in its origins, Manning famously shouted the name of the city where we are gathered today to signal play changes to his team. He had a unique ability to read the field, react and adjust at the line, cryptically signaling to his team how the play would change with the single word "OMAHA!" This afternoon I hope that you will do more than cryptically shout "OMAHA!" to signal that the rulebook needs to change without further direction. Tell us how you would redraw the playbook to work better for issuers and investors.

Thank you for spending the day with us. It is now my pleasure to welcome Chairman Jay Clayton and the other Commissioners to share their opening remarks.

Remarks of SEC Chairman Jay Clayton



Thank you, Martha [Miller] and the staff in the Office of the Advocate for Small Business Capital Formation for taking the lead in organizing this 38th annual Government-Business Forum. This is our first small business forum under the leadership of Martha and her office, which already have substantially contributed to our efforts to engage with small business owners, investors and entrepreneurs.

I also am pleased that we are continuing the trend of taking the small business forum to new locations across the country. Our generous host this year is the Heider College of Business at Creighton University. Thank you Dean Anthony R. Hendrickson for opening your doors to the SEC. I also want to thank the panelists and moderators who are sharing their insights and experience with us today.

I am particularly pleased that we are holding the small business forum in Omaha this year, the heart of the “Silicon Prairie,” a term used to loosely define a region that includes Missouri, Indiana, Iowa, Kansas, South Dakota, and Nebraska. A particular focus of mine has been to facilitate small business access to capital across the United States, not just in the traditional centers for capital in the two coasts.³⁶ While there are a couple of places that claim the title of being the geographic center of the United States,³⁷ at more than 1,400 miles from Boston and almost 1,700 miles from Silicon Valley, I am confident that this is the closest to the center of the country that the small business forum has ever convened.

Hosting the small business forum in Omaha allows us to learn from and showcase the small businesses that have been successful at raising capital outside the two coasts. Yesterday, along with some of my fellow Commissioners, I had the opportunity to tour a project in a designated opportunity zone. Today, we will hear first-hand from local small businesses and their investors. I look forward to learning more about areas where our rules are helping to facilitate capital formation and, more importantly, areas where we have more work to do.

In fact, it is a good time to be asking ourselves these questions and learning from your experiences. As you will hear from the second panel, the Commission recently issued a concept release requesting comment on how we can modernize and harmonize the exemptions from registration that many small businesses use to raise capital.³⁸ I hope today’s discussion, and the recommendations that you will be putting forth this afternoon, build from the practical experiences of our panelists. As you discuss potential recommendations, I encourage you to think outside the box, as if you had a blank slate and not the current patchwork of rules that small businesses and their investors currently need to navigate.

I look forward to the dialogue and the recommendations.

Thank you.

Remarks of SEC Commissioner Robert J. Jackson, Jr.



Thank you, Mr. Chairman, and many thanks to you, Director Bill Hinman and our terrific Staff for your leadership in bringing us here to Omaha today. There are many opening statements this morning, I know. And really we are here to listen to, and learn from, these exceptional panelists. So I'll just briefly make two points before we begin.

Before I do, I'd be remiss not to add a word of thanks to our Small Business Advocate, Martha Miller, for her extraordinary efforts in organizing all of this. Martha is too modest to say so, but she is in a way running a small business of her own. To make all this happen, we need an Advocate who, like America's small businesses, is ambitious, agile, and dedicated to her vision, and we are very lucky to have that in Martha Miller. I also want to thank Creighton University for hosting us. Go Blue Jays!

Rather than discuss policy issues, which I know my colleagues will discuss in detail, my two points are personal—but I wanted to share them so you all would know why the issues facing small business are so important to me. I got married last month, and my wife owns and runs a small business. When she started it a few years ago, I watched her try to build a client list, get a loan from a bank, and make her way in an industry that is built for people who have been in it for thirty years, not thirty months. Believe me when I say I know how incredibly hard that can be.

Watching my wife strive to build her own small business taught me two things about the issues we'll discuss today. First, the fact that the economy is doing well doesn't mean that capital is available for every entrepreneur who needs it. Each one of us on this dais knows how important it is that the SEC make sure every business has an equal opportunity to access capital. And second, each of us knows that small business can be—in fact, almost always is—very personal. Every one of you on our panels is here today not just to talk about your business or your practice or your policy views, but something you and your family have invested a lifetime in. Each of you deserves an SEC who knows just how important small businesses are to your families' futures. For that and many other reasons, I'm proud to join my colleagues on the Commission with you here in Omaha this morning. Thanks to each one of you for the opportunity to learn from you, and I so look forward to the conversation.

Remarks of SEC Commissioner Hester M. Peirce



Thank you, Martha [Miller]. It is wonderful to be here in Omaha. Thank you to all the participants in today's program. Dean [Anthony] Hendrickson, thank you for welcoming us to Creighton University's Heider College of Business. It is a beautiful facility that reflects the thriving economic region in which it sits.

I remember my first trip to Nebraska about twenty years ago. I was driving through the state and was just stunned by its Great Plains beauty. Since then, Nebraska has always been one of my favorite states, although I have not had many opportunities to visit. I am therefore happy to be back to talk about capital formation in the Silicon Prairie.

Reading Martha's introduction to today's forum deepened my affinity for Nebraska because I learned that the Reuben sandwich—my favorite—has its origins here. I understand, however, that there is a competing origin story that says the Reuben was invented in New York City.³⁹ The dueling sandwich origin narrative is a fitting theme for a discussion of capital formation. There will always be competition for capital, and too often New York claims capital that could have been put to good use right here in Omaha.

There are many factors that make it easier for capital to flow to New York rather than to places like Omaha. The clustering of capital, innovation, and economic growth is a natural phenomenon, so that is part of what makes big cities like San Francisco and New York attractive places for people looking to invest capital. Some of the factors driving capital to the coastal cities, however, are regulatory, and we have an opportunity to address those issues. For example, the accredited investor thresholds⁴⁰ that are not a limiting factor in high-income and high-cost communities on the east and west coasts are more restrictive in their effect in places where the cost of living and hence the salaries are lower. Yesterday, at the Small Business Advisory Committee meeting, we heard about another potential regulatory helping hand we can give to cities like Omaha and Cleveland, where I am from. We can revise our rules to make it easier for venture capital funds to invest on the secondary market and in other venture capital funds. In addition, we can look for creative ways to allow non-accredited investors to participate in private offerings and can design better regulatory options for micro-offerings.

The concept release that you will be discussing this morning was our attempt to stimulate discussion on these and other issues.⁴¹ I look forward to hearing your thoughts this morning on what we can do to open up opportunities for investors and companies all over the country to meet one another and create thriving regional economies. Just as one can find wonderful Reuben sandwiches all over the country, we can find great stories of entrepreneurial and investment success across the United States. In yesterday's visit to a local opportunity zone, we saw what it looks like when capital gets to work on transforming a community. With the benefit of your suggestions, we can build a regulatory framework that encourages even more such growth and enables communities all over the country to reap the benefit of well-functioning capital markets.

Remarks of SEC Commissioner Elad L. Roisman



Good morning. I am thrilled we are hosting this year's Government-Business Forum on Small Business Capital Formation in the "Silicon Prairie." Martha [Miller] did a tremendous job of highlighting Nebraska's entrepreneurial spirit. I have to admit that I am most impressed by the invention of the Reuben sandwich; we all give you credit for your steaks, but this state really does not receive adequate recognition for the Reuben out East.

Kidding aside, I have been an SEC Commissioner for almost a year now and I can say without hesitation that I learn the most when I am able to leave Washington and meet people on their home turf. It is truly one of my favorite parts of the job.

It should be no surprise to you then that ever since I received today's agenda, I have been looking forward to the first panel: Capital Formation Success Stories from the Silicon Prairie. I hope the panelists will use the opportunity to tell us not only what worked for them when raising capital, but also where the SEC might be able to improve the capital raising environment for small businesses. Have you found there to be any unique challenges to small business capital formation in the Great Plains that we may not be aware of?

I am also excited for the second panel on harmonization. The SEC's Division of Corporation Finance did a fantastic job drafting the harmonization concept release.⁴² It explained the current offering framework in a clear, easy-to-understand manner and asked a lot of great questions that I hope will elicit responses that the Commission can act on. I look forward to hearing the panelists' reactions to the release.

Before I conclude, I have a long list of "thank yous." Thank you to Martha Miller and her team, Julie Davis and Jenny Riegel, in the Office of the Advocate for Small Business Capital Formation, for planning and organizing today's forum, a first for your newly formed office—Martha, you run a very impressive "startup" within the SEC. Thank you to Bill Hinman and Jennifer Zepralka from the SEC's Division of Corporation Finance for your help and participation. Thank you to everyone back at the SEC home office running point on technology and logistics. And a big thank you to Dean Hendrickson and the Heider College of Business for hosting us here at Creighton University.

Thank you to everyone who traveled to be here today to participate in this forum, and a very special thank you to all of you here who may not have traveled very far, but are here representing Omaha and the Cornhusker State.

Remarks of SEC Commissioner Allison Herren Lee



Good morning. Thank you, Chairman Clayton and my fellow Commissioners, for your remarks. Thank you to Martha Legg Miller for putting this event together, and thank you to Creighton University Heider College of Business for hosting.

I am happy to be at this 38th Annual Government-Business Forum on Small Business Capital Formation. Having spent most of my life in Colorado, I'm especially happy for the opportunity to be back west of the Mississippi.

The Forum has long provided a great opportunity for government agencies, entrepreneurs, academics, and others to come together and exchange ideas around small business capital formation.

The Silicon Prairie represents a success in increasing access to capital for tech start-ups here in the center of the country. I hope we can draw both inspiration and lessons from the success stories we will hear this morning that will be broadly applicable to small businesses in other sectors and other communities. And I really appreciate a panel constructed around successes.

As I looked through the various panelists, all of whom are quite impressive, I noticed that we have the founder of The Silicon Prairie News. Of course, I went straight to that website and was so encouraged by the reporting—I saw a “Cybersleuth Camp” for high school girls, I saw a story about a Wisconsin medical company receiving a \$15 million cooperative award from the Department of Energy, and it went on and on. It's inspirational, just as I know the panelists this morning will be.

And we all know that behind every success story is a string of challenges that were overcome. I hope to benefit from your insights and ideas there as well.

I'm also very pleased to see that we will be hearing from experts this morning on the SEC's Concept Release on Harmonization of Securities Offering Exemptions. These are issues I have spent a lot of time researching and considering. What can we do to make this regime as simple, clear, and workable as possible, especially for small businesses? And what can we do to protect investors so as to optimize the amount of investment available to these businesses?

While we think of these as two separate groups, in reality of course, they often are not. Many investors are business owners and vice versa. The relationship is symbiotic, and when we get it right, everybody wins.

I'm looking forward to the panels today, and I also welcome your thoughts and input anytime down the road. My door is always open. Thank you.

“[I]t’s super interesting to see the stuff that is happening online, and I do think . . . that’s where the future is, but . . . don’t mess with 506(b) because there is this venture, angel, private investment role that seems to work pretty well, and certainly a lot of money is raised on it.”

BART DILLASHAW
Founder, Enterprise Legal Studio



Appendix D | **PANELIST AND MODERATOR BIOGRAPHIES**

Bart Dillashaw is the Founder of Enterprise Legal Studio in Lincoln, Nebraska, a corporate and securities boutique focused on servicing the needs of entrepreneurs and investors. Bart has been actively engaged in the entrepreneurship, angel and venture capital community in the Midwest, and he is the former president and current board member of the Nebraska Angels, Nebraska's largest association of angel investors. In addition, he serves as a mentor for local accelerator programs, and frequently lectures on the topics of angel and venture capital investing as well as start-up creation.

Allie Esch is a Principal at Dundee Venture Capital in Omaha, Nebraska. Dundee Venture Capital partners with early-stage technology business in overlooked venture markets. Allie's current focus is on sourcing investment opportunities, deepening Dundee Venture Capital's brand in new markets, and expanding the firm's deal flow capacity.

Keith Fix is the Founder and CEO of Retail Aware in Omaha, Nebraska and a member of the Ponca Tribe of Nebraska. Retail Aware helps brands and retailers maximize opportunities in the aisle with business intelligence sensors and artificial intelligence. Before founding Retail Aware, Keith founded blabfeed, a digital signage and technology integrator serving a diverse portfolio of retail, healthcare, financial, education, and public entities.

Professor Irina Fox is a member of the faculty at the Creighton University School of Law. She specializes in business law, including teaching Securities Regulation. Prior to joining the faculty, she practiced law in San Francisco at Latham & Watkins, where she represented multinational corporations in complex business litigation and also represented emerging companies in finance transactions. Prior to law school, Irina was a Senior Airman in the United States Air Force.

Carla Garrett is a Partner in the Potomac Law Group's corporate group, where she advises small business in corporate, securities, acquisitions, and contract law matters. She is the current Chair of the SEC's Small Business Capital Formation Advisory Committee. Carla also serves as outside general counsel to a number of small businesses, with a particular focus on startup and technology companies. Previously, Carla was the first General Counsel of a NASDAQ-traded public company. She also practiced as a securities attorney at Sullivan & Cromwell and Wilson Sonsini Goodrich & Rosati.

Sara Hanks, CEO of CrowdCheck, is an attorney with over 30 years of experience in corporate and securities law, and a former SEC staffer. CrowdCheck and CrowdCheck Law provide a wide range of legal, compliance and diligence services to issuers, intermediaries and investors in online capital formation. Sara also serves a member of the SEC's Small Business Capital Formation Advisory Committee.

Keith F. Higgins is a member of Ropes & Gray's corporate department and chair of the securities & governance practice. Keith rejoined the firm in 2017, after having served as Director of the Division of Corporation Finance at the U.S. Securities & Exchange Commission since 2013. Prior to serving at the SEC, Keith had for more than 30 years been counseling public companies in securities offerings, mergers and acquisitions, compliance, and corporate governance. Keith advises companies, their boards, and investors.

William Hinman was named Director of the SEC’s Division of Corporation Finance in May 2017. The Division seeks to ensure that investors are provided with material information in order to make informed investment decisions, provides interpretive assistance to companies with respect to SEC rules, and makes recommendations to the Commission regarding new and existing rules. Before serving at the Commission, Bill was a partner in the Silicon Valley office of Simpson Thacher & Bartlett LLP, where he practiced in the corporate finance group.

Stephanie Luebbe is Executive Director of Nebraska Angels in Lincoln, Nebraska. The Nebraska Angels is the state’s organized network of angel investors, with over 60 participating investors. Members meet once a month to work together to review business plans, listen to pitches, conduct due diligence, and negotiate terms for potential investments. Since 2006, the Angels have invested \$27 million into early stage companies.

SEC Commissioners and “Capital Formation Success Stories from the Silicon Prairie” panelists.



Claire McHenry is the Deputy Director of the Securities Bureau with the Nebraska Department of Banking and Finance. The Nebraska Department of Banking and Finance (NDBF) is a state agency comprised of two sections: Financial Institutions and Bureau of Securities. NDBF's mission is to protect and maintain the public confidence of Nebraska's financial institutions. The Bureau of Securities regulates the sale of securities and the securities industry in Nebraska. Claire has fourteen years of state securities regulation experience and is an active member of the North American Securities Administration Association (NASAA).

Jeff Slobotski is the Founder and Managing Partner of Router Ventures, a Midwest-based seed fund investment firm. He also works at Paul G. Smith Associates, a development and investment firm based in Omaha. Before his current roles, Jeff started Silicon Prairie News (SPN), a digital media and events company dedicated to highlighting and connecting entrepreneurs outside of the traditional startup hubs. Among other events, SPN launched the annual Big Omaha conference (now known as MAHA Festival) which brings together more than 750 founders, investor, and entrepreneurial leaders into the city from across the nation.

Heather Dawn Thompson is the Founder and Lead Manager of Native American Capital's Tribal Opportunity Zones Venture Group. She is a member of the Cheyenne River Sioux Tribe, and an expert in Native American Tribal economic development. She has extensive experience working with investors and businesses in Indian Country, individual, tribal and Indian-owned corporations, and intertribal associations. She is recognized for her expertise in tribal owned businesses and the legal, tax, financial, and structuring benefits of conducting business with tribal governments and tribal corporations. Heather served an Assistant U.S. Attorney for the U.S. Attorney's Office in South Dakota's Indian Country Section on the Pine Ridge Indian Reservation.

John Wirtz is Co-founder and Chief Product Officer of Hudl in Lincoln, Nebraska. Hudl is a leading software company revolutionizing the way coaches and athletes prepare for and stay ahead of the competition. Founded in 2006, Hudl offers the tools to edit and share video, interact with stats, and create quality highlight reels for entertainment and recruiting purposes. Hudl's products are used by over 150,000 teams globally spanning youth sports to the pros. The company has closed multiple rounds of funding and made several strategic acquisitions.

Jennifer A. Zepalka is the Chief of the Office of Small Business Policy in the SEC's Division of Corporation Finance. The office assists companies seeking to raise capital through exempt or smaller registered offerings, and participates in and reviews SEC rulemaking and other actions that may affect small businesses. Before joining the Office of Small Business Policy in 2018, Jennifer was a partner in the Transactional and Securities Departments at Wilmer Cutler Pickering Hale and Dorr LLP.

Appendix E | **ABOUT THE ADVOCATE FOR SMALL BUSINESS CAPITAL FORMATION**

About the Office

The Office of the Advocate for Small Business Capital Formation is an independent office that began operations in January 2019. The office is dedicated to advancing the interests of small businesses and their investors at the SEC and in the capital markets.

The office is responsible for:

- Identifying problems that small businesses have with securing access to capital;
- Conducting outreach to small businesses and their investors to solicit views on capital formation issues;
- Assisting small businesses and their investors in resolving significant problems they may have with the SEC or with self-regulatory organizations (SROs);
- Identifying areas in which small businesses and their investors would benefit from changes in SEC regulations or SRO rules;
- Analyzing the potential impact on small businesses and their investors of proposed SEC regulations and SRO rules; and
- Proposing appropriate regulatory and legislative changes to the SEC and Congress to mitigate problems identified with small business capital formation and to promote the interests of small businesses and their investors.

Martha Legg Miller, Advocate for Small Business Capital Formation

As the first director of the Office of the Advocate for Small Business Capital Formation, Martha Legg Miller oversees the office dedicated to advancing the interests of small businesses and their investors at the SEC and in the capital markets.

Prior to joining the SEC, Miller was a partner at the law firm Balch & Bingham LLP in Birmingham, Alabama, where she represented companies and investors across a spectrum of corporate transactions.

Miller holds bachelor's degrees in Cognitive Neuroscience and Communications Studies from Vanderbilt University and a juris doctor degree from Georgetown University Law Center.

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ENDNOTES

- 1 <https://www.sec.gov/news/press-release/2019-97>
- 2 <https://business.creighton.edu>
- 3 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))].
- 4 Responsibility for the Forum transferred to the Office pursuant to the SEC Small Business Advocate Act of 2016, P.L. 114-284. See <https://www.sec.gov/files/Small%20Business%20Advocate%20Act%20of%202016-as%20amended.pdf>.
- 5 Panelists' biographies are provided in Appendix D.
- 6 Panelists' biographies are provided in Appendix D.
- 7 *Concept Release on Harmonization of Securities Offering Exemptions*, Release No. 33-10649 (Jun. 18, 2019), <https://www.sec.gov/rules/concept/2019/33-10649.pdf> (“Harmonization Concept Release”).
- 8 <https://www.sec.gov/files/2019-sec-government-business-forum-small-business-capital-formation-transcript.pdf>
- 9 https://www.sec.gov/video/webcast-archive-player.shtml?document_id=081419sbf
- 10 Attendees were asked to respond whether the SEC should give high priority (5), medium-high priority (4), medium priority (3), medium-low priority (2), or low priority (1) to each of the five recommendations in that session. The weighted average assignment of points was determined for each recommendation by dividing the total number of points for a recommendation by the number of responses received for that recommendation. Any attendees that were not able to vote using the online voting during the sessions were provided with an opportunity to prioritize that session's recommendations post hoc.
- 11 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).
- 12 See Office of Information and Regulatory Affairs, Office of Management and Budget, “Fall 2019 Unified Agenda of Federal Regulatory and Deregulatory Long-term Actions by the Securities and Exchange Commission,” https://www.reginfo.gov/public/do/eAgendaHistory?operation=OPERATION_GET_PUBLICATION&showStage=longterm¤tPubId=201910. Long-term Actions are items under development but for which regulatory action is not expected within 12 months after publication of the Fall 2019 Unified Agenda.
- 13 See Harmonization Concept Release.
- 14 See *Id.* at Section II.A. Section 413(b)(2)(A) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the “Dodd-Frank Act”) directs the Commission to review the accredited investor definition as it relates to natural persons every four years to determine whether the definition should be modified or adjusted for the protection of investors, in the public interest, and in light of the economy. The discussion in Section II.A of the Harmonization Concept Release is intended to satisfy this requirement.
- 15 See Office of Information and Regulatory Affairs, Office of Management and Budget, “Securities and Exchange Commission Agency Rule List (Fall 2019),” https://www.reginfo.gov/public/do/eAgendaMain?operation=OPERATION_GET_AGENCY_RULE_LIST¤tPub=true&agencyCode=&showStage=active&agencyCd=3235&Image58.x=46&Image58.y=16&csrf_token=23932B176234D9EEBC94A355C5ABD1DF1F7A6B1CFD96456AEB85EB590586500B9922497AC1392364D97D823530443142C590.
- 16 See Report to the Commission on Regulation Crowdfunding (Jun. 18, 2019), https://www.sec.gov/files/regulation-crowdfunding-2019_0.pdf. In the Commission's 2015 final release adopting the Regulation Crowdfunding exemption, the staff undertook to study and submit a report to the Commission on the impact of the regulation on capital formation and investor protection no later than three years following the effective date of the Regulation Crowdfunding exemption. See “Crowdfunding,” SEC Release No. 33-9974 (Oct. 30, 2015). The release indicated that the report should include, but not be limited to, a review of: (1) issuer and intermediary compliance; (2) issuer offering limits and investor investment limits; (3) incidence of fraud, investor losses, and compliance with investor aggregates; (4) intermediary fee and compensation structures; (5) measures intermediaries have taken to reduce the risk of fraud, including reliance on issuer and investor representations; (6) the concept of a centralized database of investor contributions; (7) intermediary policies and procedures; (8) intermediary record keeping practices; and (9) secondary market trading practices.

- 17 See *Amendments for Small and Additional Issues Exemptions Under the Securities Act (Regulation A)*, Release No. 33-9741, at Section II(A) (Mar. 25, 2015).
- 18 *Id.*
- 19 See M&A Brokers, SEC No-Action Letter (Feb. 4, 2014), <https://www.sec.gov/divisions/marketreg/mr-noaction/2014/ma-brokers-013114.pdf>.
- 20 See American Bar Association (ABA) Report and Recommendations of the Task Force on Private Placement Broker-Dealers (Jun. 20, 2005), <https://www.sec.gov/info/smallbus/2009gbforum/abareport062005.pdf>.
- 21 See SEC Roundtable on the Proxy Process (Nov. 15, 2018), <https://www.sec.gov/proxy-roundtable-2018>.
- 22 See Jay Clayton, Chairman, SEC, *SEC Rulemaking Over the Past Year, the Road Ahead and Challenges Posed by Brexit, LIBOR Transition and Cybersecurity Risks* (Dec. 6, 2018), <https://www.sec.gov/news/speech/speech-clayton-120618>.
- 23 See *Commission Guidance Regarding Proxy Voting Responsibilities of Investment Advisers*, SEC Release No. IA-5325 (Aug. 21, 2019).
- 24 See *Commission Interpretation and Guidance Regarding the Applicability of the Federal Proxy Rules to Proxy Voting Advice*, SEC Release No. 34-86721 (Aug. 21, 2019).
- 25 *Amendments to Exemptions from the Proxy Rules for Proxy Voting Advice*, Release No. 34-87457 (Nov. 5, 2019), <https://www.sec.gov/rules/proposed/2019/34-87457.pdf>.
- 26 *Procedural Requirements and Resubmission Thresholds under Exchange Act Rule 14a-8*, Release No. 34-87458 (Nov. 5, 2019), <https://www.sec.gov/rules/proposed/2019/34-87458.pdf>.
- 27 The Forum was created by the Small Business Investment Incentive Act of 1980. The program with the full agenda for the day is available at <https://www.sec.gov/oasb/sbforum>.
- 28 <https://business.creighton.edu>
- 29 For more information on the Office of the Advocate for Small Business Capital Formation, visit <https://www.sec.gov/oasb>.
- 30 <https://www.mahafestival.com>
- 31 See <https://www.omahachamber.org/wedontcoast>.
- 32 See, e.g., Brad Feld, *Startup Communities: Building an Entrepreneurial Ecosystem in Your City* (2012), which details entrepreneurial ecosystem growth effects and opportunities, including an exemplar of Big Omaha's startup efforts.
- 33 Harmonization Concept Release.
- 34 L. Frank Baum, *The Wonderful Wizard of Oz* (1900).
- 35 See, e.g., <https://www.sbnation.com/2017/4/12/15279674/peyton-manning-omaha-why-does-he-say-it-broncos-colt>.
- 36 See, e.g., *Amendments to Smaller Reporting Company Definition*, Release No. 33-10513 (Jun. 28, 2018) [83 FR 31992 (Jul. 10, 2018)]; *Rule 701- Exempt Offerings Pursuant to Compensatory Arrangements*, Release No. 10520 (Jul. 18, 2018) [83 FR 34940 (Jul. 24, 2018)]; *Amendments to Regulation A*, Release No. 33-10591 (Dec. 19, 2018) [84 FR 520 (Jan. 31, 2019)]; *FAST Act Modernization and Simplification of Regulation S-K*, Release No. 33-10618 (Mar. 20, 2019) [84 FR 12674 (Apr. 2, 2019)]; *Solicitations of Interest Prior to a Registered Public Offering* (proposing release), Release No. 33-10607 (Feb. 19, 2019) [84 FR 6713 (Feb. 28, 2019)]; *Amendments to the Accelerated Filer and Large Accelerated Filer Definitions* (proposing release), Release No. 34-85814 (May 3, 2019) [84 FR 24876 (May 29, 2019)]; and Harmonization Concept Release.
- 37 The U.S. National Geodetic Survey regards a point approximately 20 mi north of Belle Fourche, South Dakota as the geographic center of the United States (when including Alaska and Hawaii in the calculation). For the contiguous states, the geographic center is two miles northwest of the town of Lebanon, Kansas. See Geographic Center of the United States, U.S. Department of Commerce, National Oceanic and Atmospheric Administration, National Ocean Survey, https://www.ngs.noaa.gov/PUBS_LIB/GeoCenter_USA1.pdf.
- 38 Harmonization Concept Release.
- 39 See Wikipedia, Reuben Sandwich, https://en.wikipedia.org/wiki/Reuben_sandwich.
- 40 The term "accredited investor" is defined in Rule 501 of Regulation D. 17 C.F.R. § 230.501(a).
- 41 Harmonization Concept Release.
- 42 *Id.*

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