FINAL REPORT OF THE SEC GOVERNMENT-BUSINESS FORUM ON SMALL BUSINESS CAPITAL FORMATION

January, 1987

INTRODUCTORY STATEMENT FROM THE CHAIRMAN OF THE EXECUTIVE COMMITTEE

I am happy to present the Final Report of the Fifth Annual SEC Government-Business Forum on Small Business Capital Formation. As with the previous Forums, this conference was hosted by the Commission pursuant to the authority granted by Section 503 of the Small Business Investment Incentive Act of 1980 to review the problems associated with capital formation for small businesses. This report satisfies our mandate to advise the U.S. Congress about the Forum proceedings and its recommendations.

The recommendations which follow represent the views of a majority of the Forum participants which consisted of more than 150 small business owners and operators, venture capitalists, financial analysts and other advocates of small business. Government representatives also attended and participated in the discussions but not in the voting or ranking of the recommendations. A number of the Forum issues and recommendations are of interest to the Commission. However, neither I nor my colleagues on the Commission, nor any of our staff, have sought to influence or dictate the outcome of any Forum recommendation. It is important to note this feature of governmental restraint inasmuch as the recommendations which follow represent the views of small business and not the directives of any government regulator.

The Forum participants met in Washington, D.C. for two and one-half days from September 25th through the 27th. The Executive Committee for the Forum determined that the focus of this year's deliberations would be upon implementing, to the extent feasible, recommendations from prior Forums and from the 1986 White House Conference on Small Business. The broader topic areas included securities regulation, financial services, payroll costs/ERISA and liability insurance. While the materials which follow reflect a degree of success with respect to the implementing goal of the Forum, even greater success may be seen in the number and quality of the substantive recommendations reported out by the Forum in plenary session.

There have been numerous contributors to the success of these proceedings. It is always noteworthy that the small business participants in this Forum come and participate at their own expense, in an effort to make a meaningful impact in the formulation of the public policy which affects all of us. Representatives of government agencies at both the federal and the local levels also devote time and their energies to these worthwhile deliberations. While the SEC hosts this annual conference, it is the professional and clerical staff of the Commission's Office of Small Business Policy which plans, coordinates and ensures the smooth and efficient operation of the Forum each year. Most important, the

leadership, thoughtful insight and expertise contributed by Mary E. T. Beach, Associate Director of the Commission's Division of Corporation Finance was, as always, invaluable and a significant factor in the Forum's success.

Much has been said, and in the future will be said, about the importance of small business to our economy. The people involved in these Forums devoted to solving the problems of raising capital encountered by small businesses are among our finest and most dedicated. They are the source of the small business contributions to our economy and our nation. It has been my pleasure to be associated with their very worthwhile endeavors.

Edward H. Fleischman
Commissioner
U.S. Securities and Exchange Commission

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Charles Tobias, Law Student Intern

Regina A. Baker, Secretary

Eloise A. Green, Secretary

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I. SUMMARY OF FORUM RECOMMENDATIONS AND RANKINGS

A. SECURITIES

RECOMMENDATION 1 Regulation D General Solicitation

To facilitate the removal of barriers to sellers reaching potential buyers in connection with the raising of capital for small businesses, we recommend that clear rules permit certain forms of general solicitation. These rules should permit:

a. General solicitation of those reasonably believed to be accredited investors.

b. Generic advertising by financial intermediaries with the content specified by rule even if such an intermediary's business is of a limited scope.

c. General solicitation by issuers intending to raise a small amount of capital specified by rule (perhaps $500,000) with the content of the message limited by a rule similar to Rule 134 which would permit the naming of the issuer, the type and price of the security offered, an indication of the type of business of the issuer, the amount to be raised and other such information.

Although we realize that "c." above is a significant departure from current concepts, we believe for those trying to raise a small amount of capital the current system does not work.

RECOMMENDATION 2

For a non-reporting company, reference to any mandated form for disclosure requirements and the requirement for audited financials should be eliminated. In substitution therefore, a requirement to disclose such narrative and financial information as the issuer reasonably believes would, when considered in light of all facts and circumstances, enable the investor to assess the merits and risks of making the particular investment should be included.

As an alternative, we recommend the SEC develop a specific disclosure form for all offerings pursuant to Regulation D (similar to Form MD-2 for limited offering in the State of Maryland) that includes clear and simple definitions of concepts such as "materiality" to aid issuers in compliance.

RECOMMENDATION 3

The following changes should be made to Regulation D:

1. The limitations on the number of purchasers (as defined in Regulation D) under Rules 505 and 506 should be increased to a minimum of 75.

2. Substantial good faith compliance with the requirements of Regulation D should constitute compliance with Regulation D, especially for filing requirements, the number of purchasers, the accredited investor tests and similar technical provisions.

3. The dollar ceiling of Rule 504 should be increased from $500,000 to $1 million.

4. The filing of a Form D should be eliminated as a condition of the safe harbor.

5. A Regulation D offering should not be integrated with a later private or public offering even though the later offering may still be integratable with the earlier offering.

6. The definition of "accredited investor" should be expanded as follows:

   a. The category of institutional investors should include savings and loan associations, investment banks, broker/dealers, venture capital firms, credit unions, and any entity which controls, is controlled by or is under common control with an institutional investor.

   b. The $1 million net worth test should be reduced to $500,000 and should apply to entities as well as natural persons.

   c. The $200,000 income test (Rule 501(a)(7)) should be reduced to $100,000, should apply to the joint income of spouses, and should apply to entities as well as natural persons.

   d. The insider category (Rule 501(a)(4)) should be expanded to include key employees.

   e. The $150,000 investment test (Rule 501(a)(5)) should be reduced to $100,000; and

f. If at least 90% of an entity is owned by accredited investors, then it should be deemed an accredited investor unless it was organized for the specific purpose of making the investment in question.

7. Failure to comply with the disclosure requirements of Regulation D should not constitute a violation of Section 5. Recourse for such a failure should be limited to Federal and State anti-fraud laws (e.g., Rule 10b-5).

RECOMMENDATION 4 Preemption

Congress should adopt legislation which would preempt, in interstate public and private offerings of securities, state regulation of securities registrations and exemptions. Such legislation should allow for a continued state role by permitting states to require notifications of offerings (and attendant filing fees) so as to provide a basis for continued anti-fraud enforcement activities.

RECOMMENDATION 5 Accounting for Stock Options

We recommend that FASB adopt a method to account for compensatory stock options by charging to income the good faith estimate of the fair value of the option

1. at the date of grant;

2. with a minimum (arbitrary) amount;

3. and with a maximum of (not more) than one-half of the market or fair value of the stock at the date of grant.

RECOMMENDATION 6 Tier Reporting

Reduce or eliminate 1934 Act reporting requirements by

1. creating a second tier of issuers which would be subject to less than the full reporting requirements; and

2. providing for reduced reporting or an exemption from reporting for issuers with trading volume in their securities below certain minimums.

RECOMMENDATION 7 Employee Benefit Exemption

The SEC should adopt a rule that specifically exempts from Section 5 of the Securities Act of 1933 the issuance by a company of securities in an aggregate amount up to $5 million pursuant to one or more plans intended primarily to compensate or reward employees, advisors and consultants, including non-employee directors for services to the company. Such exemption to be available only to companies that are not eligible to use Form S-8; the amount to be determined by the amount of cash or other tangible consideration paid or, in the case of an option, to be paid by the employee; that securities issued pursuant to such exemption be eligible for subsequent inclusion in a Form S-8 registration statement filed by the company; and that Rule 144 be amended to provide that the holding period for securities issued pursuant to the exemption shall not be extended by reason of any installment payment arrangement.

RECOMMENDATION 8 Disclosure and Offering Ceiling: S-18 and Regulation A

Expand and simplify the ability of small business to raise capital through initial public offerings.

A. By increasing the maximum entitlement under Regulation A from $1.5 to $5.0 million as currently authorized under Section 3(b) of the '33 Act.

B. By increasing the availability and usefulness of Form S-18 through the following steps:

1. The amount should be increased to $10 million;

2. The disclosure requirements should be further streamlined;

3. The SEC should make clear that Form S-1 standards are not necessarily appropriate guidelines;

4. The SEC should provide guidance (possibly by amendment of Rule 176) that size of the offering is a factor to be considered as part of a liability analysis.

B. FINANCIAL SERVICES

RECOMMENDATION 1 Small Business Participating Debenture

Adopt a new uniform or standard security to be called Small Business Participating Debentures (SBPD's) and which would further include the following features:

1. Deductible interest payments for the issuer, with a minimum floor rate as per section 483, and a maximum rate; and which are taxed by the holder as regular income;

2. Additional deductible participation or incentive payments determined by agreement at issue of the SBPD, when redeemed or received by the holder would be taxed at the lowest preferential rate available;

3. Losses would be allowed as an ordinary deduction for the investor/holder of the SBPD;

4. Secondary marketability;

5. Term not exceeding 20 years.

RECOMMENDATION 2 Small Business Reinvestment Corporations

The SEC should research means --- either by modifying existing laws such as ERISA and/or existing vehicles such as SBICs, or by enacting new enabling legislation for asset pooling vehicles called Small Business Reinvestment Corporations (SPERK) --- to facilitate the investment by pension funds of some percentage of their assets in small businesses through equity and debt participations.

RECOMMENDATION 3 Corporation for Small Business Investment

That the 99th Congress enact the COSBI enabling legislation contained in the Budget Reconciliation Bill passed by the House of Representatives.

In view of the urgency of the present situation and time constraints, the immediate release of the foregoing to the Congress and the public at large is recommended.

RECOMMENDATION 4 Capital Gains-Preferential Tax Treatment for Small Business Investments

A preferential tax rate should be applied to the gains on the sale of investments in OPERATING businesses which have been held 3-5 years.

RECOMMENDATION 5 Definition of Small Business

Whenever small business is defined for purposes of benefitting from some type of federal or state program, the definition should recognize that there are several tiers of small business. The programs should then be designed to assure that all tiers of small business will be appropriately advantaged.

C. Payroll Costs/ERISA

RECOMMENDATION 1 Employee Stock Ownership Plans ("ESOPs")

We recommend that there be no further changes to the current status of ESOPs.

RECOMMENDATION 2 Moratorium on ERISA Changes

We recommend adoption of a simple moratorium on any further changes to ERISA for a period of at least 5 years. We urge that Congress respond to this major problem by observing the recommended moratorium.

RECOMMENDATION 3 Adoption of the Final Recommendations on Payroll Costs from the 1986 White House Conference on Small Business

We recommend that the SEC 5th Annual Government Business Forum on Small Business Capital Formation go on record as supporting the 1986 White House Conference on Small Business final recommendations relating to payroll costs issues. The final White House Conference payroll costs recommendations read as follows:

> 2. There should be no government mandated employee benefits, such as employer-paid health benefits, parental leave, disability leave, etc. Specific actions should include, but not be limited to:
>
> a. Congress should prohibit the states from mandating employee benefits;

b. Congress should reject parental and disability leave legislation, such as H.R. 4300 and S. 2278;

c. Congress should reject proposals to mandate medical coverage. Business supports creative efforts in the private sector to identify new and voluntary approaches to enable working parents to fulfill their job and family responsibilities. [R.A. 203, Payroll Costs; 1360 votes]

7. Congress should repeal the Davis-Bacon Act and the Service Contract Act in their entireties. [R.A. 196, Payroll Costs; 1156 votes]

8. Congress should reform the Social Security System by taking the following steps:

1. Remove all non-retirement programs from the Social Security programs and pay them from the general fund.

2. Bring all workers, government and private, under the Social Security System.

3. Freeze employer FICA contribution wage base and tax rate at the 1986 rate.

4. Cap automatic indexing and C.O.L.A.'s on program benefits.

5. Fund the establishment of a broad-based Presidential commission to develop long-range alternatives to the present Social Security system which places an undue and inequitable escalating financial burden on business employees. This Presidential commission must submit its complete report within 24 months. The Social Security system needs to become actuarially sound on a defined contribution basis and not rely on automatic and regular increases in the tax rates and wage base. The following things need to be done:

a. Reduction of the Social Security taxes for employers and employees with alternative qualified retirement plans.

b. Extend the eligibility age for Social Security retirement and lift payroll earning restrictions for Senior Citizens by increasing what they can earn without forfeiting Social Security benefits.

c. Create parity between self employment tax and employer/employee Social Security contributions.

d. Consider the possibility of a long-term phase-out of the present system to be replaced with an optional, actuarially sound, privatized system of retirement and health benefits. The privatization of the present system is considered to be a very desirable goal by the delegates to the 1986 White House Conference on Small Business. [R.A. 218, Payroll Costs; 1152 votes]

20. To promote the retirement security of our nation's employees, Congress must support and promote the continued viability of the private retirement system in the small business community. In support of this goal, there must be a five year moratorium on further changes in our private retirement plan laws except for the following changes which we recommend:

a. Promote parity between large and small plans and between private and public sector plans;

b. To simplify filing requirements and paperwork; and

c. To increase contribution benefit limits, including 401(k) plans and IRAs to be at least as great as the pre-1986 Tax Reform Act limits; and

d. In the multi-employer sector, to reform Multi-Employer Pension laws (*Multi-Employer Pension Plan Amendments Act of 1980, MPPAA, subtitle E of Title IV of ERISA, sections 4201 through 4402) to curtail or eliminate withdrawal liability. [R.A. 239, Payroll Costs; 861 votes]

26. Congress should not tax employee benefits above existing levels. [R.A. 199, Payroll Costs; 720 votes]

31. Unemployment Insurance: amend the Federal Unemployment Tax Act and the Social Security Act and the Wagner-Peyser Act to achieve the following:

a. Prohibit strikers from collecting benefits.

b. Require claimants to actively seek work and accept the next best job after eight weeks of job search or lose benefits;

c. Eliminate FUTA and related taxes on wages of persons who do not qualify for benefits, (e.g., independent contractors, corporate officers, shareholders, retirees, etc.)

d. Allow surplus funds to be invested in the state which paid the taxes.

e. Cap FUTA tax at present levels.

f. The rate increase of .2% in FUTA taxes should be allowed to expire on January 1, 1988 as scheduled under current law. [R.A. 244, Payroll Costs; 654 votes]

38. To reduce payroll complexity and cost by:

a. Standardizing Federal payroll reporting onto one form with one due date and to provide incentives to include consolidation of state and local payroll information;

b. Increasing the threshold for requiring payment of payroll taxes through Federal Depositories (i.e., allow mailing in of larger payments with quarterly filing...currently, the threshold is $500.00) and increasing the thresholds for determining the frequency of all payroll tax deposits (i.e., increase threshold for 3-day deposits which is currently $3,000). [R.A. 247, Payroll Costs; 576 votes]

53. The concept of comparable worth is contrary to the free enterprise system. Compensation should be based upon market supply and demand. [R.A. 235, Payroll Costs; 408 votes]

54. Congress should enact labor law reform to repeal the union shop provision to Section 8(a)3 of the Labor Management Relations Act, as amended, to allow employees the fullest freedom of choice to join or not join or support a union and amend the Hobbs Act to make violence in labor disputes a Federal crime. [R.A. 253, Payroll Costs; 395 votes]

56. Congress should defeat proposed Anti-double breasting legislation (H.R. 281 and S. 2181). [R.A. 391, Payroll Costs; 378 votes]

RECOMMENDATION 4 No Government Mandated Employee Benefits

There should be no government mandated employee benefits, such as employer-paid health benefits, parental leave, disability leave, etc. Specific actions should include, but not be limited to:

a. Congress should prohibit the states from mandating employee benefits;

b. Congress should reject parental and disability leave legislation, such as H.R. 4300 and S. 2278;

c. Congress should reject proposals to mandate medical coverage.

Business supports creative efforts in the private sector to identify new and voluntary approaches to enable working parents to fulfill their job and family responsibilities.

RECOMMENDATION 5 Alternatives to the Current Social Security System

We recommend that all possible alternatives be explored to mitigate the effect of Social Security obligations on small business, including, but not limited to enhancing the role of private retirement mechanisms, expanding coverage, removing non-retirement programs, limiting COLA's, increasing retirement ages and permissible earnings, and setting up a body appointed by the President and Congress that would consider the Social Security system against the background of total long-term retirement needs and would include substantial input by the small business community.

D. LIABILITY INSURANCE

RECOMMENDATION 1 Increasing Insurance Capacity

Enact the Federal Risk Retention Act of 1986 and reduce regulations which reduce capacity for insurance underwriting. Provide for increased capacity available for liability insurance underwriting and risk retention by insurors, risk retention groups and other sources by

(1) removing regulatory barriers to placement of reinsurance with off-shore, foreign, and surplus-lines reinsurors; and

(2) encouraging state insurance commissioners to a more permissive reception to entrepreneurs and small independent property and casualty insurance entities.

RECOMMENDATION 2 Product Liability Reform

The enactment of state and Federal legislation expressing the spirit and intent of S.B. 2760 as considered by the 99th Congress.

RECOMMENDATION 3 Enactment of Legislation Limiting Directors' Liability

It is recommended that the Delaware D&O [Directors and Officers] Liability Law be adopted by all the states and that Congress consider adopting similar provisions at the Federal level, but with an automatic sunset provision that requires readoption by the stockholders periodically.

RECOMMENDATION 4 Adoption of the Final Recommendations on Insurance from the 1986 White House Conference on Small Business

The Forum enthusiastically endorses the number one recommendation of the 1986 White House Conference on Small Business concerning tort reform/liability insurance with certain amendments. The recommendation, as amended, reads as follows:

Civil Justice Reform

Because the liability insurance crisis in the United States has not only become a life and death sentence to many small businesses, but also is changing adversely our way of life, we must pursue a four pronged effort at reform: civil justice reform; uniform standards for product, professional and commercial liability; regulation of the insurance and re-insurance industries; and viable affordable alternatives to liability coverage.

We, therefore, strongly urge the President, the Congress, and the state legislatures, to implement the following action as a vitally important step in alleviating the problems of availability and affordability of liability insurance to small business in America:

A. Civil Justice Reform

1. Return to a fault based standard of liability.

2. Base causation findings on credible scientific and medical evidence and opinions.

3. Eliminate joint and several liability in cases where defendants have not acted in concert.

4. Limit non-economic damages (such as pain and suffering, mental anguish or punitive damages) to a fair and reasonable maximum dollar amount, not to exceed $250,000 in any case.

5. Restrict punitive damage awards to cases of willful and

malicious conduct. The amount awarded shall go to a governmental trust fund, not the plaintiff.

6. Limit attorneys' contingency fees to reasonable amounts on a sliding scale.

7. Reduce awards in cases where a plaintiff can be compensated by certain collateral sources to prevent windfall double recovery.

8. Prior to actual trial of any civil action, the only statement as to specific dollar amount claimed shall be limited to any minimum amount required to establish the jurisdiction of the forum in which the claim is made, leaving any additional amount to that which the proof at trial may show; in any civil action any party may make an offer of settlement to any other party and if such other party rejects such offer and thereafter obtains a judgment less favorable than the rejected offer, the rejecting party shall pay the offering party all of the latter's legal fees and costs in addition to paying his own.

9. Impose a uniform, reasonable statute of limitations and repose in all tort actions; and hold defendants to the state-of-the-art in existence at the time the product was manufactured or the service was performed.

10. Provide for periodic instead of lump sum payments for future medical care or lost income.

11. Encourage use of alternative dispute resolution mechanisms to resolve cases out of court.

12. Provide for citizen participation in state bar association matters to include conduct review and rule making.

B. Federal Standards for Product, Professional and Commercial Liability:

Establish a uniform standard of fault based product, commercial, and professional liability which incorporates provisions cited in "Civil Justice Reform" above.

C. Availability and Affordability of Liability Insurance and Re-Insurance:

1. Review McCarran-Ferguson Act of 1945 as it applies to state regulation of insurance and the industry's limited exemption from anti-trust laws.

2. Promote the establishment of joint underwriting associations and assigned risk pools.

3. A minimum of 60 days notice should be required for an insurer to non-renew a policy or to increase its unit premium by more than 25 percent. Mid-term cancellations should be prohibited and premiums should be based on experience ratings.

4. Promote tax deductible self-insurance through risk pooling and other group arrangements, including the expansion of The Risk Retention Act of 1981.

5. Legislate a self-insurance system that would allow small businesses to pay premiums into a fund with pre-tax dollars which could be used for no other purpose than the payment of claims, with the fund being regulated in the same manner as any other insurance company.

6. Require the insurance industry to make complete financial disclosures by lines of insurance, so that Congress, state legislatures, and state insurance commissioners may call on it at any time.

E. RANKINGS

Participants were asked to rank the foregoing recommendations by topic in order of their importance to small business capital formation.

Table 1:

Ranking of Securities Recommendations

Recommendation No.	Ranking
3	1
1	2
4	3
10	4
6	5
7	6
2	7
5	8

Table 2:

Ranking of Financial Services Recommendations

Recommendation No.	Ranking
1	1
4	2
3	3
2	4
5	5

Table 3:

Ranking of Payroll Costs/ERISA Recommendations

Recommendation No.	Ranking
4	1
3	2
2	3
5	4
1	5

Table 4:

Ranking of Liability Insurance Recommendations

Recommendation No.	Ranking
4	1
2	2
1	3
3	4

II. INTRODUCTION

A. Background

The Small Business Investment Incentive Act of 1980 directs the U.S. Securities and Exchange Commission to host an annual conference on issues relating to small business capital formation. This conference, entitled the SEC Government-Business Forum on Small Business Capital Formation (the "Forum"), has been held annually for the past five years and has resulted in recommendations to Congress and the appropriate regulatory agencies covering such areas as tax, securities, the financial services industry and state capital formation programs. The Forum typicaly lasts between two to three days and is attended by small business owners, venture capitalists, government officials, trade association representatives, academians, and other advocates of small business. The format of the Forum is specifically organized to generate candid discussion on current areas of concern in the capital formation process between small business owners and those individuals, organizations and government agencies which typically play some role in the area of small business.

This year, in addition to the SEC's Forum, the second White House Conference on Small Business was held in Washington, D.C. on August 17-21, 1986. The first time this conference had been convened was in January of 1980. In 1984, President Reagan signed into law a bill providing

for the 1986 White House Conference on Small Business (P.L. 98-276). The objectives of the Conference, as described in its legislation, were as follows:

> The purpose of the Conference shall be to increase public awareness of the essential contribution of small business; to identify the problems of small business, to examine the status of minorities and women as small business owners; to assist small business in carrying out its role as the Nation's job creator, to assemble small businesses to develop such specific and comprehensive recommendations for executive and legislative action as may be appropriate for maintaining and encouraging the economic viability of small business and, thereby, the Nation; and to review the status of the recommendations adopted at the 1980 White House Conference on Small Business.

The resulting 1986 National White House Conference was the culmination of preliminary meetings in each of the states, the District of Columbia and Puerto Rico which were held to identify and discuss issues of concern to small business, to propose a small business agenda for federal action, and to elect delegates to the National Conference. At the National Conference, 1,813 delegates from across the republic formulated a set of sixty detailed policy recommendations. The Conference subject areas included: Economic Policy, Small Business Education and Training, Finance, Future of an Agency for Small Business, Innovation, International Trade, Liability Insurance, Payroll Costs, Procurement, Regulation and Paperwork, and Taxation.

B. Issue Selection

Preparations for the 1986 Forum began in December 1985, when the Executive Committee met for the first time. The Executive Committee is comprised of representatives from government agencies and a number of private sector organizations in accordance with the Congressional guidelines. In an effort to maximize the impact of those issues in the area of small business capital formation which were recommended at the White House Conference and to avoid duplication and promote implementation, the Executive Committee for the 1986 Forum decided upon a different focus from that of the past four Forums. As such, the 1986 Forum examined capital formation recommendations from the White House Conference, past Forum recommendations which were still relevant and which had not yet been implemented, and other key issues of current importance to the small business community. The resulting subject areas that were discussed at the Forum were Securities, Financial Services, Payroll Costs/ERISA and Liability Insurance. Securities regulation was split into two (2) separate topic areas due to the numerous securities related issues.

The background materials used by the participants in preparation for the Forum included portions of the White House Conference issue papers, materials prepared for

previous Forums, and several position papers submitted by participants at the Forum. The following is a list of the background materials which were distributed to the Forum participants.

Securities Regulation A

1. White House Conference Issue Paper
2. Regulation D
3. Proposed Modifications to Regulation D
   Letter dated March 27, 1986 from RESSI
4. Integration of Securities Offerings:
   Report of the Task Force on Integration
   by Committee on Federal Regulation of
   Securities
5. State Response to 504

Securities Regulation B

1. Evaluation of Form S-18
2. Securities and Exchange Commission
   Release No. 34-23407
3. Impact of Securities Law
   on Employee Equity Incentive
   Arrangements
4. Delaware's D&O Liability Law
   a. A "Windfall" for Directors
   b. Other States Should Follow Suit

Financial Services

1. Final White House Conference
   Recommendations and White House
   Conference Issue Paper
2. Report of the Task Force on Access
   to Commercial Credit by NAWEO

3. COSBI - Fact Sheet and Congressional Record

4. A Tax Change to Assist Small Business Capital Formation - The SBPD

Payroll Costs/ERISA

1. Final White House Conference Recommendations and White House Conference Issue Papers

2. Payroll Tax - Deposit Requirements

3. Incentive Stock Options

4. ESOPS

Liability Insurance

1. Final White House Conference Recommendations and Issue Paper

2. Tort Reform Summary Sheet

3. The Need for Legislative Reform of the Tort System

Payroll Costs/ERISA
(Supplementary Paper)

1. Pensions and Mortgages by HUD

Appendix A - Small Business Capital Formation Trends

C. Conduct of the Forum

The first morning of the Forum consisted of a general session conducted by Executive Committee Chairman, SEC Commissioner Edward H. Fleischman. Commissioner Fleischman discussed the purpose of the Forum and explained to the over 150 participants who attended, many of whom were also

White House delegates, the format that would be followed during the remainder of the conference. This year's Forum followed the "Packwood" format which established discussion groups and topic groups as described below. Opening remarks were also presented by SEC Chairman, John Shad.

For the remainder of the first day of the Forum and during the second morning session, the participants met in ten separate discussion groups. Each group considered all five of the major topic areas: Securities Regulation A and B, Financial Services, Payroll Costs/ERISA and Liability Insurance. A minimum of two participants assigned to each one of the five major topic groups were present at each discussion group and were responsible for leading the discussion on their particular topic. Each discussion group developed its own views and comments on the issues.

Participants also attended two luncheon talks during the first two days of the Forum. The first luncheon speaker was Congressman Doug Barnard, Jr., Chairman of the House Subcommittee on Commerce, Consumer and Monetary Affairs. Congressman Barnard spoke generally on the regulation of the banking industry. David Flory, legislative assistant to Senator Robert W. Kasten, Jr. was the luncheon speaker for the second day of the Forum. Mr. Flory spoke on the liability insurance area.

During the afternoon session on the second day, the participants regrouped from the ten discussion groups into the five topic groups to which they were assigned. It was at this time that the participants drafted the final recommendations from each topic group to be voted on by all Forum participants during the plenary session the following day. As previously indicated, each topic group included at least two individuals who had been present at the ten discussion groups during the previous sessions and, therefore, could reflect the views of each discussion group during the drafting of the final recommendations.

On the final morning of the Forum, recommendations for each major issue were presented to and voted on by all the nongovernment Forum participants at a plenary session. This plenary session, which was attended by all Forum participants as well as members of the public and press, consisted of a three hour session where representatives from each major topic group presented that group's recommendations and a supporting statement. Time was available for Forum participants to comment on or to offer amendments to the proposals prior to voting on their adoption as final recommendations of the Forum. Twenty-two proposals were adopted by the Forum, and are presented in the pages which follow.

III. SECURITIES REGULATION

A. Statement of the Issues

Small business faces many restrictions in its attempt to raise capital externally. Two such restrictions are the federal and state securities laws. These laws generally prohibit a company from selling or offering to sell its securities without first registering the securities or having an exemption from registration available. Although these regulations have been instituted for the protection of investors, in many instances the costs to the company associated with such compliance can be exorbitant. The prohibitive effect of such costs is especially evident with the smaller businesses that can't bear the high costs.

In light of this hardship on small business, a continuing effort has been made by both the federal and state securities regulators to coordinate the two regulatory systems and provide one uniform system of securities regulation. Two of the most significant achievements on behalf of small business which have resulted from this coordinated effort were the adoption of Regulation D by the Securities and Exchange Commission ("SEC") on the federal level and the adoption of the Uniform Limited Offering Exemption ("ULOE") policy statement of the North American Securities Administrators Association, Inc. ("NASAA") or some variation thereof by various states. Although a uniform system is still not a reality, continuing advancements are being made.

The focus of this year's securities issues discussed at the Forum was, as in past years, on further alleviating the regulatory hurdles encountered by small business in its attempt to raise the necessary capital to effectively compete in the market place. Two of the final recommendations in the securities area specifically address the need for changes to Regulation D since its adoption over four years ago. Other final recommendations deal with the reduction in the mandated disclosure requirements for small offerings and the adoption of a specific exemption for employee stock option plans.

B. Recommendations

RECOMMENDATION 1 Regulation D General Solicitation

To facilitate the removal of barriers to sellers reaching potential buyers in connection with the raising of capital for small businesses, clear rules that permit certain forms of general solicitation should be adopted. These rules should permit:

a. General solicitation of those reasonably believed to be accredited investors.

b. Generic advertising by financial intermediaries with the content specified by rule even if such an intermediary's business is of a limited scope.

c. General solicitation by issuers intending to raise a small amount of capital specified by rule (perhaps $500,000) with the content of the message limited by a rule similar to Rule 134 which would permit the naming of the issuer, the type and price of the security offered, an indication of the type of business of the issuer, the amount to be raised and other such information.

Although "c." above is a significant departure from current concepts, it has been argued that for those trying to raise a small amount of capital the current system does not work.

One of the financing vehicles frequently used by small businesses to raise capital externally is Regulation D. This Regulation, however, is not as effective as it could be because in most cases the Regulation, through Rule 502(c), prohibits the issuer, or any person acting on behalf of the issuer, from offering or selling securities by any form of general solicitation or advertising. The SEC has interpreted this restriction as generally limiting the contacts made by the issuer, or its agents to those individuals or entities with whom the issuer has a pre-existing substantive relationship. Thus, the small issuer's market for raising capital is severely limited. Furthermore, it is also argued that small businesses have difficulty in attracting broker-dealers to market their smaller offerings. The proposed revisions to Rule 502(c) included in the recommendation stated above would significantly expand the capital market available to small businesses by permitting restricted methods of solicitation and advertising based upon the qualification of the investor and the generic form of the advertisement.

RECOMMENDATION 2

For a non-reporting company, reference to any mandated form for disclosure requirements and the requirement for audited financials should be eliminated. In substitution therefore, a requirement to disclose such narrative and financial information as the issuer reasonably believes would, when considered in light of all facts and circumstances, enable the investor to assess the merits and risks of making the particular investment should be included.

As an alternative, the SEC should develop a specific disclosure form for all offerings pursuant to Regulation D (similar to Form MD-2 for limited offering in the State of Maryland) that includes clear and simple definitions of concepts such as "materiality" to aid issuers in compliance.

Regulation D requires mandated disclosure only for those transactions in securities in excess of $500,000 involving nonaccredited investors. Rule 502(b) of the Regulation sets forth the specific disclosure requirements for such offerings based upon whether or not the issuer is a reporting company, the size of the offering and the qualification of the investors. Offerings made solely to accredited investors, regardless of their size, are not required to provide any specific information to purchasers. Nonreporting companies must provide the same narrative and financial information as provided in Part I of Form S-18 or other appropriate registration statement form entitled to be used by the issuer, except that limited financial information is permitted for offerings under $5 million. Reporting companies must provide information from their filings with the Commission. Issuers that make offerings pursuant to any of these mandated disclosure requirements must bear the costs of compliance with such requirements. For smaller companies, these costs can be exorbitant in comparison with the size of the offering. This recommendation suggests the elimination of the requirement for mandated disclosure and audited financial statements in order to relieve the issuer from the burden of such costs. Of course the trade-off for such reduced disclosure would be the reduction of information available to the investing public.

The alternative recommendation mentioned above is to adopt a uniform disclosure document to be used in conjunction with all offerings under Regulation D. Representatives of

small businesses have suggested that a uniform disclosure document would provide certainty, would be less time consuming and thus, most importantly, would be less costly because it could be completed by the issuer and legal services and fees could be kept to a minimum.

RECOMMENDATION 3

The following changes should be made to Regulation D:

1. The limitations on the number of purchasers (as defined in Regulation D) under Rules 505 and 506 should be increased to a minimum of 75.

2. Substantial good faith compliance with the requirements of Regulation D should constitute compliance with Regulation D, especially for filing requirements, the number of purchasers, the accredited investor tests and similar technical provisions.

3. The dollar ceiling of Rule 504 should be increased from $500,000 to $1 million.

4. The filing of a Form D should be eliminated as a condition of the safe harbor.

5. A Regulation D offering should not be integrated with a later private or public offering even though the later offering may still be integratable with the earlier offering.

6. The definition of "accredited investor" should be expanded as follows:

   a. The category of institutional investors should include savings and loan associations, investment banks, broker/dealers, venture capital firms, credit unions, and any entity which controls, is controlled by or is under common control with an institutional investor.

   b. The $1 million net worth test should be reduced to $500,000 and should apply to entities as well as natural persons.

   c. The $200,000 income test (Rule 501(a)(7)) should be reduced to $100,000, should apply to the joint income of spouses, and should apply to entities as well as natural persons.

d. The insider category (Rule 501(a)(4) should be expanded to include key employees.

e. The $150,000 investment test (Rule 501(a)(5)) should be reduced to $100,000; and

f. If at least 90% of an entity is owned by accredited investors, then it should be deemed an accredited investor unless it was organized for the specific purpose of making the investment in question.

7. Failure to comply with the disclosure requirements of Regulation D should not constitute a violation of Section 5. Recourse for such a failure should be limited to Federal and State anti-fraud laws (e.g., Rule 10b-5).

The overall tone of this recommendation indicates the need for comprehensive changes to Regulation D now that the Commission and those practitioners who use Regulation D have had a chance to witness its pros and cons. The changes that are recommended cover most of the general conditions of the Regulation including the limitations on the number and qualification of purchasers, the filing requirement, the aggregate offering limitation on Rule 504, integration and the loss of the exemption for failure to strictly comply with the rules.

The notice requirement under Regulation D, Rule 503, has been amended since the Forum and now only requires a single filing of the initial Form D unless a revised or amended form needs to be filed due to an error made at the time of completion of the form or if the terms of the offering have been changed. Although this one filing is still a condition of the Regulation, the previously mandated six month update and a final filing are no longer required.

services for the issuance of the options while the employee receives the option as compensation, reflecting an exchange of value. For this reason, the FASB is considering changing the current accounting treatment for stock options to require companies to expense the "value" of the stock option against their earnings. The question then arises how should the options be valued?

The three mostly widely accepted approaches to the valuation of options are highlighted below. The approach which has the support of start-ups and high-tech companies, the companies which regularly use stock options to attract key employees, is grant-date valuation of stock options. This approach values the option at the date it is granted to the employee. This approach is favored by these companies, if some expensing of the options will be required, because the expense against earnings for options valued at the grant date should be minimal in comparison to the potential value of the options and thus the expense at their date of vesting.

A second approach is vesting date valuation. Under this method, the vesting date of a stock option is typically two or more years after the grant date of the option. Thus, it is argued that vesting date valuation would generally result in a much higher expense against earnings than grant-date valuation because the later date allows time for the options to increase in value based on the growth of the company during the vesting period.

The final approach to stock option valuation most recently under consideration by the FASB is called the "fair-value" method. The FASB has suggested that the value of an option

should be computed using an option pricing model that considers at least the fair value of the underlying stock, the exercise price, dividends during the option term, volatility, and the option term. In addition, the FASB has indicated that some adjustments to such a computed value may be necessary due to the restrictions of nontransferability and the requirement of exercising the option upon termination of employment usually associated with employee stock options. This method values the option on a continuous basis until vested.

Regardless of the specific valuation method required to be used for stock option accounting, any expensing of options will have an impact on the financial statements of businesses as reflected in a lower profit line. The recommendation by this Forum to use grant date valuation, within specified minimum and maximum amounts, reflects the concern which has been expressed by the small business community in general on the continued use of stock options by small businesses and start-ups to attact key employees in order to compete in the market place. Instead of offering employees high cash salaries which the company cannot afford, many small companies solicit employees based on the potential growth of the company and future earnings to be made on their stock. If the valuation of stock options results in their immediate cost to the company outweighing the benefits of gaining key employees, then businesses will no longer use stock options as a method of attracting key personnel. It has been suggested that such a result would place small business at a further disadvantage in the market place.

RECOMMENDATION 6 Tier Reporting

Reduce or eliminate 1934 Act reporting requirements by

1. creating a second tier of issuers which would be subject to less than the full reporting requirements; and

2. providing for reduced reporting or an exemption from reporting for issuers with trading volume in their securities below certain minimums.

Once an issuer becomes a reporting company pursuant to the Securities Exchange Act of 1934 (the "Exchange Act") the company, regardless of its size or its trading volume, must comply with the same periodic reporting requirements as all other reporting companies, including the very large. The burden of complying with these requirements for small businesses may far exceed the benefits obtained by the small percentage of the investing public. In addition, currently the duty to file periodic reports can be terminated only when a company has fewer than 300 shareholders or fewer than 500 shareholders and less than $5 million in total assets for each of the three preceding fiscal years, provided that no registration statement has become effective during that three-year period. The $5 million total asset requirement was recently adopted by the SEC as an increase from the previous $3 million total asset requirement. 1/ At that same time, the SEC also requested comments on other ways to classify small issuers in order to permit them to terminate their continuing reporting requirements. 2/ In response

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1/ Release No. 33-6652; 34-23406; 39-2022.

2/ Release No. 34-23407; S7-16-86.

to this request, the Forum recommends tiering the disclosure system based on the size of the issuer and an exemption for issuers maintaining a minimum trading volume.

RECOMMENDATION 7 Employee Benefit Exemption

The SEC should adopt a rule that specifically exempts from Section 5 of the Securities Act of 1933 the issuance by a company of securities in an aggregate amount up to $5 million pursuant to one or more plans intended primarily to compensate or reward employees, advisors and consultants, including non-employee directors for services to the company. Such exemption to be available only to companies that are not eligible to use Form S-8; the amount to be determined by the amount of cash or other tangible consideration paid or, in the case of an option, to be paid by the employee; that securities issued pursuant to such exemption be eligible for subsequent inclusion in a Form S-8 registration statement filed by the company; and that Rule 144 be amended to provide that the holding period for securities issued pursuant to the exemption shall not be extended by reason of any installment payment arrangement.

In order for a company to issue securities under a stock option plan to attract, compensate or retain qualified employees, the company must either register the offering or make the offering under Regulation A or Regulation D, two exemptions from Section 5 of the Securities Act of 1933. A registered offering is both costly and time consuming and therefore not the most efficient way to implement an employee benefit plan. Furthermore, under either of the two exemptions mentioned above the company would be severely limited in the number of employees to whom it may eventually sell its stock or in the total dollar value of the options offered to its employees.

Under Regulation D, three separate exemptions are available, Rule 504, Rule 505 and Rule 506. Under the restrictions of a Rule 504 offering, although an unlimited

number of investors could purchase, a total offering of only $500,000 could be made within any twelve month period. In addition, any offerings made under Rules 505 or 506, although the dollar limitations are much higher, a maximum of $5 million within a twelve month period under Rule 505 and an unlimited offering amount under Rule 506, only thirty-five nonaccredited investors could purchase. Furthermore, in a Rule 506 offering those thirty-five must meet a minimum sophistication level. Many companies employ more than thirty-five individuals who would not qualify either under the accredited investor definition of Regulation D or a sophistication standard and therefore the companies would not be able to sell to all their employees. Based on the limitations described above, it is clear that the exemptions available under Regulation D are not practical for most employee stock offerings. On the other hand, Regulation A is not an attractive alternative in most cases. Although a Regulation A offering does not limit the number of investors, only $1.5 million can be offered within a twelve month period and the disclosure and filing requirements are more comprehensive than those under Regulation D.

The special nature of employee stock offerings suggests that companies should be permitted to issue stock to their employees as a form of compensation without incurring high costs for compliance with the securities laws or without limiting the offering by dollar amount or number of employees. An exemption such as the one proposed above would allow companies to expand their use of stock as part of their total employee benefit package.

RECOMMENDATION 8 Disclosure and Offering Ceiling: S-18 and Regulation A

Expand and simplify the ability of small business to raise capital through initial public offerings.

A. By increasing the maximum entitlement under Regulation A from $1.5 to $5.0 million as currently authorized under Section 3(b) of the '33 Act.

B. By increasing the availability and usefulness of Form S-18 through the following steps:

1. The amount should be increased to $10 million;

2. The disclosure requirements should be further streamlined;

3. The SEC should make clear that Form S-1 standards are not necessarily appropriate guidelines;

4. The SEC should provide guidance (possibly by amendment of Rule 176) that size of the offering is a factor to be considered as part of a liability analysis.

Section 3(b) of the Securities Act of 1933 grants authority to the Securities and Exchange Commission to exempt any class of securities from the registration requirements when it is not necessary for the public interest or the protection of investors by reason of the small amount of the offering or the limited character of the public offering. However, the maximum aggregate amount per issuance which may be exempted is $5 million. Regulation A is an exemption under this section that permits issuers to raise up to $1.5 million in capital through a public offering. The proposed recommendation suggests that the Commission exercise its

authority under Section 3(b) to increase the aggregate offering price permitted under Regulation A to the maximum of $5 million. This increase would allow businesses to raise larger amounts of capital through the less restrictive means of an exempted offering but in a public fashion.

The second part of the recommendation deals with proposed amendments to Form S-18. Form S-18 was adopted by the Commission in order to provide a less restrictive method of registering securities for certain nonreporting companies. Currently, such designated companies may raise up to $7.5 million. The proposed amendments suggest that the aggregate dollar amount should be increased to $10 million and that the disclosure requirements should be further streamlined. One of the present advantages of using Form S-18 in comparison to Form S-1, which is the general registration form, is the reduced narrative and financial statement requirements.

IV. FINANCIAL SERVICES

A. Statement of the Issues

As with all business enterprises, successful operation and expansion for small businesses depends upon financing whether from internal or external sources. The key to external financing is access to capital at competitive rates. While the need for external funds for particular businesses vary, in the cases of many smaller businesses, this need is acute. Consequently, new and innovative methods of creating opportunities for small businesses to have access to much needed capital need to be considered.

B. Recommendations

RECOMMENDATION 1 Adopt a new uniform or standard security to be called Small Business Participating Debentures (SBPD's) and which would further include the following features:

1. Deductible interest payments for the issuer, with a minimum floor rate as per section 483, and a maximum rate; and which are taxed by the holder as regular income;

2. Additional deductible participation or incentive payments determined by agreement at issue of the SBPD, when redeemed or received by the holder would be taxed at the lowest preferential rate available;

3. Losses would be allowed as an ordinary deduction for the investor/holder of the SBPD;

4. Secondary marketability;

5. Term not exceeding 20 years.

The SBPD is a financing vehicle with great appeal for the small business; it would also be an attractive investment security to the investor. The SBPD would permit the investor the opportunity to participate in the growth and success of the company, while the company would receive needed capital at favorable interest rates. Through secondary marketability, the SBPD's use would be broadened.

RECOMMENDATION 2 The SEC should research means --- either by modifying existing laws such as ERISA and/or existing vehicles such as SBICs, or by enacting new enabling legislation for asset pooling vehicles called Small Business Reinvestment Corporations (SPERK) --- to facilitate the investment by pension funds of some percentage of their assets in small businesses through equity and debt participations.

The availability of investment into small businesses to pension funds can serve two functions through the extension of capital to small business and the provision of a worthwhile investment to the pension fund. However, this situation requires further study to determine the best method of satisfying both of these functions. It is possible that existing vehicles such as the Small Business Investment Company with appropriate modifications could be

used. But perhaps something like the Small Business Reinvestment Corporation would be required. The requested study would provide an answer to this issue.

RECOMMENDATION 3 That the 99th Congress enact the COSBI enabling legislation contained in the Budget Reconciliation Bill passed by the House of Representatives.

In view of the urgency of the present situation and time constraints, the immediate release of the foregoing to the Congress and the public at large is recommended.

The Corporation for Small Business Investment ("COSBI") would operate as a "capital bank", providing a dependable flow of funds at reasonable cost to SBIC's from private capital markets. Access to an assured source of leverage would permit SBICs to make a continuing stream of venture capital investments and long-term loans to small growth firms. COSBI would assume the licensing and regulatory functions over SBICs which are currently with the U.S. Small Business Administration. COSBI would be sponsored by the Government and be similar to agencies such as the Federal National Mortgage Association ("Fannie Mae") and the Student Loan Marketing Association ("Sallie Mae").

RECOMMENDATION 4 A preferential tax rate should be applied to the gains on the sale of investments in OPERATING businesses which have been held 3-5 years.

Long term capital commitments are fundamental to business growth. American companies are at a disadvantage

because our investors generally are looking for immediate returns. This attitude is complicated by a tax policy which is not conducive to patient, long-term investment. In order for our companies to be internationally competitive, our investors must become willing to accept the risks of long term equity ownership. A tax incentive for enhanced holding of such investments would encourage investors to make a longer term commitment and thus enable businesses to concentrate on strategic priorities rather than immediate profitability.

RECOMMENDATION 5 Whenever small business is defined for purposes of benefitting from some type of federal or state program, the definition should recognize that there are several tiers of small business. The programs should then be designed to assure that all tiers of small business will be appropriately advantaged.

Many Governmental programs are designed to assist small businesses. However, these programs do not always recognize the wide range of sizes among the small businesses; the smaller small businesses do not reap the intended benefits. Consequently, any legislation enacted or rules promulgated should recognize the variety of small businesses so that every eschelon will receive equitable treatment.

V. PAYROLL COSTS/ERISA

A. Statment of the Issues

The main source of capital for small business is the retention of internally-generated funds. Payroll costs account for a major use of small business funds, particularly since small business is considered to be labor intensive. Business taxes which are based on a firm's gross dollar payroll are a proportionately heavier burden for small business than big business.

Payroll costs are determined or affected by numerous Federal laws and regulations including the Employee Retirement Income Security Act of 1974 ("ERISA"), the Social Security Act, the Federal unemployment insurance program, the Davis-Bacon Act, and payroll tax administration requirements. Payroll taxes have grown substantially in the last two decades. Past and scheduled payroll tax increases include 9 Social Security rate increases totalling 60%, 19 Social Security wage base increases of approximately 677%, 3 Federal unemployment tax rate increases totalling 94%, and 3 Federal unemployment tax wage base increases totalling 133%.

Reduction in both Federal payroll taxes and the associated paperwork and administration will permit small business to retain a larger portion of internally-generated funds. These cost savings will provide additional resources for small

business to survive, expand, create new jobs and/or innovate. Capital retention also will reduce the need for small businesses to rely on more expensive external financing.

B. Recommendations

RECOMMENDATION 1 Employee Stock Ownership Plans ("ESOPs")

We recommend that there be no further changes to the current status of ESOPs.

Employee stock ownership plans ("ESOPs") provide significant benefits to both a company and its employees. From the viewpoint of the employer, ESOPs permit increases in employee compensation without using cash flow, motivate employees by offering them a share in the potential growth of the company, and provide attractive financing alternatives for the company. In addition, ESOPs offer several tax advantages. For example, employees receive tax benefits because stock acquired for the accounts of employees is not taxed as income until distributed to the employees. Such distribution usually occurs upon retirement when an individual is likely to be in a lower income tax bracket.

Small business recognizes the significant benefits provided by ESOPs and strongly recommends that no changes be made in the current law relating to ESOPs.

RECOMMENDATION 2 Moratorium on ERISA Changes

We recommend adoption of a simple moratorium on any further changes to ERISA for a period of at least 5 years. We urge that Congress respond to this major problem by observing the recommended moratorium.

The Employee Retirement Income Security Act of 1974 ("ERISA") established a pension benefit insurance program and minimum standards for funding, participation and vesting. Legislation enacted in recent years has substantially amended and revised the original provisions of ERISA. The Tax Equity and Fiscal Responsibility Act of 1982 ("TEFRA") created a new class of plans referred to as "top-heavy plans." Top-heavy plans are subject to restrictions and requirements in addition to those set by ERISA. For example, top-heavy plans are subject to accelerated vesting requirements, minimum employer contributions and limits on compensation that can be used in calculating benefits.

Additional changes were made in 1984. The Deficit Reduction Act of 1984 ("DEFRA") made technical as well as significant substantive changes to the law governing retirement plans. In addition, the Retirement Equity Act of 1984 ("REA") granted spouses substantial rights over a participant's retirement plan benefits. Generally, unless a waiver from the spouse is obtained, a spouse married to a participant for one year could receive an annuity for his or her lifetime, payable from a portion of the participant's benefits.

Many small businesses have had to amend or completely restate their retirement plans several times in recent years

to conform with this legislation. These plan amendments have imposed tremendous administrative costs on small business. Small business is less able than large business to bear these increased administrative costs. Available information indicates that the cost per employee of a retirement plan operated by a small business is significantly greater than the retirement plan cost incurred by large business with respect to each employee. The Small Businesss Administration has reported that a small company operating a defined benefit plan (where employees are promised a specified level of benefits upon retirement) with fewer than 10 employees will incur costs approximately twice as high per employee than a business with 500 or more employees under the same plan.

A moratorium on pension legislation will give small businesses a chance to conform their retirement plans to the recent legislative changes. The numerous legislative changes also have prevented business from determining the level of funding necessary to pay benefits to employees upon retirement. A moratorium will permit businesses to assess their plans for funding retirement benefits and adopt any necessary changes.

The recent legislation has created uncertainty and confusion for small businesses. Implementation of the recommendation will lessen this uncertainty and encourage

small businesses to continue or adopt retirement plans. The moratorium also will reduce costs and expenses of maintaining retirement plans. Cost savings will permit small businesses to retain capital thereby reducing the need for additional capital from outside sources.

RECOMMENDATION 3 Adoption of the 1986 White House Conference on Small Business Final Recommendations

We recommend that the SEC 5th Annual Government Business Forum on Small Business Capital Formation go on record as supporting the 1986 White House Conference on Small Business final recommendations relating to payroll costs issues. The final White House Conference payroll costs recommendations read as follows:

> 2. There should be no government mandated employee benefits, such as employer-paid health benefits, parental leave, disability leave, etc. Specific actions should include, but not be limited to:
>
> a. Congress should prohibit the states from mandating employee benefits;
>
> b. Congress should reject parental and disability leave legislation, such as H.R. 4300 and S. 2278;
>
> c. Congress should reject proposals to mandate medical coverage. Business supports creative efforts in the private sector to identify new and voluntary approaches to enable working parents to fulfill their job and family responsibilities. [R.A. 203, Payroll Costs; 1360 votes]
>
> 7. Congress should repeal the Davis-Bacon Act and the Service Contract Act in their entireties. [R.A. 196, Payroll Costs; 1156 votes]
>
> 8. Congress should reform the Social Security System by taking the following steps:
>
> 1. Remove all non-retirement programs from the Social Security programs and pay them from the general fund.
>
> 2. Bring all workers, government and private, under the Social Security System.

3. Freeze employer FICA contribution wage base and tax rate at the 1986 rate.

4. Cap automatic indexing and C.O.L.A.'s on program benefits.

5. Fund the establishment of a broad-based Presidential commission to develop long-range alternatives to the present Social Security system which places an undue and inequitable escalating financial burden on business employees. This Presidential commission must submit its complete report within 24 months. The Social Security system needs to become actuarially sound on a defined contribution basis and not rely on automatic and regular increases in the tax rates and wage base. The following things need to be done:

a. Reduction of the Social Security taxes for employers and employees with alternative qualified retirement plans.

b. Extend the eligibility age for Social Security retirement and lift payroll earning restrictions for Senior Citizens by increasing what they can earn without forfeiting Social Security benefits.

c. Create parity between self employment tax and employer/employee Social Security contributions.

d. Consider the possibility of a long-term phase-out of the present system to be replaced with an optional, actuarially sound, privatized system of retirement and health benefits. The privatization of the present system is considered to be a very desirable goal by the delegates to the 1986 White House Conference on Small Business. [R.A. 218, Payroll Costs; 1152 votes]

20. To promote the retirement security of our nation's employees, Congress must support and promote the continued viability of the private retirement system in the small business community. In support of this goal, there must be a five year moratorium on further changes in our private retirement plan laws except for the following changes which we recommend:

a. Promote parity between large and small plans and between private and public sector plans;

b. To simplify filing requirements and paperwork; and

c. To increase contribution benefit limits, including 401(k) plans and IRAs to be at least as great as the pre-1986 Tax Reform Act limits; and

d. In the multi-employer sector, to reform Multi-Employer Pension laws (*Multi-Employer Pension Plan Amendments Act of 1980, MPPAA, subtitle E of Title IV of ERISA, sections 4201 through 4402) to curtail or eliminate withdrawal liability. [R.A. 239, Payroll Costs; 861 votes]

26. Congress should not tax employee benefits above existing levels. [R.A. 199, Payroll Costs; 720 votes]

31. Unemployment Insurance: amend the Federal Unemployment Tax Act and the Social Security Act and the Wagner-Peyser Act to achieve the following:

a. Prohibit strikers from collecting benefits.
b. Require claimants to actively seek work and accept the next best job after eight weeks of job search or lose benefits;
c. Eliminate FUTA and related taxes on wages of persons who do not qualify for benefits, (e.g., independent contractors, corporate officers, shareholders, retirees, etc.)
d. Allow surplus funds to be invested in the state which paid the taxes.
e. Cap FUTA tax at present levels.
f. The rate increase of .2% in FUTA taxes should be allowed to expire on January 1, 1988 as scheduled under current law. [R.A. 244, Payroll Costs; 654 votes]

38. To reduce payroll complexity and cost by:
a. Standardizing Federal payroll reporting onto one form with one due date and to provide incentives to include consolidation of state and local payroll information;
b. Increasing the threshold for requiring payment of payroll taxes through Federal Depositories (i.e., allow mailing in of larger payments with quarterly filing...currently, the threshold is $500.00) and increasing the thresholds for determining the frequency of all payroll tax deposits (i.e., increase threshold for 3-day deposits which is currently $3,000). [R.A. 247, Payroll Costs; 576 votes]

53. The concept of comparable worth is contrary to the free enterprise system. Compensation should be based upon market supply and demand. [R.A. 235, Payroll Costs; 408 votes]

54. Congress should enact labor law reform to repeal the union shop provision to Section 8(a)3 of the Labor Management Relations Act, as amended, to allow employees the fullest freedom of choice to join or not join or support a union and amend the Hobbs Act to make violence in labor disputes a Federal crime. [R.A. 253, Payroll Costs; 395 votes]

56. Congress should defeat proposed Anti-double breasting legislation (H.R. 281 and S. 2181). [R.A. 391, Payroll Costs; 378 votes]

The 1986 White House Conference on Small Business addressed the issue of payroll costs and generated specific recommendations to Congress and the Administration to provide small business relief from rapidly escalating payroll costs.

The first, third and fourth Conference recommendations concern issues which also were addressed by other Forum recommendations. For a discussion of these issues, please refer to the discussions following the preceding Forum recommendation and the two following Forum recommendations. The remaining Conference recommendations propose various changes in Federal law designed to reduce payroll costs and paperwork.

The second Conference recommendation advocates repeal of the Davis-Bacon Act and the Service Contract Act. The Davis-Bacon Act requires the payment of a minimum wage to employees in Federal construction projects over $2,000.

The Department of Labor determines the wage rate to be paid to workers on these projects. The Act originally was designed to ensure that Federal projects would be performed by local contractors rather than out-of-town construction companies that hired transient workers at lower wages.

The participants believe that the Davis-Bacon Act discourages bidding by small businesses on Federal projects because such businesses are required to pay wages higher than they pay on other projects. Repeal of the Act would encourage small businesses to bid for Federal projects. Further, Congressional studies have determined that reform of the Davis-Bacon Act could save the Federal government from $200 million to $2 billion each year.

Conference participants recommended that no changes be made in the tax treatment of employee fringe benefits. Currently, tax-exempt benefits are excluded from an employee's taxable income. Examples of these benefits include health insurance premiums and life insurance premiums for up to $50,000 of coverage. Other employee benefits, such as pensions, are tax-deferred in that such benefits are taxed after retirement when an individual usually is in a lower income tax bracket.

Repeal of the current treatment of fringe benefits will remove the incentive for small businesses to provide these benefits.

A reduction in fringe benefits may cause employees to seek wage increases to cover the after tax cost of these benefits. A tax on employer-paid health insurance and pension contributions also could force more reliance on Social Security retirement and disability programs and ultimately increase taxes necessary to fund these government programs.

The White House Conference recommended various changes in the Federal unemployment insurance program. Proposed changes would cap the tax at the current 6.2 percent tax rate on the first $7,000 of wages of each employee, prevent striking employees from collecting benefits, and require claimants to accept the best job obtainable after eight weeks of collecting benefits. Conference participants also recommended that employers be exempt from paying unemployment taxes on the wages of persons who may never claim unemployment benefits. For example, under current law, the salaries of corporate officers are subject to tax even though they are ineligible for benefits should they become unemployed without cause.

White House Conference participants also voiced their opposition to the concept of equal pay for comparable jobs. Under this "comparable" worth principle each job would be valued to determine its worth to the employer.

Factors which would be considered in determining this value include working conditions, mental demands and accountability while factors which would be ignored include seniority, on-the-job training and education.

Forum participants believe that the only objective method for determining the value of a particular job is the wage or salary placed on the job by the market place. The comparable worth concept is not only philosophically invalid but would pose substantial problems for small firms. Small businesses, unlike larger firms, have neither the funds nor the expertise to perform the job evaluations required by the concept.

The White House Conference issued two recommendations concerning labor law reform. The first advocated repeal of the union shop provision of Section 8(a)(3) of the Labor Management Relations Act in order to allow employees full freedom in determining whether to join a union. The second recommendation voiced opposition to proposed legislation to amend the National Labor Relations Act. According to its proponents, the proposed legislation would eliminate a practice in the construction industry known as double-breasting. Under a typical double-breasting arrangement, a company which has negotiated a labor agreement with a construction union establishes a related company which is operated on a nonunion basis. The nonunion affiliate

The proposal would actually pressure contractors to go totally union thus denying them needed flexibility to employ both union and nonunion employees. The bill also would deny freedom of choice to employees to decide whether or not they want to be represented by a union. The employees of the nonunion company would be automatically subject to the decision made by employees of the union company with regard to such important matters as work rules, wages, and employment conditions.

RECOMMENDATION 4 No Government Mandated Employee Benefits

There should be no government mandated employee benefits, such as employer-paid health benefits, parental leave, disability leave, etc. Specific actions should include, but not be limited to:

a. Congress should prohibit the states from mandating employee benefits;

b. Congress should reject parental and disability leave legislation, such as H.R. 4300 and S. 2278;

c. Congress should reject proposals to mandate medical coverage.

Business supports creative efforts in the private sector to identify new and voluntary approaches to enable working parents to fulfill their job and family responsibilities.

In the past, Federal and state governments have established incentives to encourage employers to provide employee benefits. Recently, however, legislation has been passed which has determined which employees must be covered by benefit plans and what benefits must be provided to employees.

This new trend can be seen in legislation and legislative proposals in the health care area. State legislation has

required coverage for certain health care providers (e.g., chiropractors and midwives), certain illnesses (e.g., substance abuse), and the extension of employees health insurance to cover persons other than current employees (e.g., divorced spouses of employees, former employees, or their dependents).

At the Federal level, the Consolidated Omnibus Budget Reconciliation Act of 1985 requires employers with 20 or more employees and with an employer-sponsored health plan to continue coverage for divorced spouses, widows, and certain dependents. Recent Federal legislative proposals would have required health insurance policies to cover preventive pediatric services for children and to continue health benefits to workers on leave for parenting or medical purposes. This proposal also would have guaranteed the employee's job after a mandated four to six month leave period.

Mandated benefits are a disproportionately larger burden on small businesses. Larger businesses, in increasing numbers, are relying on self-insurance in providing mandated employee benefits. On the other hand, small businesses rely to a greater degree on internal funds to expand and innovate and therefore do not have sufficient funds to provide for self-insurance or cover the increase in payroll costs which results from mandated benefits.

Small businesses generally experience higher employee turnover rates than larger firms. To the extent that mandated benefits require coverage for groups other than current employees, small businesses are unfairly burdened. The addition of mandated benefits also results in additional administration, paperwork and training, especially for multi-state employers which must comply with varying state mandates.

RECOMMENDATION 5 Alternatives to the Current Social Security System

We recommend that all possible alternatives be explored to mitigate the effect of Social Security obligations on small business, including, but not limited to enhancing the role of private retirement mechanisms, expanding coverage, removing non-retirement programs, limiting COLA's, increasing retirement ages and permissible earnings, and setting up a body appointed by the President and Congress that would consider the Social Security system against the background of total long-term retirement needs and would include substantial input by the small business community.

The Social Security system provides benefits when workers retire, become disabled, or die. The program is financed by revenues from payroll taxes paid by matching employer and employee contributions. A study by the U.S. Chamber of Commerce concluded that Social Security taxes, as a percentage of gross payroll, increased from 1.4 percent in 1951 to 6.6 percent in 1984. During the same period, private pension contributions went from 3.6 to 4.7 percent, an increase of only 1.1 percent. Employer and employee contributions to Social Security are scheduled to rise further.

In 1986, employers and employees each contributed 7.15 percent of gross wages, up to $42,000 per employee. By 1990, the tax rate is scheduled to increase to 7.65 percent of gross wages and the taxable wage base will increase to $51,000.

The 1986 Social Security Trustees Report has concluded that, under four sets of actuarial assumptions ranging from optimistic to pessimistic, the Old Age and Survivors Insurance Trust Fund and the Disability Insurance Trust Fund will remain solvent over the next five years. The report also concluded that these trust funds would remain solvent over the next 75 years except under the most pessimistic set of assumptions. Notwithstanding these findings, many workers do not expect to receive benefits from the system. This lack of confidence in the Social Security system is understandable considering that by the year 2000 one of every five Americans will be over 65 and the average life expectancy will be 80. Further, the ratio of active workers to retirees will fall from the present 3:1 to 2:1.

Forum participants believe that the steep and frequent increases in the Social Security taxes place an increasingly heavy burden on small business because the formation and growth of small businesses creates the majority of new jobs. These jobs provide taxes for the Social Security

system. The recommendation advocates changes in the current system in order to lessen this disproportionate burden imposed on small business. Continuation of the present trend of increased rates and base earnings discourages small business formation and growth thereby hindering creation of new jobs.

VI. LIABILITY INSURANCE

A. Statement of the Issues

Insurance policyholders as a group are finding that it is increasingly difficult to obtain affordable and adequate insurance to meet their needs. Several factors have contributed to this situation. The ability of an insurer to issue policies depends on its surplus level. Recently, record liability awards and declining interest rates have decreased insurers' surpluses and reduced the industry's capacity to meet consumers' demand for insurance. Consequently, insurers are raising premiums and lowering coverage.

Another cause of the current insurance shortage is the significant increases in the number of lawsuits and the size of damage awards in recent years. Further, the diverse treatment of liability suits by the courts has created an unstable environment in which insurers cannot predict, with reasonable certainty, the potential dollar amount of damages. This uncertainty has caused insurers to price their policies high and drop certain types of coverage.

The insurance crisis has disproportionately burdened small business. Unlike large businesses, small businesses depend on internally generated funds to maintain and expand their operations. The growing costs of insurance, if available, severely restricts the ability of a small business

to grow and to innovate, thus contributing to decreased productivity and competitiveness.

B. Recommendations

RECOMMENDATION 1 Increasing Insurance Capacity

Enact the Federal Risk Retention Act of 1986 and reduce regulations which reduce capacity for insurance underwriting. Provide for increased capacity available for liability insurance underwriting and risk retention by insurors, risk retention groups and other sources by

(1) removing regulatory barriers to placement of reinsurance with off-shore, foreign, and surplus-lines reinsurors; and

(2) encouraging state insurance commissioners to a more permissive reception to entrepreneurs and small independent property and casualty insurance entities.

The shortage and high cost of liability insurance have caused some small businesses to seek alternatives to conventional insurance policies. For example, some businesses either self-insure pursuant to a risk retention group in which members of the group insure themselves or join with other businesses to form a group to buy one policy to cover the group. Presently, several states restrict these forms of group insurance.

Adoption of the Federal Risk Retention Act would enable any business to join an insurance pool or purchase insurance as a member of a group, thereby providing small business with an alternative source of liability insurance.

The recommendation also calls for the removal of needlessly restrictive and overly conservative regulation in the

insurance industry. For example, the National Association of Insurance Commissioners have adopted policies which limit or prohibit reinsurance with "non-admitted" sources such as foreign and surplus line reinsurers and risk retention facilities. Reinsurance provides coverage for primary insurance carriers by indemnifying such carriers for all or part of specified losses. The recommendation would provide additional sources of reinsurance thereby increasing the availability of reinsurance at lower prices. The recommendation also advocates less restrictive standards for entry into the insurance industry by entrepreneurs and small insurance companies.

RECOMMENDATION 2 Product Liability Reform

The enactment of state and Federal legislation expressing the spirit and intent of S.B. 2760 as considered by the 99th Congress.

The present system for resolving product liability disputes and compensating individuals injured by defective products is costly, slow and unpredictable. The unpredictability and inefficiency of the system contribute to the increasing cost and unavailability of liability insurance.

Senate Bill 2760 contains a number of significant reforms to the product liability system. The measure would impose a uniform liability standard for product sellers and would eliminate joint and several liability for noneconomic damages,

such as damages for pain and suffering. A defendant's liability for pain and suffering damages would be limited to his percentage of responsibility for the harm as determined by the trier of fact. With respect to punitive damages, a claimant must meet a higher burden of proof by establishing that the injury was the result of a conscious, flagrant indifference to the safety of product users. The bill includes a new expedited settlement system that creates incentives for both plaintiffs and defendants to settle claims. Under this new system, damages for pain and suffering would be limited to a maximum amount of $250,000 when a settlement offer is rejected. This maximum is imposed only if the settlement offer equals an injured person's actual economic losses that are not reimbursed by other sources (such as workers' compensation benefits) plus $100,000 for pain and suffering.

These reforms would reduce the excessive cost of product liability claims and substantially shorten the time in which it now takes to litigate a product liability claim. The uniform liability standards and the settlement system would substantially reduce the now unpredictable liability faced by manufacturers and product sellers. These measures would reduce significantly the cost and increase the availability of insurance for small businesses.

RECOMMENDATION 3 Enactment of Legislation Limiting Directors' Liability

It is recommended that the Delaware D&O [Directors and Officers] Liability Law be adopted by all the states and that Congress consider adopting similar provisions at the Federal level, but with an automatic sunset provision that requires readoption by the stockholders periodically.

The Delaware Supreme Court in Smith v. Van Gorkom, 488 A. 2d 858 (1985), held independent directors personally liable for grossly negligent actions undertaken in good faith in a friendly acquisition. Insurance coverage for directors has become increasingly unavailable and premiums and deductible amounts have increased substantially since that decision. The decision also has made qualified persons reluctant to serve as independent directors.

These recent changes in the market for directors' liability insurance prompted Delaware to amend its General Corporation Law to permit a corporation to eliminate the legal liability of directors for violations of their duty of care. The elimination of the liability may be included in the corporation's original certificate of incorporation or added to the certificate of an existing corporation if approved by the required percentage of shareholders.

Enactment of legislation comparable to the Delaware law should permit small companies to attract and retain highly qualified directors. The legislation should allow companies to more readily obtain director's liability insurance providing higher coverage and fewer policy exclusions at a lower cost.

RECOMMENDATION 4 Adoption of the 1986 White House Conference on Small Business Final Recommendations

The Forum enthusiastically endorses the number one recommendation of the 1986 White House Conference on Small Business concerning tort reform/liability insurance with certain amendments. The recommendation, as amended, reads as follows:

Civil Justice Reform

Because the liability insurance crisis in the United States has not only become a life and death sentence to many small businesses, but also is changing adversely our way of life, we must pursue a four pronged effort at reform: civil justice reform; uniform standards for product, professional and commercial liability; regulation of the insurance and re-insurance industries; and viable affordable alternatives to liability coverage.

We, therefore, strongly urge the President, the Congress, and the state legislatures, to implement the following action as a vitally important step in alleviating the problems of availability and affordability of liability insurance to small business in America:

A. Civil Justice Reform

1. Return to a fault based standard of liability.

2. Base causation findings on credible scientific and medical evidence and opinions.

3. Eliminate joint and several liability in cases where defendants have not acted in concert.

4. Limit non-economic damages (such as pain and suffering, mental anguish or punitive damages) to a fair and reasonable maximum dollar amount, not to exceed $250,000 in any case.

5. Restrict punitive damage awards to cases of willful and malicious conduct. The amount awarded shall go to a governmental trust fund, not the plaintiff.

6. Limit attorneys' contingency fees to reasonable amounts on a sliding scale.

7. Reduce awards in cases where a plaintiff can be

compensated by certain collateral sources to prevent windfall double recovery.

8. Prior to actual trial of any civil action, the only statement as to specific dollar amount claimed shall be limited to any minimum amount required to establish the jurisdiction of the forum in which the claim is made, leaving any additional amount to that which the proof at trial may show; in any civil action any party may make an offer of settlement to any other party and if such other party rejects such offer and thereafter obtains a judgment less favorable than the rejected offer, the rejecting party shall pay the offering party all of the latter's legal fees and costs in addition to paying his own.

9. Impose a uniform, reasonable statute of limitations and repose in all tort actions; and hold defendants to the state-of-the-art in existence at the time the product was manufactured or the service was performed.

10. Provide for periodic instead of lump sum payments for future medical care or lost income.

11. Encourage use of alternative dispute resolution mechanisms to resolve cases out of court.

12. Provide for citizen participation in state bar association matters to include conduct review and rule making.

B. Federal Standards for Product, Professional and Commercial Liability:

Establish a uniform standard of fault based product, commercial, and professional liability which incorporates provisions cited in "Civil Justice Reform" above.

C. Availability and Affordability of Liability Insurance and Re-Insurance:

1. Review McCarran-Ferguson Act of 1945 as it applies to state regulation of insurance and the industry's limited exemption from anti-trust laws.

2. Promote the establishment of joint underwriting associations and assigned risk pools.

3. A minimum of 60 days notice should be required for an insurer to non-renew a policy or to increase its unit premium by more than 25 percent. Mid-term cancellations should be prohibited and premiums should be based on experience ratings.

4. Promote tax deductible self-insurance through risk pooling and other group arrangements, including the expansion of The Risk Retention Act of 1981.

5. Legislate a self-insurance system that would allow small businesses to pay premiums into a fund with pre-tax dollars which could be used for no other purpose than the payment of claims, with the fund being regulated in the same manner as any other insurance company.

6. Require the insurance industry to make complete financial disclosures by lines of insurance, so that Congress, state legislatures, and state insurance commissioners may call on it at any time.

Reforming the tort system to provide a stable environment in which small business and insurers can function should result in more reasonable insurance costs, legal costs and access to liability insurance coverage. Consequently, firms should have more capital available to maintain and expand their businesses and to perform the research and development needed to develop and market new technology.

VII. FORUM PARTICIPANTS

Academics

Buck, James (East Carolina University/Buck Supply Co.)
Jennings, Richard (University of California School of Law, Berkely)
Tenenbaum, Bernard (Snider Entrepreneurial Center - The Wharton School)
Wesley, Roland (Carlinshar & Associates d/b/a/ Carlinshar Institute)

Accountants

Abo, Martin (Abo & Vris, P.A.)
Ashcraft, Kenneth (Benson & Neff, CPA)
Botello, Leopoldo (L. P. Botello, Jr. CPA)
Charpentier, Richard (Smith, Batchelder & Rugg)
Gage, Fred (Baden, Conrad, Gage & Schroeder)
Gillman, Jeffry (Florida Institute of CPA's Health Benefit Trust)
Goldstein, Alan (Touche Ross & Co.)
Hartman, Brian (Brian F. Hartman, CPA)
Hoover, James (Lathan, Lumsden, McCormick and Co.)
Montgomery, Z. (Rogers, Brigman, Peterson & Co.)
Nemes, Daniel (Nemes, Auen & Lefdo, PC)
O'Halloran, James (Arthur Andersen & Co.)
O'Neill, James (Hausser & Taylor, CPA's)
Spira, Herbert (Arthur Anderson & Company)
Staab, Charles (Pennichuck Corporation)
Sunderland, Zell (Diamond, Sunderland & Co., CPA)
Turner, James (James W. Turner & Company)
Washecka, William (Arthur Young & Company)
Wolfe, Dorothy (Wolfe & Wolfe, CPA's)
Wong, David (Magna Pacific Investments)

Congressional Staff

Bodenlos, Bill (Subcommittee on Telecommunications, Consumer Protection and Finance)
Coggin, David (Legal Assistant to Congressman Cobey)
Jarretts, Laurie (Subcommittee on Telecommunications, Consumer Protection and Finance)
Williams, Stephen (U.S. Senate Committee on Small Business)

Federal Agency Staff

Bookey, Jack (U.S. Securities and Exchange Commission)
Bryson, Charles (U.S. Securities and Exchange Commission)
Ohri, Bonnie (U.S. Chamber of Commerce)
Opper, Jan (U.S. Department of Housing & Urban Development)
Ou, Charles (Office of Research, Small Business Administration)
Stockwell, Eleanor (Board of Governors of Federal Reserve System)
Sullivan, Patrick (U.S. Department of of Agriculture)
White, Patricia (Board of Governors of the Federal Reserve System)
Zweig, Robert (U.S. Securities and Exchange Commission)

Financial Consultants and Banks

Backlund, B.F. (Backlund-White, Inc.)
Carr, Bill (Senteco, Inc.)
Chambers, J. Richard (Nashville CityBank & Trust Company)
Franceschini, Jose A. (North Puerto Rico Local Development Co., Inc.)
Hammersley, James (Small Business Administration)
Hayhoe, Celia (Personal Planning Service, Inc.)
Indingaro, Joyce (Florida National Bank)
Kravitz, Barbara (The BankHouse Exchange Incorporated)
McCall, James (Miller & Schroeder Financial, Inc.)
McGee, Robert (The Carlton Group)
Mendelson, Alan (Aetna Life Insurance Co./Bond Investment Department)
Slater, John (Asset Services)
Summers, Carter (Consultant - CPA)
Wachtel, Bonnie (Wachtel & Co., Inc.)
Wickiser, Susan (IDS Financial Services, Inc.)

Lawyers

Barnes, Willie (Manatt, Phelps, Rothenberg, Tunney & Phillips)
Barnett, Barry (Johnson and Lanphere, P.C.)
Budd, Martin (Day, Berry & Howard)
Cherin, Richard (Kirsten, Freidman & Cherin)
Coles, Lawrence (McBride, Baker & Coles)
Colish, Faith (Faith Colish, A Professional Corporation)
Daitz, Ronald (Weil, Gotshal & Manges)
de Haaff, Stuart (Buchalter, Nemer, Fields, Chrystie & Younger)
DeWeese, Thomas (Cross, Marshall, Schuck, DeWeese, Cross & Feick, Professional Corporation)
Eaton, Mark (Lane & Mittendorf)
Eppler, Klaus (Proskauer, Rose, Goetz & Mendelsohn)
Foremny, Brian (Kirkpatrick & Lockhart)
Gruber, Misty (Sachnoff Weaver & Rubenstein, Ltd.)
Hale, Lola (McBride Bafer & Coles)
Jackley, Mary (Pillsbury, Madison & Sutro)
James, V. Joseph
Johnson, Franklin (Counsel, Edes & McNally, Inc.)
Keller, Stanley (Palmer and Dodge)
Klein, Stephen
Lalor, Owen (Watkins Ludlam & Stennis)
Morgenstern, Marc (Kahn, Kleinman, Yanowitz & Arnson Co., L.P.)
Noone, Charles (McCarty, Noone & Williams)
Petillon, Lee (Petillon & Murray)
Pierno, Anthony (Memel, Jacobs, Pierno, Gersh & Ellsworth)
Pugh, Roger (Edwards & Angell)
Rachlin, Alan (DeBroeck & Rachlin)
Rice, Denis (Howard, Rice, Nemerovski, Canady, Robertson & Falk)
Rollinson, Mark (Rollinson and Zusman)
Rosen, Louis (Adams, Fox Adelstein & Rosen)
Seelig, Carol (Abramson and Fox)
Slichter, Donald (Orrick, Herrington & Sutcliffe)
Somers, Jeffrey (Gadsby & Hannah)
Staples, Lyle
Stockmar, J. Brian (Morrison & Foerster)
Tarzwell, Brice (McAfee & Taft, A Professional Corporation)
Thompson, Bob (Bass, Berry & Sims)

Small Business Persons

Barr, Eric (Weiner & Company)
Cassagnol, Francois (International Small Business Investment Limited Partnership Co.)
Coughlin, Paul (Washington Aluminum Co.)
Curtis, Stuart (Curtis Machine Company, Inc.)
Davidson, Michael (Wind River Energy Corporation)
Deans, Robert (Formsmart, Inc.)
Dietrick, Gerald (Composite Aircraft Corporation)
Duck, Thomas (Ugly Duckling Rent-A-Car System, Inc.)
Erdman, Daryl (College of St. Thomas)
Fulwiler, Stanley (Voxcom Web Printing)
Gordon, Richard (Great American Cookie Co., Inc.)
Herrick Stephen (Import Parts of America Inc.)
Jenkinson, William (Rochester Drapery, Inc.)
Jordan-DeLaurenti, Mary (Jordan-Delaurenti Inc.)
Kelliher, Daniel (Abt Associates, Inc.)
Langiotti, Patricia (Creative Management Concepts)
Malone, Cleyon (John Young Co.)
Manning, K. Kent (Strategic Management Systems, Inc.)
Mastick, Betty (Preferred Associates, Inc.)
Metzner, T.C. (T.C. Metzner dba McDonald's Restaurant)
Nordyke, H. William (Nordyke & Associates)
O'Connor, John (Jack O'Connor's Quality Beef n Seafood Restaurant)
Okinaga, Sam (MGS Hawaii Corporation)
Olson, Oscar (Olson's, Inc.)
Range, Leslie (Pro-Mark, Inc.)
Robinson, Emyre (Barrios Technology, Inc.)
Rorke, Marcia (Mohawk Research Corp.)
Rucker, Jerry (Dooley, Rucker, Maris & Foxman)
Sarkisian, John (RAM Investment Co.)
Schiro, Richard (Dee & Hattie Specialty Cleaners Inc.)
Schundler, Robert (The Schundler Company)
Selwood, Ronald (Metech, Inc.)
Weinberg, Morris (Fibronics International Inc.)

State and Local Government Officials

Cupidore, Calvin (Michigan Strategic Fund)
Jones, Rufus (GRID Inc.)
Rittenhouse, Susan (Maryland State Securities Commission)
Williams, Steve (Nebraska Department of Economic Development)

Trade Groups

Augustine, Donald (RESSI/Rogers & Wells)
Chalpin, Mark (American Institute of Architects)
Coffey, Matthew (National Tooling and Machining Association)
Ferguson, Bruce (American Stock Exchange)
Goldstein, Benson (National Society of Public Accountants)
Gordon, Janet (Comptroller of the Currency)
Lipow, Herschel (American Institute of Architects)
Rothwell, Suzanne (National Association of Securities Dealers, Inc.)
Satagaj, John (Small Business Legislative Council)
Thomas, Diane (AAMESBIC)
Upton, Wayne (Financial Accounting Standards Board)

Venture Capitalists

Avery, C. Stevens (U.S. Venture Development Corp.)
Bannon, Richard (Cardinal Development Capital Fund I)
Birnberg, Jack, (Tappan Zee Capital Corp.)
Greene, Donald (Minority Equity Capital Company, Inc.)
Heizer, E. F. (Heritage)
Mullin, Janis (Ozanam Capital Company - I)
Skornia, Thomas (Triangle Ventures)
Underwood Robert (Northern Capital Corp.)
Weston, Daniel (Corporate Capital Resources, Inc.)
Wicks, David (Criterion Venture Partners)

VIII. EXHIBIT

A. SMALL BUSINESS FINANCING TRENDS: 1976-1985

SMALL BUSINESS FINANCING TRENDS

This brochure is intended to provide participants at the SEC Government-Business Forum on Small Business Capital Formation background material on trends in small business financing. Statistics are provided for the ten-year period 1976 - 1985 for all securities offerings registered under the Securities Act of 1933.

In Summary, the statistics indicate that:

- Amounts registered in initial public offerings (IPOs) increased by over 50 percent in 1985.
- The number of IPOs has been far more volatile in recent years than either total registered issues or the S&P 500.
- IPO registrations of common stock increased by over 40 percent in 1985.
- More than 85 percent of the IPO issuers in 1985 had assets of $10 million or less and over two-thirds had assets of $500 thousand or less.
- Underwriters furtner reduced their participation in bringing small company IPOs to market in 1985.
- The Finance, Insurance and Real Estate industries accounted for almost two-thirds of the value of IPO issues. Together with the Manufacturing and Service Industries, they accounted for the bulk of IPOs.

All of the material presented (excluding Table 1) is derived from the SEC's Registration and Offerings Statistics File, which contains information on all registered offerings since 1970. This file is available to the public on magnetic tape for computer processing.

Jeffry L. Davis
Director of Economic
and Policy Analysis

Figure 1

NET SOURCES OF FUNDS FOR COPRORATE BUSINESS

1976 - 1985

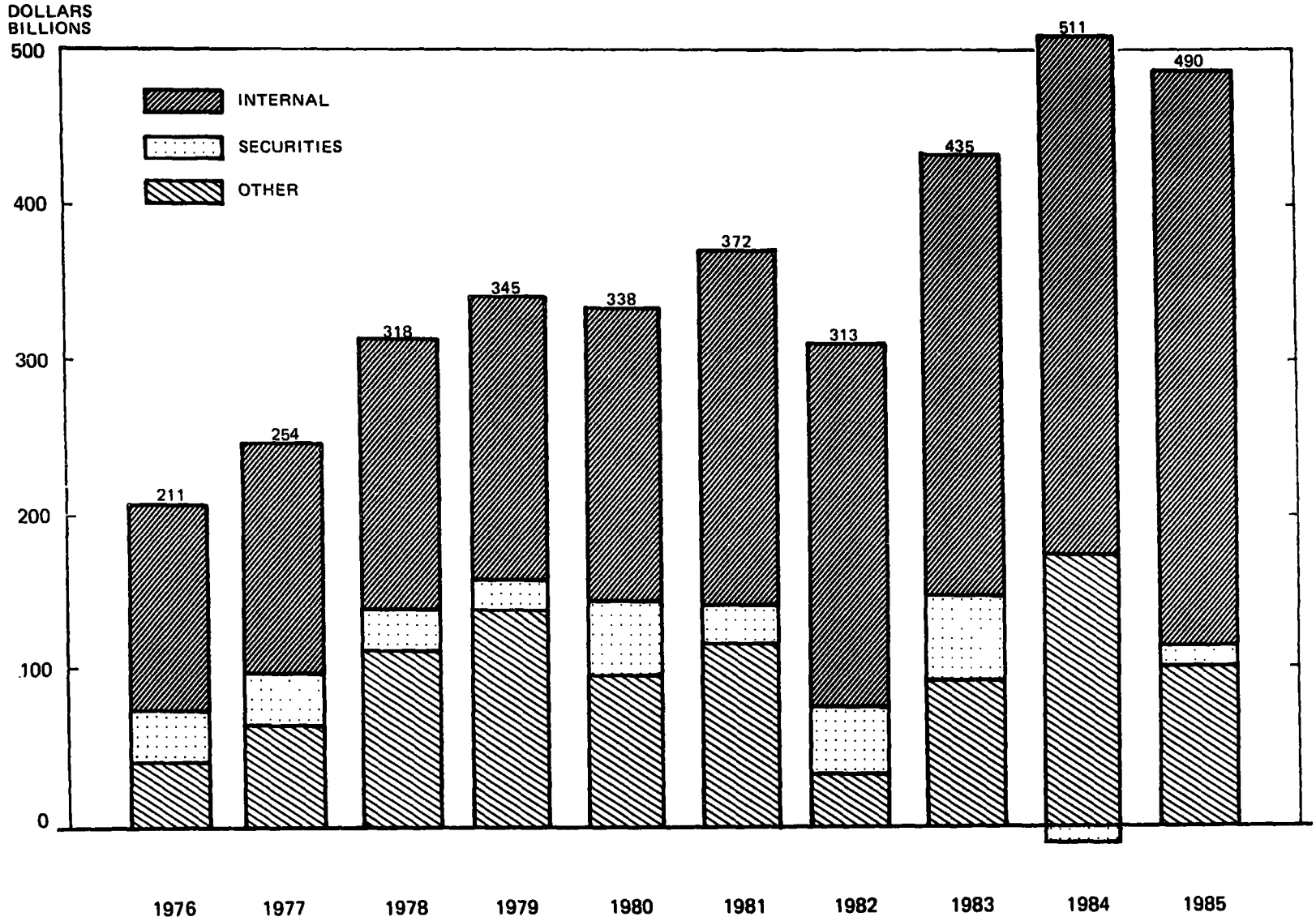


Figure 2

EFFECTIVE REGISTRATIONS FOR CASH SALE

(Value of Offerings: 1976-1985)

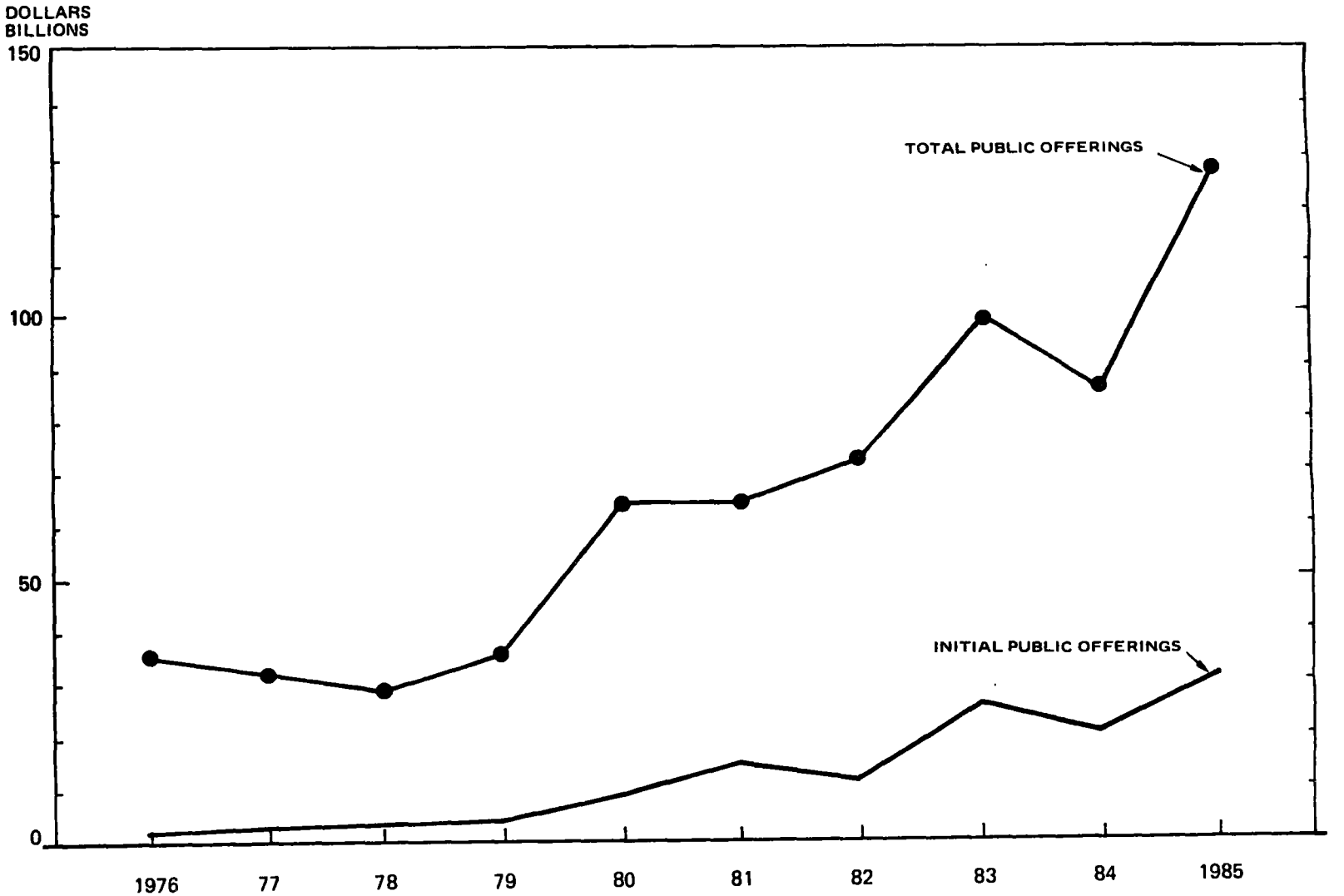


Table 3

IPO COMMON STOCK BY ISSUERS' ASSET SIZE
1976 - 1985
(Millions of dollars)

	ASSET SIZE											
	$500,000 or Less		$500,001 to $1,000,000		$1,000,001 to $5,000,000		$5,000,001 to $10,000,000		$10,000,001 and Greater		Total	
Year	No.	Amount	No.	Amount	No.	Amount	No.	Amount	No.	Amount	No.	Amount
1976	12	$ 38.8	0	$ 0	4	$ 5.7	7	$ 22.3	19	$ 96.4	42	$ 163.2
1977	30	53.4	4	5.0	7	16.5	7	26.0	7	17.3	55	118.2
1978	38	100.0	2	2.1	4	5.5	7	22.4	17	133.7	68	263.7
1979	54	182.0	15	43.8	11	50.2	9	53.6	20	175.0	109	504.6
1980	149	424.2	24	71.9	37	150.1	20	95.1	43	507.5	273	1,248.8
1981	269	1,277.4	34	123.8	120	484.6	43	330.8	79	935.4	545	3,152.0
1982	187	691.4	30	81.0	40	130.1	22	171.2	34	459.4	313	1,533.1
1983	455	1,701.8	51	228.0	125	785.6	78	887.1	191	4,029.6	900	7,632.1
1984	487	1,668.3	24	69.9	84	755.0	36	252.0	90	1,139.6	721	3,884.8
1985	444	$2,956.5	24	$ 71.4	66	$ 247.3	36	$304.3	98	$2,003.2	668	$5,582.7

Source: Registrations and Offerings Statistics File

Prepared by: Directorate of Economic and Policy Analysis
U.S. Securities and Exchange Commission

Figure 3

INITIAL PUBLIC OFFERING INDEX

(Number of Registrations: 1976 - 1985)

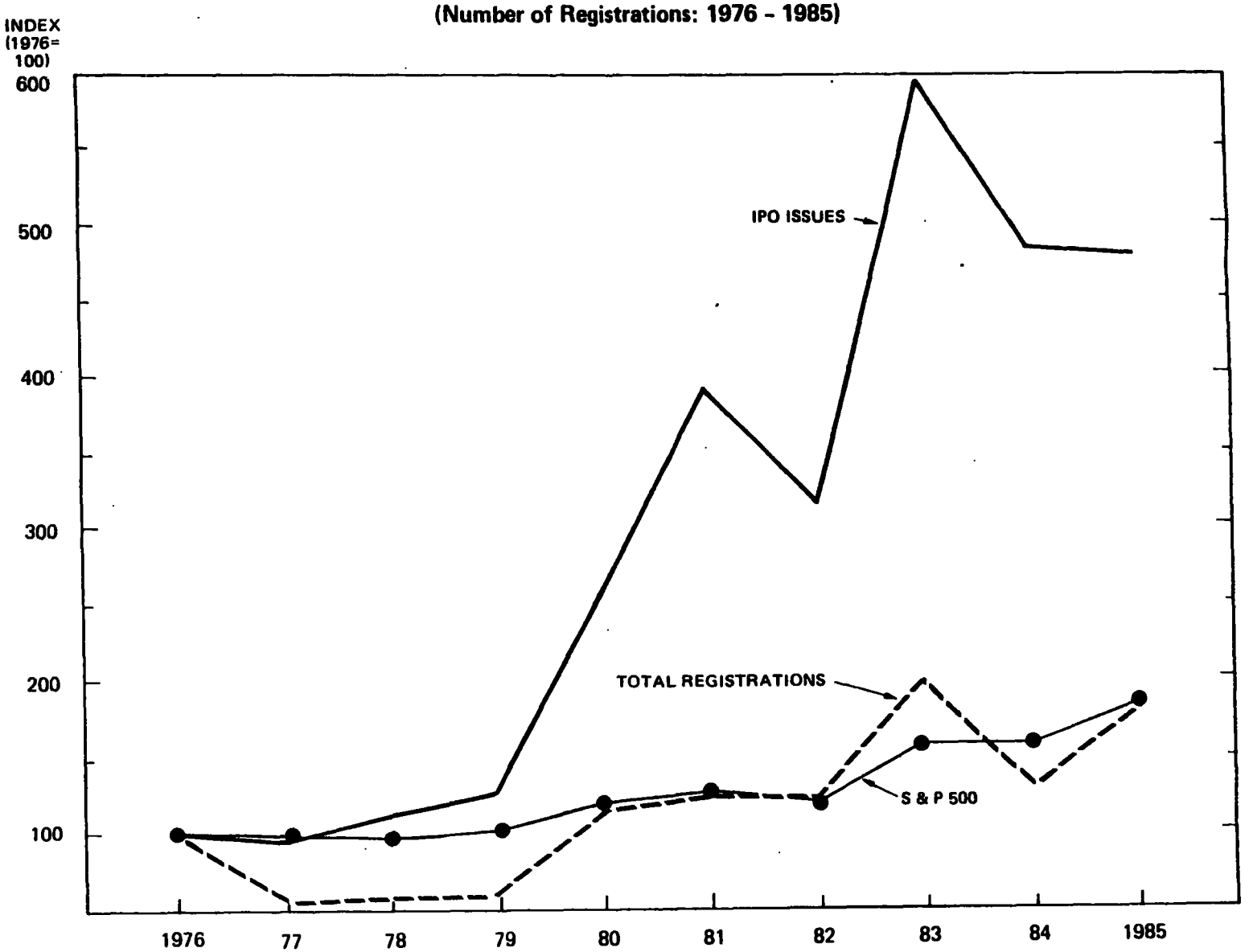


Table 4

VALUE OF TYPICAL COMMON STOCK IPO BY ISSUERS' ASSET SIZE 1/
1976 - 1985
(Millions of dollars)

Year	Asset Size: $500,000 or Less	$500,001 to $1,000,000	$1,000,001 to $5,000,000	$5,000,001 to $10,000,000	$10,000,001 and Greater
1976	$1.0	$0	$1.1	$2.7	$ 5.0
1977	1.1	1.1	2.3	2.6	2.0
1978	1.2	1.1	1.4	3.0	7.0
1979	1.5	2.0	2.0	3.4	5.2
1980	2.0	3.0	3.6	4.6	8.6
1981	2.8	3.6	3.5	6.6	9.0
1982	2.4	2.4	3.0	5.0	5.9
1983	2.5	3.0	4.2	7.5	13.0
1984	2.0	3.0	3.2	4.9	8.1
1985	$1.5	$3.0	$3.5	$6.6	$12.9

1/ Median Offering.

Source: Registrations and Offerings Statistics File

Prepared by: Directorate of Economic and Policy Analysis
U.S. Securities and Exchange Commission

Figure 4

ASSET SIZE OF COMMON STOCK IPO ISSUERS

1985

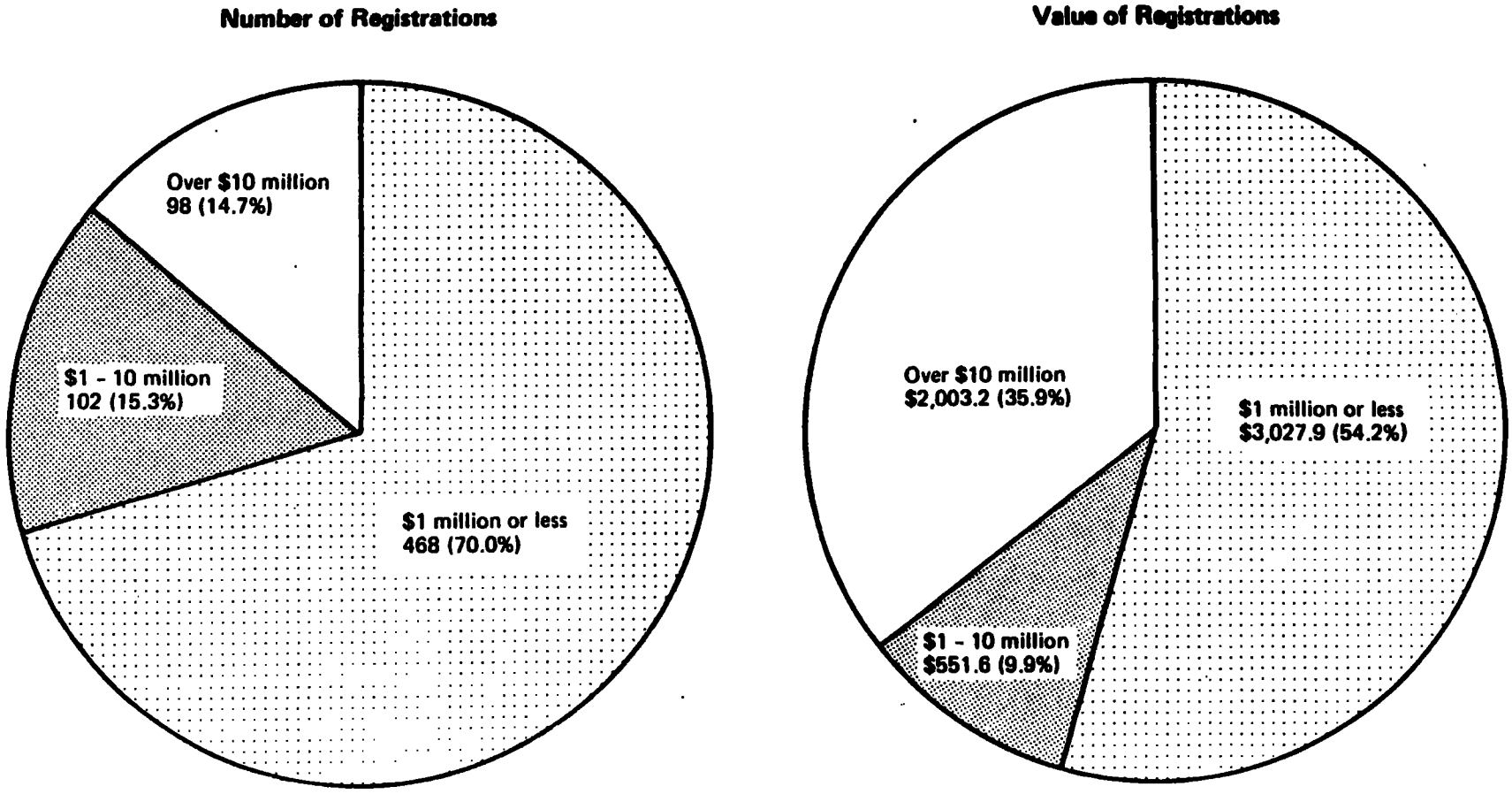


Table 5

SMALL COMPANY IPO ISSUES BY METHOD OF DISTRIBUTION 1/
1976 - 1985
(Millions of dollars)

Year	Underwritten		Agency Best Efforts		Company Direct		Total	
	No.	Amount	No.	Amount	No.	Amount	No.	Amount
1976	7	$ 24.4	0	$ 0	16	$ 42.4	23	$ 66.8
1977	16	43.4	21	21.1	11	36.5	48	101.1
1978	13	27.8	30	76.3	8	26.0	51	130.1
1979	31	142.1	47	143.2	11	44.3	89	329.6
1980	93	413.2	117	261.5	20	66.5	230	741.2
1981	254	1,261.2	177	671.6	35	283.8	466	2,216.6
1982	85	498.6	142	374.7	52	200.4	279	1,073.7
1983	388	2,735.7	237	599.3	84	267.5	709	3,602.5
1984	221	1,229.3	290	990.3	120	525.6	631	2,745.2
1985	182	$2,359.0	237	$727.7	151	$492.8	570	$3,579.5

1/ Registrations of common stock by issuers with assets of $10 million or less.

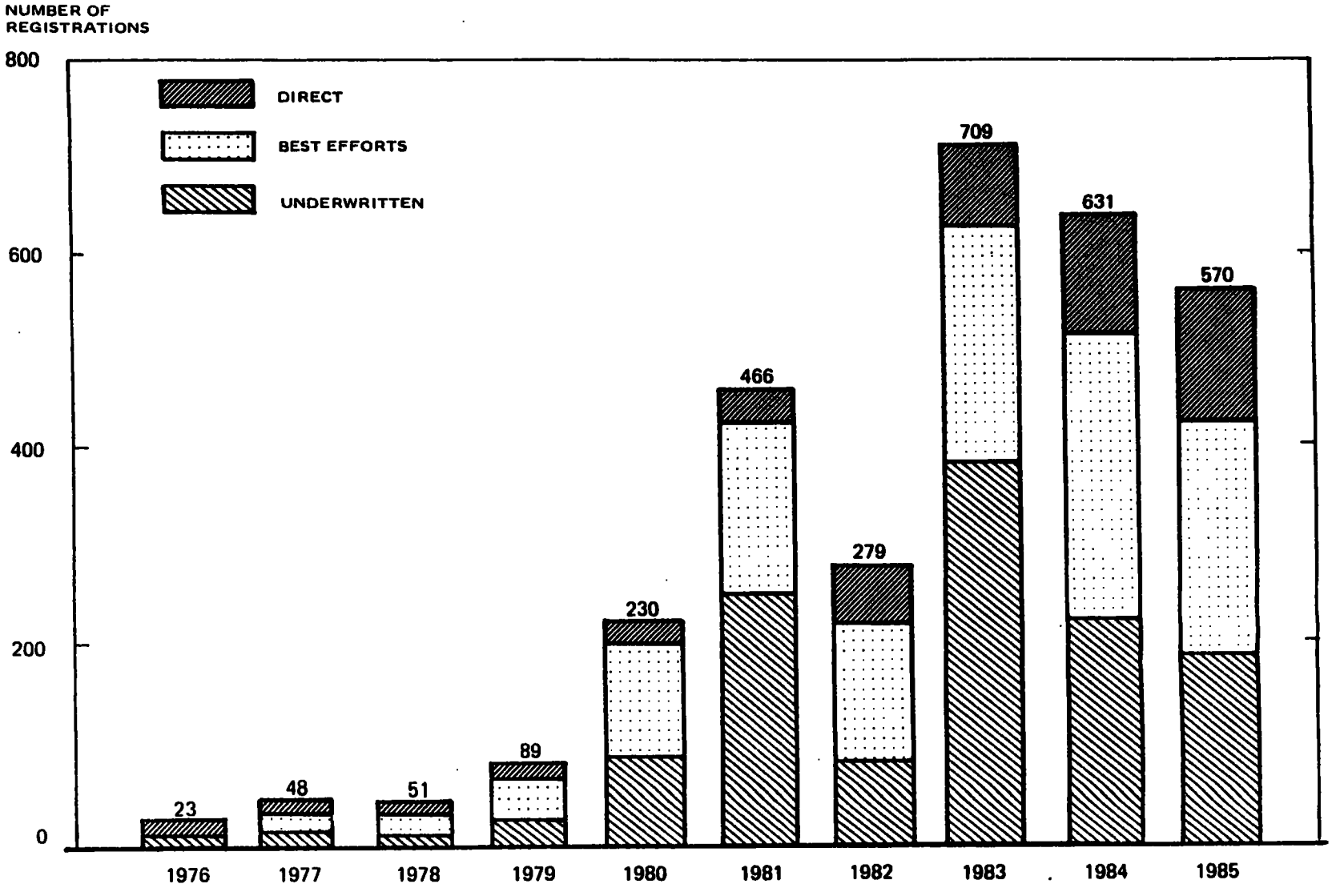
Source: Registrations and Offerings Statistics File

Prepared by: Directorate of Economic and Policy Analysis
U.S. Securities and Exchange Commission

Figure 5

METHOD OF DISTRIBUTION OF SMALL COMPANY IPO ISSUERS[1/]

1976 – 1985



1/ Registrations of common stock by issuers with assets of $10 million or less.