Testimony on "Spurring Job Growth Through Capital Formation While Protecting Investors"

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Chairman Johnson, Ranking Member Shelby, and members of the Committee:

My name is Meredith Cross, and I am the Director of the Division of Corporation Finance at the Securities and Exchange Commission. I am joined in this testimony by Lona Nallengara, Deputy Director of the Division of Corporation Finance. We are pleased to testify today on behalf of the Commission on the topic of capital formation.[1]

The mission of the Securities and Exchange Commission is to protect investors, maintain fair, orderly and efficient markets, and facilitate capital formation. A critical goal of the SEC is to facilitate companies' access to capital while at the same time protecting

[1] Ms. Cross's participation in this testimony does not include matters related to crowdfunding. Prior to joining the Commission staff in June 2009, Ms. Cross served as counsel to a company in connection with its registration under the Securities Act of 1933 of notes offered and sold through its "peer-to-peer" lending platform. Although Ms. Cross has no financial or other interest in her former client or her prior employer, in light of the small number of participants in that market, in order to avoid any appearance concerns, she does not participate in matters involving peer-to-peer lending. Further, since there are some similarities between peer-to-peer lending and some crowdfunding concepts, even though Ms. Cross has been advised by SEC Ethics Counsel that there is no conflict of interest, Ms. Cross has determined that in order to avoid any appearance concerns, she will no longer participate in crowdfunding matters. For purposes of this written testimony, Mr. Nallengara is addressing crowdfunding matters.

investors. Companies of all sizes need cost-effective access to capital to grow and develop, and the Commission recognizes that any unnecessary or superfluous regulations may impede their ability to do that. At the same time, the Commission must seek to ensure that investors have the information and protections necessary to give them the confidence they need to invest in our markets. Investor confidence in the fairness and honesty of our markets is critical to the formation of capital, and the protections provided by the securities laws are critical to large and small company investors alike.

Over the years the SEC has taken significant steps, consistent with its investor protection mandate, to facilitate capital-raising by companies of all sizes and to reduce burdens on companies making offerings, be it through introducing or increasing eligibility for shelf registration or implementing small business reforms. Going forward, the Commission will continue to consider and, if appropriate, implement changes to its existing rules to reduce regulatory burdens while maintaining important investor protections provided under the securities laws.

Chairman Schapiro has instructed the staff to take a fresh look at some of our offering rules to develop ideas for the Commission to consider that may reduce the regulatory burdens on small business capital formation in a manner consistent with investor protection. The staff's review is ongoing and is focusing on a number of areas, including:

- the number of shareholders and other triggers for public reporting;
- the restriction on general solicitation in private offerings; and
- restrictions on communications in public offerings.

Additional areas of review concern the regulatory questions posed by new capital raising strategies, such as crowdfunding, and the scope of our existing rules that provide for capital raising, such as Regulation A.

Additionally, the Commission's recently formed Advisory Committee on Small and Emerging Companies will provide the Commission and the staff with advice and recommendations about regulations that affect privately held and publicly traded small and emerging businesses.[2] The members of the Advisory Committee include representatives from a range of small and emerging companies, and investors in those types of companies, with real world experience under our rules. The Advisory Committee held its first meeting on October 31, 2011, where it considered a number of issues related to capital formation for small and emerging companies, including the triggers for registration and public reporting and suspension of reporting obligations, possible scaling of regulations for newly public companies, crowdfunding, possible modifications to Regulation A, and the restrictions on general solicitation.[3] We understand that the Advisory Committee intends to provide preliminary recommendations to the Commission on many of these topics in the coming weeks, and we are looking forward to receiving these recommendations.

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[2] *See SEC Announces Formation of Advisory Committee on Small and Emerging Companies* (Sept. 13, 2011), http://www.sec.gov/news/press/2011/2011-182.htm.

[3] *See SEC Advisory Committee on Small and Emerging Companies to Hold First Meeting on Oct. 31* (Oct. 13, 2011), http://www.sec.gov/news/press/2011/2011-207.htm; *SEC Announces Agenda for First Meeting of Advisory Committee on Small and Emerging Companies* (Oct. 25, 2011), http://www.sec.gov/news/press/2011/2011-222.htm.

My testimony today will focus on small business capital formation initiatives and the broader capital formation regulatory review we are undertaking at Chairman Schapiro's request.

Update on Review of Certain Offering Regulations

I would first like to provide an update on the staff's review of our regulations relating to the triggers for public reporting, the restrictions on general solicitation, and communications in connection with public offerings.

Triggers for Public Reporting

Chairman Schapiro has asked the staff to review the triggers for public reporting and the characteristics of companies that should be subject to public reporting obligations. In addition, bills have been proposed in both the House and the Senate relating to the Section 12(g) thresholds for reporting.

Section 12(g) of the Exchange Act, which sets forth certain registration requirements for securities, was adopted in 1964 following a rigorous special study of the securities markets in the early 1960s, commissioned by Congress and conducted by the Commission.[4]

[4] *Report of Special Study of Securities Markets of the Securities and Exchange Commission*, H.R. Doc. No. 88-95, pt. 3 (1963). According to the Committee Report summarizing the results of the study:

> There is no convincing reason why the comprehensive scheme of disclosure that affords effective protection to investors in the exchange markets should not also apply in the over-the-counter market. . . . [B]ecause the over-the-counter market includes not only securities of widely known and seasoned companies but also those of relatively unknown and insubstantial ones, the need of investors for accurate information is at least as great, if not greater than in the exchange markets.

S. Rep. No. 88-379, at 9 (1963).

The study included a survey of over 2,000 issuers that sought data from these issuers on, among other things, asset levels, their securities offerings, shares outstanding, stockholders of record, and the number of shares held by large shareholders. The data derived from the study was critical in developing metrics upon which to base the triggers for public reporting given the nature of the companies and the shareholders that would be impacted.

Section 12(g) requires a company to register its securities with the Commission, within 120 days after the last day of its fiscal year, if, at the end of the fiscal year, the securities are "held of record" by 500 or more persons and the company has "total assets" exceeding $10 million.[5] Shortly after Congress adopted Section 12(g), the Commission adopted rules defining the terms "held of record" and "total assets."[6] The definition of "held of record" counts as holders of record only persons identified as owners on records of security holders maintained by the company, or on its behalf, in accordance with accepted practice. As such, this definition simplified the process of determining the applicability of Section 12(g).[7]

Of course, securities markets have changed significantly since the enactment of Section 12(g) and the Commission's adoption of the definition of "held of record." Today, the vast majority of securities of publicly-traded companies are held in nominee or "street

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[5] *See* Exchange Act § 12(g)(1); Exchange Act Rule 12g-1. When Section 12(g) was enacted, the asset threshold was set at $1 million. The asset threshold was most recently increased by rule to $10 million in 1996. Release No. 34-37157, *Relief from Reporting by Small Issuers* (May 1, 1996), http://www.sec.gov/rules/final/34-37157.txt.

[6] *See* Release No. 34-7492, *Adoption of Rules 12g5-1 and 12g5-2 Under the Securities Exchange Act of 1934* (January 5, 1965).

[7] *See id.*

name" rather than directly by the owner. This means that the brokers that purchase securities on behalf of investors typically are listed as the holders of record. One broker may own a large position in a company on behalf of thousands of beneficial owners, but because the shares are all held in street name, those shares count as being owned by one "holder of record." This change in the way securities are held means that for most publicly-traded companies, much of their individual shareholder base is not counted under the current definition of "held of record." Conversely, the shareholders of most private companies, who generally hold their shares directly, are counted as "holders of record" under the definition. This has required private companies that have more than $10 million in total assets and that cross the 500 record holder threshold – where the number of record holders is actually representative of the number of shareholders – to register and commence reporting. At the same time, it has allowed a number of public companies, many of whom likely have substantially more than 500 beneficial owners, to stop reporting, or "go dark," because there are fewer than 500 "holders of record" due to the fact that the public companies' shares are held in street name. In light of these issues, some have called for changes to the definition and threshold adopted pursuant to Section 12(g).

The Commission has exercised its exemptive authority in the past to adjust the application of Section 12(g).[8] For example, in 2007, the Commission adopted Rule 12h-1(f)

[8] Exchange Act Section 12(h) provides the Commission broad authority to exempt issuers from the registration requirements of Section 12(g) so long as the Commission finds that the action is not inconsistent with the public interest or protection of investors. The Commission has previously relied on Section 12(h) to raise the total assets threshold. Additionally, Congress has provided the Commission broad exemptive authority in Section 36 of the Exchange Act. The Commission has previously established exemptions from the Section 12(g) requirement and Section 12(g) provides the Commission with authority to define the terms "held of record" and "total assets." *See* Exchange Act Rule 12g3-2 and Exchange Act § 12(g)(5).

under the Exchange Act, which provides an exemption from the held of record threshold for compensatory stock options. This exemptive rule allows private companies to provide compensatory stock options to employees, officers, directors, consultants and advisors without triggering the need to register those options under the Exchange Act.[9] A variety of proponents have advanced a wide range of proposals relating to possible amendments to Section 12(g) reporting standards. Some of these proposals seek to limit the class of issuers required to report pursuant to the Exchange Act, for example, by raising the shareholder threshold,[10] by excluding employees, or by excluding accredited investors, qualified institutional buyers ("QIBs") or other sophisticated investors from the calculation.[11] Conversely, the Commission has received a rulemaking petition requesting that the Commission revise the "held of record" definition to look through record holders to the underlying beneficial owners of securities that would prevent issuers from ceasing to report in certain circumstances.[12]

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[9] Release No. 34-56887, *Exemption of Compensatory Employee Stock Options from Registration Under Section 12(g) of the Securities Exchange Act of 1934* (December 3, 2007), http://www.sec.gov/rules/final/2007/34-56887.pdf. The staff of the Division of Corporation Finance also issued a no-action letter saying that it would not recommend an enforcement action to a company that issued restricted stock units due to the similarities between them and stock options. *See Twitter, Inc.* (September 13, 2011); *Zynga Inc.* (June 17, 2011); *Facebook, Inc.* (October 14, 2008).

[10] In a November 12, 2008 letter, the American Bankers Association made the argument that the 500-shareholder threshold should be increased to reduce the regulatory hardship suffered by small community banks. *See* Comment Letter from American Bankers Association to SEC (November 12, 2008), http://www.sec.gov/rules/petitions/4-483/4483-21.pdf.

[11] *See 2009 Annual SEC Government-Business Forum on Small Business Capital Formation Final Report* (May 2010), http://www.sec.gov/info/smallbus/gbfor28.pdf.

[12] On February 24, 2009, the Commission received a rulemaking petition urging the Commission to count beneficial owners instead of record holders to prevent companies with large numbers of holders from exiting the reporting system. *See* Petition from Lawrence Goldstein to SEC (February 24, 2009), http://www.sec.gov/rules/petitions/2009/petn4-483-add.pdf. This followed an earlier, similar petition. *See*

As stated, the securities markets have gone through profound changes since Congress added Section 12(g) to the Exchange Act. To facilitate the Commission's review of the issues related to the thresholds for public reporting (and those for leaving the reporting system), the staff is undertaking a robust study like the one conducted when Section 12(g) was enacted. The study is seeking to determine whether the current thresholds and standards effectively implement the Exchange Act registration and reporting requirements and what it means to be a "public" company such that an issuer should be required to register its securities and file with the Commission. The staff has begun a detailed analysis of public company information – including numbers of record and beneficial owners, total assets, and public float – to assess the characteristics of public companies. The study also will seek to obtain and consider private company information to assess current reporting thresholds. In connection with the study the staff expects to seek comment and data from companies, investors, financial market participants, academics, regulators and others on a number of the issues related to the current triggers for public reporting. To the extent that the staff develops recommendations or proposals regarding changes to the reporting thresholds for the Commission's consideration, the consequences of any such proposed change will be subject to careful assessment as to the impact on investor protection and capital formation and the other costs and benefits of any proposed change.

Petition for Commission Action to Require Exchange Act Registration of Over-the-Counter Equity Securities (July 3, 2003), http://www.sec.gov/rules/petitions/petn4-483.htm.

Restriction on General Solicitation

Chairman Schapiro also asked the staff to review the restrictions our rules impose on communications in private offerings, in particular the restrictions on general solicitation. In addition, legislation has been introduced which would require the Commission to revise its rules to permit general solicitation in offerings under Rule 506 of Regulation D.

One of the most commonly-used exemptions from the registration requirements of the Securities Act is Section 4(2), which exempts transactions by an issuer "not involving any public offering." Currently, an issuer seeking to rely on Section 4(2) is generally subject to a restriction on the use of general solicitation or advertising to attract investors for its offering.[13] The restriction was designed to protect those who would benefit from the safeguards of registration from being solicited in connection with a private offering.

The Commission and staff have acted to provide increased certainty in connection with private offerings by adopting safe harbor rules, such as Rule 506, and providing guidance with respect to the scope of Section 4(2) and the restriction on general solicitation and advertising. Recognizing the increased use of the Internet and other modern communication technologies in private offerings, the staff has issued no-action letters providing issuers with flexibility to use modern communication technologies without the staff recommending enforcement action regarding the general solicitation restriction.[14]

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[13] *See* Rule 502(c) of Regulation D and Release No. 4552, *Non-Public Offering Exemption*, (November 6, 1962).

[14] *See, e.g.*, *IPONET* (July 26, 1996) (general solicitation is not present when previously unknown investors are invited to complete a web-based generic questionnaire and are provided access to private offerings via a password-protected website only if a broker-dealer makes a determination that the investor is accredited under Regulation D); *Lamp Technologies, Inc.* (May 29, 1998) (posting of information on a password-protected

Notwithstanding these efforts, the restriction on general solicitation is cited by some as a significant impediment to capital raising.[15] We understand that some believe that the restriction may be unnecessary because offerees who might be located through a general solicitation but who do not purchase the security, either because they do not qualify under the terms of the exemption or because they choose not to purchase, would not be harmed by the solicitation.[16] In addition, some have questioned the continued practical viability of the restriction in its current form given the presence of the Internet and widespread use of electronic communications. At the same time, others support the restriction on general solicitation on the grounds that it helps prevent securities fraud by, for example, making it more difficult for fraudsters to find potential victims or unscrupulous issuers to condition the market.[17]

We believe it is important to consider both of these views about the need for the restriction on general solicitation in private offerings when considering possible revisions to

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website about offerings by private investment pools, when access to the website is restricted to accredited investors, would not involve general solicitation or general advertising under Regulation D).

[15] *See, e.g., Final Report of the Advisory Committee on Smaller Public Companies to the U.S. Securities and Exchange Commission* (April 23, 2006), http://www.sec.gov/info/smallbus/acspc/acspc-finalreport.pdf; Joseph McLaughlin, *How the SEC Stifles Investment – and Speech*, The Wall Street Journal (February 3, 2011). Concerns about the scope of the Commission's rules on general solicitation and advertising have been raised by the participants in the annual SEC Government-Business Forum on Small Business Capital Formation. *See 2010 Annual SEC Government-Business Forum on Small Business Capital Formation Final Report* (June 2011), http://www.sec.gov/info/smallbus/gbfor29.pdf

[16] *See Pinter v. Dahl*, 486 U.S. 622, 644 (1988) ("The purchase requirement clearly confines §12 liability to those situations in which a sale has taken place. Thus, a prospective buyer has no recourse against a person who touts unregistered securities to him if he does not purchase the securities.").

[17] *See, e.g.*, J. William Hicks, Exempted Transactions Under the Securities Act of 1933 § 7:160 (2d ed. 2002); Comment Letter from Investment Companies Institute to SEC (October 9, 2007), http://www.sec.gov/comments/s7-18-07/s71807-37.pdf (warning that unlimited general solicitation would "make it difficult for investors to distinguish between advertisements for legitimate offerings and advertisements for fraudulent schemes").

our rules. In analyzing whether to recommend changes to the restriction, the staff is preparing a concept release for the Commission's consideration, through which it would seek the public's input on the advisability and the costs and benefits of retaining or relaxing the restrictions on general solicitation. The Commission could seek views from all interested parties on a number of issues related to the restriction on general solicitation, including specific protections that could be considered if the restriction is relaxed and the types of investors who would be most vulnerable if it is relaxed. Of course, in considering whether to recommend that the Commission make changes to the rules restricting general solicitation, we will remain cognizant of our investor protection mandate.

Communications in Public Offerings

We also are assessing our rules, and the regulatory burdens they impose, with respect to communications in public offerings. Over the years, the Commission has taken steps to facilitate continued communications around public offerings. For example, as early as 1970, the Commission adopted safe-harbor exemptions to make it clear that continued analyst research coverage does not constitute an unlawful offer.[18] In 2005, the Commission significantly reformed the registration and offering process by adopting a comprehensive set of rules and amendments to facilitate capital raising and relax restrictions on communications

[18] *See* Release No. 33-5101, *Adoption of Rules Relating to Publication of Information and Delivery of Prospectus by Broker-Dealers Prior to or After the Filing of a Registration Statement Under the Securities Act of 1933* (November 19, 1970).

by issuers during the registered offering process.[19] These changes significantly liberalized the rules governing communications by the largest issuers during public offerings, thereby allowing more information to reach investors. The staff is reviewing the rules relating to communications in public offerings to consider whether any of the liberalizations adopted in 2005 should be adapted for smaller public companies, including whether more companies should be able to use free writing prospectuses before a substantially complete prospectus is filed. As a result of this review, the staff may recommend proposed changes to the offering rules, or recommend that the Commission seek additional input through the issuance of a concept release.

As part of its review, the staff also is considering regulatory questions posed by new capital raising strategies, such as crowdfunding, and the scope of our existing rules that provide for capital raising, such as Regulation A.

Crowdfunding – A New Capital Raising Strategy

A new method of capital raising that is gaining increasing interest is crowdfunding. Generally, the term "crowdfunding" is used to describe a form of capital raising whereby groups of people pool money, typically comprised of very small individual contributions, to support an effort by others to accomplish a specific goal. This funding strategy was initially developed to fund such things as films, books, music recordings, and charitable endeavors. At that time, the individuals providing the funding were more akin to contributors than

[19] *See* Release No. 33-8591, *Securities Offering Reform* (July 19, 2005), http://www.sec.gov/rules/final/33-8591.pdf.

"investors" and were either simply donating funds or were offered a "perk," such as a copy of the related book. As these capital raising strategies did not provide an opportunity for profit participation, initial crowdfunding efforts did not raise issues under the federal securities laws.

Interest in crowdfunding as a capital raising strategy that could offer investors an ownership interest in a developing business is growing. Bills have been introduced that would provide an exemption from Securities Act registration for securities sold in crowdfunding transactions that meet specified requirements. Proponents of crowdfunding are advocating for exemptions from the Securities Act registration requirements for this type of capital raising activity in an effort to assist early stage companies and small businesses. For example, the Commission received a rulemaking petition requesting that the Commission create an exemption from the Securities Act registration requirements for offerings with a $100,000 maximum offering amount that would permit individuals to invest up to a maximum of $100.[20]

The staff has been discussing crowdfunding, among other capital raising strategies, with business owners, representatives of small business industry organizations, and state regulators. For example, crowdfunding was discussed at the first meeting of the Advisory Committee on Small and Emerging Companies on October 31, 2011, and at the Commission's most recent annual Forum on Small Business Capital Formation on November

[20] Petition from Sustainable Economies Law Center to SEC (July 1, 2010), http://www.sec.gov/rules/petitions/2010/petn4-605.pdf. To date, the petition has received almost 150 comment letters, all in favor of the creation of such an exemption, with some offering different thresholds for offering size and/or individual investment limits. The comment letters are available at http://www.sec.gov/comments/4-605/4-605.shtml.

17, 2011. In January, the staff met with a group from the Small Business & Entrepreneurship Council advocating an exemption from registration requirements for crowdfunding offerings meeting specific requirements. In addition, in March the staff discussed crowdfunding with representatives from the North American Securities Administrators Association, the organization of state securities regulators.

Current technology allows small business owners to easily access a large number of possible investors across the country and throughout the world as a source of funding to help grow and develop their businesses or ideas. This source of capital and the ease with which an individual can communicate with and access investors electronically presents an opportunity for smaller companies in need of funds.

At the same time, of course, an exemption from registration and the investor protections provided thereby also would present an enticing opportunity for the unscrupulous to engage in fraudulent activities that could undermine investor confidence.[21] As a result, in considering whether to provide an exemption from the Securities Act registration requirements for capital raising strategies like crowdfunding, the Commission needs to be mindful of its responsibilities both to facilitate capital formation and protect investors.

The Commission's rules previously included an exemption, Rule 504, which allowed a public offering to investors (including non-accredited investors) for securities offerings of up to $1 million, with no prescribed disclosures and no limitations on resales of the securities

[21] Note that the antifraud provisions of the federal securities laws continue to apply to any offering or sale of securities, even if an exemption from registration applies. In Fiscal Year 2010, offering frauds – cases where promoters, issuers or others defraud investors in the offer of securities – comprised 22 percent of the Commission's cases.

sold.[22] These offerings were subject only to state blue sky regulation and the antifraud and other civil liability provisions of the federal securities laws. In 1999, that exemption was significantly revised due in part to investor protection concerns about fraud in the market in connection with offerings conducted pursuant to this exemption.[23] In assessing any possible exemption for crowdfunding, it would be important to consider this experience and build in investor protections to address the issues created under the prior exemption.

Some of the questions to consider with regard to crowdfunding include:

- what limitations should be placed on the aggregate amount of funds that can be raised by a company and invested by an individual;
- what information – for example, about the business, the planned use of funds raised, and the principals, agents, and finders involved with the business – should be required to be available to investors;
- how and to what extent should websites that facilitate crowdfunding investing be subject to regulatory oversight;
- what restrictions should there be on participation by individuals or firms that have been convicted or sanctioned in connection with prior securities fraud;
- should a Commission filing or notice be required so that activities in these offerings could be observed; and
- should securities purchased be freely tradable?

Although the business venture may have a well-formulated plan and a committed entrepreneur, potential investors may have little information about the plan, its execution, or the entrepreneur behind the business. Investments in small businesses can be open to

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[22] *See* Release No. 33-6949, *Small Business Initiatives* (July 30, 1992), http://www.sec.gov/rules/final/6949.txt.

[23] *See* Release No. 33-7644, *Revision of Rule 504 of Regulation D, the "Seed Capital" Exemption* (February 25, 1999), http://www.sec.gov/rules/final/33-7644.txt (referencing "disturbing developments" in, among other things, initial Rule 504 issuances).

opportunism created by this information asymmetry. Although sophisticated investors with sufficient bargaining power may be able to negotiate protections for themselves in privately-negotiated transactions, that opportunity is unlikely to be available in the crowdfunding context. Due to the nature of crowdfunding ventures, crowdfunding investors may have limited investment experience, limited information upon which to make investment decisions, and almost no ability to negotiate for protections. While the small amount of any crowdfunding investment may limit the extent of an individual's potential losses from any single investment, such losses may nevertheless be significant to the affected individual. These issues are among those that would need to be considered as a part of the cost-benefit analysis that the Commission would consider in connection with any future proposal.

Potential Increase in Offering Amount Permitted under Regulation A

Regulation A under the Securities Act provides an exemption from registration for transactions by non-reporting companies of up to $5 million per year. The exemption requires an offering document to be filed with the SEC, which is subject to SEC staff review. The exemption sets forth information requirements that are simpler than those required in registered offerings, including allowing companies to provide the disclosure in a question and answer format, and allows companies to "test the waters" for interest in their offerings before they incur the full expense of preparing the Regulation A offering document. Unlike the private placement exemption, the Regulation A exemption permits a public offering that is not limited to particular types of investors, and the securities purchased are not transfer-

restricted under the Securities Act. Unlike registered offerings, companies that complete Regulation A offerings do not automatically become subject to ongoing reporting under the Exchange Act. Instead, reporting would be required only if the company has a class of securities listed on a national securities exchange or the company reaches the thresholds under Section 12(g) that require registration under the Exchange Act. Offerings conducted in reliance on Regulation A are not preempted from state registration under Section 18 of the Securities Act, and, thus, are subject to compliance with state securities laws in the states in which the company offers or sells the securities.

Regulation A is not widely used. For example, in the fiscal year ended September 30, 2010, there were 25 initial Regulation A filings with the Commission and only three Regulation A offerings were qualified. Some have indicated that the $5 million annual cap reduces the utility of the Regulation A exemption and have advocated for an increase. The Regulation A offering limit was last raised in 1992, when it was increased from $1.5 million to $5 million.[24] Others have noted the lack of state preemption, requiring issuers and intermediaries to qualify offerings under Regulation A in each state under applicable blue sky laws. Bills have been introduced in both the Senate and the House that would require the Commission to create a new exemption, which would be similar to Regulation A, but with certain additional conditions and a higher offering limit.

[24] Regulation A was promulgated pursuant to Section 3(b) of the Securities Act, which allows the Commission to adopt rules exempting certain offerings, up to $5 million, if the Commission finds that "enforcement of this title with respect to such securities is not necessary in the public interest and for the protection of investors by reason of the small amount involved or the limited character of the public offering…."

The ongoing review of the impact of our regulations on small business capital formation will include consideration of whether the Regulation A ceiling should be raised, including whether raising the ceiling would promote increased reliance on the exemption in a manner consistent with investor protection, and whether there are other impediments to use of the exemption that could be addressed by the Commission.

Conclusion

In considering possible revisions to the Commission's rules, it is critically important that the staff gather data and seek input from a wide variety of sources, including small businesses, investor groups, and other members of the public. The data and input the staff receives should aid in the development of thoughtful recommendations for the Commission consistent with the goals of facilitating capital formation and protecting investors.

Thank you again for inviting me to appear before you today. I would be happy to answer any questions you may have.