Written Statement for the Record

SEC Small Business Capital Formation Advisory Committee

"Shedding Light on the Private Secondary Market"

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INTRODUCTION

I appreciate the Committee's decision to explore the private secondary market. This is one of the most consequential structural issues facing small business capital formation today, and I am grateful for the opportunity to contribute data and operational perspective to your deliberations.

I am the Founder of Crowdfund Capital Advisors and co-author of the original policy framework that became Regulation Crowdfunding. Since the market's launch in 2016, my team and I have built and maintained what is widely regarded as the most complete dataset on Regulation Crowdfunding in the United States—tracking every live offering daily across more than 8,800 issuers and 10,000+ offerings representing over $3.2 billion in capital formation. Through direct advisory work, research, regulatory engagement, and my book *INVESTOMERS*, I have worked with and analyzed thousands of issuers, offerings, and securities filings.

I write to ensure the Committee's exploration includes the retail investor perspective—specifically, the more than two million Americans who have invested through Regulation Crowdfunding and Regulation A and who face a liquidity landscape fundamentally different from the institutional participants who will be represented in your panel discussion.

THE RETAIL INVESTOR LIQUIDITY GAP

Your agenda rightly notes that "continuation funds," "special purpose vehicles," and "private tender offers" are filling liquidity needs for LPs, VCs, and strategic investors. This is true. Institutional investors have access to increasingly sophisticated secondary mechanisms.

Retail investors in crowdfunded securities do not.

The data is stark:

Less than 1% of Regulation Crowdfunding issuers have achieved meaningful secondary liquidity. StartEngine, the largest platform offering secondary trading for crowdfunded securities, reports that while over 400 issuers have signed up for its secondary marketplace, only 25 companies have

been quoted to date. Total trading volume on the platform has reached approximately $1.4 million across 1,200 investors since launch.

Compare that to the scale of the primary market: more than $3.2 billion raised across 8,800+ issuers since 2016. Secondary trading volume represents a fraction of a percent of primary capital raised.

This is not a functioning market. For retail investors, the secondary market effectively does not exist.

SUCCESS WITHOUT LIQUIDITY: THE TRAPPED VALUE PROBLEM

The liquidity gap is not a reflection of company failure. Many crowdfunded companies have succeeded.

Our analysis of institutional funding data shows that 257 companies that raised capital through Regulation Crowdfunding subsequently attracted institutional investment totaling $5.04 billion in follow-on funding. These are companies with VC-validated valuations—Series A rounds, venture funding, real institutional interest.

Yet the retail investors who took the earliest risk—often at the lowest valuations—remain trapped. They cannot sell into these higher valuations. They cannot realize the gains they created on paper.

When a company raises a Series A at a $50 million valuation, the VC gets preferred shares with liquidity preferences, anti-dilution protection, and often contractual exit rights. The crowdfunding investor who funded the company at a $5 million valuation gets common shares with no liquidity path.

This is not a story of failure. It is a story of success that retail investors cannot access.

WHY SECONDARY MARKETS DO NOT FUNCTION FOR CROWDFUNDED SECURITIES

Three structural barriers prevent functional secondary markets for retail crowdfunding investors:

1. State-by-state regulatory fragmentation. Secondary trading in non-exchange-listed securities remains subject to state Blue Sky laws. While 43 states recognize some form of manual exemption, implementation is inconsistent. One issuer that engaged our firm spent more than $90,000 and over a year attempting state-by-state registration solely to permit secondary trading. This is not an outlier—it is representative of the structural barrier facing any issuer that attempts to enable lawful secondary trading for its investors.

2. Inadequate disclosure infrastructure. Secondary trading volume is negligible because pricing is impossible. A buyer sees a company that raised at a $10 million valuation in 2021. It is now 2026. The most recent annual report is two years old, compliance with ongoing disclosure is inconsistent across the market, and there is no mechanism for price discovery between filings. Without current, standardized information, buyers cannot price securities and trades do not occur.

3. Transfer agent and cap table friction. Even where regulatory and informational barriers are overcome, the mechanics of share transfer remain cumbersome. Transfer agents, issuer rights of first refusal, and inconsistent cap table management create friction that institutional secondary markets have solved but retail markets have not.

THIS IS AN INFRASTRUCTURE FAILURE, NOT A MARKET FAILURE

Some may look at this data and conclude that Regulation Crowdfunding itself should be reconsidered. That argument confuses cause and effect.

Regulation Crowdfunding has succeeded at capital formation: over $3 billion raised, thousands of companies funded, and more than two million Americans participating in early-stage investing for the first time. The liquidity failure is not a defect in the primary market—it is the predictable result of building an on-ramp with no exit.

The 2+ million investors who already hold these securities cannot be helped by abandoning the crowdfunding framework. They can only be helped by building the secondary infrastructure that should have accompanied it from the start.

RECOMMENDATIONS FOR THE COMMITTEE'S CONSIDERATION

As the Committee explores the private secondary market, I respectfully offer the following recommendations:

1. Include retail crowdfunding investors in the analysis. The secondary market landscape for LPs and VCs is qualitatively different from the landscape facing retail investors in crowdfunded securities. Any policy framework that addresses only institutional liquidity will leave millions of retail investors behind.

2. Support federal preemption for secondary trading with standardized disclosure. The state-by-state patchwork is the single largest barrier to functional secondary markets for small issuers. The Commission should support legislative efforts—including H.R. 7127, the Restoring the Secondary Trading Market Act—that would enable secondary trading where issuers make current information publicly available through standardized disclosure.

3. Recognize qualified disclosure publishers as compliant pathways. The solution is not more exchanges—exchanges exist. The solution is disclosure infrastructure that gives buyers and sellers the information they need to transact. Through our firm GUARDD (*guardd.com*), we have built a Qualified Disclosure Publisher that collects standardized issuer information, verifies core financial data, enforces update cadence, withdraws eligibility when issuers fail to comply, and makes information freely accessible. The Commission should consider recognizing such systems as compliant pathways for non-reporting issuers seeking to enable secondary trading.

4. Address the digital securities dimension. Any tokenized security, NFT deemed a security, or digital asset classified as an investment contract will face the same impossibility of lawful secondary trading unless these structural barriers are addressed. The Commission's work on digital

asset regulation should incorporate secondary market infrastructure from the outset, rather than replicating the liquidity trap that exists for traditional crowdfunded securities.

CONCLUSION

The Committee's exploration of the private secondary market is timely and important. I commend the Commission for turning its attention to this issue.

As you hear from experts on continuation funds, SPVs, and institutional secondary mechanisms, I urge you to keep in mind the millions of retail investors for whom these tools do not exist. They took the earliest risks on the companies that now attract institutional capital. They deserve a path to liquidity.

I would welcome the opportunity to provide additional data, case studies, or technical input to the Committee or to the Office of the Advocate for Small Business Capital Formation.

Respectfully submitted,

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