



Hearing on “Legislative Proposals to Improve the U.S. Capital Markets”  
House Financial Services Committee  
Subcommittee on Capital Markets & Government Sponsored Enterprises  
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On behalf of the Small Business Investor Alliance  
[www.SBIA.org](http://www.SBIA.org)



**Good afternoon Chairman Garrett, Ranking Member Maloney, and Members of the House Financial Services Subcommittee on Capital Markets & Government Sponsored Enterprises.**

I am here today representing the Small Business Investor Alliance or the “SBIA”, which is the trade association of lower middle market private equity funds, SBICs, and business development companies or “BDCs” and their institutional investors. SBIA members provide vital capital to small and medium-sized businesses across the country.

My name is Chris Mathieu, Chief Financial Officer and co-founder of Horizon Technology Finance Corporation, an externally managed publically traded Business Development Company, or “BDC”. I am also an original member of the team that founded Horizon’s advisor. Horizon is based in central Connecticut with offices in Northern Virginia and Northern California.

I have been involved in the accounting, finance and venture debt industries for more than 25 years. After earning my Bachelor’s degree in Accounting, I became a Certified Public Accountant and worked with the financial services group of KPMG. My background includes leadership positions here at Horizon, and business development roles in lending to the life science industry at great US based firms such as Transamerica and GATX.

Having serviced as a steward of investors capital for the last 25 years in both the public and private markets and for both institutional and individual investors, I believe I have a wide and deep perspective on the importance of having an advocate among the decision makers within an organization and industry and its underlying sectors.

Horizon is a specialty finance company that lends to and invests in development and growth stage companies in the technology and life science industries. Our investments take the form of secured loans, or “Venture Loans” to companies backed by established venture capital and private equity firms.

Horizon is a leading venture lending platform that has partnered with hundreds of venture capital investors to thoughtfully and creatively provide structured debt products to life science and technology companies. Horizon’s experienced team of investment and operations professionals has been providing debt capital to some of the most exciting companies for decades. The members of the Horizon team have, collectively, originated and invested more than \$3 billion in venture loans to thousands of companies. More recently, since 2004, Horizon has directly originated and invested more than \$1.2 billion in growth capital loans to more than 170 growing companies.

With Horizon’s industry knowledge and proven reliability as a capital source, combined with its long-standing relationships in the venture capital community, the Horizon team shares the optimism of its portfolio companies and their commitment to overcome any obstacles to success.

Horizon's financing solutions are tailored to each company's unique funding needs and business and development plans. Horizon's venture debt products have become a valuable tool in the equity investors' toolbox to fund the growth of its portfolio companies, while maximizing returns on equity. Horizon provides portfolio companies with meaningful debt capital that can be used like equity capital, but that has a much lower cost and dilution to investors and employees. This balance of debt and equity capital makes Horizon a perfect partner for its portfolio companies, their employees and their investors.

Like its portfolio companies, Horizon is optimistic and forward-looking. Horizon balances its inherent optimism with a selective origination and a rigorous underwriting process. Horizon's selective origination ensures that Horizon and its prospects are not spending valuable time and energy when venture debt is not the right solution. This upfront communication serves as a gateway to a smooth underwriting and approval process. For each investment opportunity, Horizon carefully evaluates the company's management team, investors, equity history, technology value, intellectual property and other critical factors. Horizon's goal is not to simply get a deal done, but to provide a successful financing solution that will propel a portfolio company forward.

I am here to support a bipartisan bill called the SEC Small Business Advocate Act of 2015 (H.R. 3784), introduced by Representatives John Carney, Sean Duffy, Mike Quigley and Ander Crenshaw, and co-sponsored by Representative Brad Sherman. I would also like to support the Small Business Capital Formation Enhancement Act introduced by Representative Bruce Poliquin and the Helping Angels Lead Our Startups Act ("HALOS Act"), a discussion draft written by House Small Business Committee Chairman Steve Chabot and Representatives Sinema, Hurt, and Takai. I would like to thank the Subcommittee for examining these bills today.

## **I. The SEC Small Business Advocate Act of 2015**

In a speech given by former Securities and Exchange Commission (SEC) Commissioner Daniel Gallagher, on September 17, 2014, the genesis of the SEC Small Business Advocate Act was born.<sup>1</sup> In his opinion, Mr. Gallagher argued that the SEC does not have an adequate structure in place to consider the views of small businesses. He argued that the SEC consistently overlooks the impact of their decisions on small businesses and this could be a detriment to capital formation.

We agree with Mr. Gallagher's assessment and believe Congress needs to put a permanent structure in place at the SEC to give a stronger voice to small businesses and capital formation issues. The SEC Small Business Advocate Act is the favored approach by the industry to create this new structure.

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<sup>1</sup> Commissioner Daniel M. Gallagher, *Whatever Happened To Promoting Small Business Capital Formation?*, Washington, D.C., September 17, 2014, available at: <http://www.sec.gov/News/Speech/Detail/Speech/1370542976550>.

As drafted in H.R. 3784, the Advocate will give small businesses and small business investors a voice in regard to proposed rules and regulations of the SEC and self-regulatory organizations (SROs) because small business investing is an afterthought in the policymaking process. Moreover, the new Advocate will have the knowledge and input of members of the newly established Small Business Capital Formation Advisory Committee (Advisory Committee) and finally provide a conduit for the ideas raised at the annual Government-Business Forum on Small Business Capital Formation. The new Advocate will have similar powers to the Dodd-Frank created Office of the Investor Advocate, giving small businesses an equal footing with investors in influence over SEC and SRO actions.

**A. The Advocate Will Provide The Small Business Perspective on Proposed SEC and SRO Rulemakings To Lessen the Burden on Small Business and Small Business Investors**

Many rules and regulations propagated and policed by the Commission impose disproportionate burden on small businesses, including accounting rules, securities offering rules, securities resale rules, disclosure rules and others. The myriad of rules and regulations prove costly and lengthy to navigate, often requiring small businesses to hire specialized lawyers and accountants to ensure they are in compliance. While many of these current rules and regulations may be necessary to protect investors, many could be streamlined and scaled for small businesses and small business investors, to ensure the benefits outweigh the costs to economic growth and job creation. The dual mandate at the SEC to protect investors and promote capital formation will be enhanced not hindered by the Advocate.

The Advocate will fulfill a much needed role in providing comments and input on proposed rules and regulations set forth by the SEC and SROs, including the relevant securities exchanges and FINRA. As former Commissioner Gallagher highlighted in his speech in September 2014, the SEC suffers from a dearth of small business comments on proposed rules and regulations, while the SBA's Office of Advocacy rarely has provided input on the impact of SEC rules on small businesses. The Advocate has the ability to bring on skilled staff, hire external experts, and actively reach out through regional roundtables to small businesses and small business investors to gather information on how proposed SEC and SRO rulemakings impact them, and apply the Advocate's expertise to expressing those concerns in an effective way with SEC staff. Having a team dedicated to this mission within the confines of the SEC, but not subject to pressure within the agency, will go a long way to ensure the independent voice of small business and small business investors is heard.

**B. The Advocate will Promote Innovative Ideas For Small Business Capital Formation and Provide an Incubator and Outlet for New Ideas to Congress & the Commission**

The SEC Small Business Advocate Act strengthens the voice of small business at the SEC by making significant changes to the way the SEC hears from small business stakeholders; responds to stakeholder requests; and makes recommendations to Congress and the SEC to improve the ability of small businesses to access capital.

This legislation arms the new Advocate for Small Business Capital Formation with the necessary tools to be the strongest voice possible in the SEC. For example, the legislation charges the advocate to produce an independent, annual report to Congress on its activities and recommendations. This report will provide a summary of the most serious issues encountered by small businesses and small business investors and recommendations for changes to regulations and other guidance that may be appropriate to resolve these problems. Smaller business investors have a much lower threshold for regulatory pain and the SEC needs to understand the challenges of scale when creating policy.

Congress would also benefit greatly from this office. Legislating good policy generally includes technical assistance and input from the regulators and SROs. The technical assistance given to Congress suffers from the same bias and focus on large corporations. Congress would benefit from having small business issues included in both the technical assistance it receives and in the way regulations are crafted when implementing legislation. Better information means better legislation.

The Act makes permanent the Small Business Capital Formation Advisory Committee (on which the Advocate has a permanent seat). The creation of a permanent and independent Advisory Committee will ensure that stakeholders have a seat at the table to respond to rulemakings and create ideas that the SEC can act on to help small businesses. Observing members include other regulatory stakeholders, including the U.S. Small Business Administration, and the state securities administrators. Making this Committee permanent ensures that the Advocate and the Commission generally will have a permanent group of small business investors and small business owners to provide constant feedback, and hold the SEC's feet to the fire. It also mirrors responsibilities of the Dodd-Frank created Investor Advisory Committee, giving the Small Business Advocate the same resources as the Investor Advocate.

The Act improves and makes stronger the Government-Business Forum because in its current form, the Forum is weak and unfortunately most of its ideas are often left for dead. While the Forum has generated a number of helpful improvements that were incorporated into the JOBS Act, the format of the Forum could be greatly improved, and given increased independence from the policy objectives of the Division of Corporation Finance. In addition, outreach and promotion of this event could be greatly strengthened to increase the number of stakeholders in attendance and provide enhanced educational opportunities from outside stakeholders. This event may then be transformed into what Congress intended when it mandated it in 1980.

Currently both the Advisory Committee on Small Business Capital Formation and the Government-Business Forum are under the stewardship of the Office of Small Business Policy, run by the Division of Corporation Finance. While the SEC has performed a noteworthy job in shepherding the JOBS Act rulemakings across the finish line, while also engaging in a solid stewardship of the Committee and the Forum, an independent office running these groups is critical. An independent office, in the form of the Advocate, will ensure that the issues raised by these groups are brought to the highest levels of the Commission, and in Congress, without being subject to the influence of the SEC staff and divisional directors. Institutional inertia and bias in favor of focusing efforts on the largest institutions must be overcome.

The Office of Small Business Policy will continue to have a complementary and critical role at the Commission, as it will continue to assist small businesses and small business investors seeking to navigate the regulatory requirements of setting up a Regulation A+ or equity crowdfunding offering, as well as assisting the SEC staff in drafting proposed rules and regulations, such as those under any future JOBS Act 2.0. In sum, the Office of Small Business Policy will be complementary to the Small Business Advocate office in that it will not be a policy creation and promotion office (like the Advocate), but an active implementor of the new proposals championed by the Advocate, the Committee and the Forum. It is far too easy and far too common that small business interests are pushed aside and permanently delayed in favor of issues focused on the very large institutions regulated by the SEC.

## **II. The Office of the Advocate for Small Business Capital Formation will Assist Horizon & Other Small Business Investors**

A new Small Business Advocate office will be a significant help to Horizon and other small business investors that make up SBIA's membership. First, there are a number of current examples where an Advocate would be helpful to encourage the Commission to take action to encourage change to SEC rules that would promote small business capital formation. Second, the Advocate could have encouraged helpful changes to the JOBS Act rulemakings that could have assisted small business investors, such as Horizon, had they been implemented. Finally, the new permanent Small Business Capital Formation Advisory Committee could and should include firms like Horizon that have an impact on small business investment.

### **C. The Office of the Advocate Could Assist in Making Regulatory Changes for BDCs and Advisers to Small Business Funds that Would Encourage Small Business Capital Formation**

The Small Business Advocate would be helpful to BDCs, like Horizon, by raising regulatory issues and helping Congress draft legislation to modernize BDC regulations. For example, there are a number of offering reforms impacting BDCs that would greatly help the BDC capital raising process and make it more flexible, more efficient, and less expensive, while making little impact on investor protection and transparency. This year as Committee Members drafted and passed out of the Committee reforms that modernize the capital raising process for BDCs, the Advocate would have been an independent voice for the industry and more helpful to Congress as it drafted these reforms.

Similarly, many private fund advisers that invest in small business, including SBIA's members, have been faced with a burdensome registration regime, and investment adviser regulations designed for retail customers, rather than investing in small businesses. A Small Business Advocate, as proposed in this legislation, could be a champion for those small business fund advisers, to ensure that the rules they are following make sense for the type of investing they are engaged in.



**D. The Office of the Advocate Could Encourage Changes to the JOBS Act that Assist Small Business Investors, including BDCs**

In the final release of the regulations implementing the JOBS Act, a number of changes and issues remain that were not appropriately addressed by the Commission. For instance, the SEC chose in the final rulemaking, not to permit BDCs to utilize the new Tier 2 of Regulation A+. This is despite the fact that Regulation A+ would be useful for new “startup” BDCs seeking to raise capital before going public. These “startup” BDCs could be a useful way to raise capital to invest in small businesses, but are unable to use the new rule. A Small Business Advocate could raise these issues to the Commission in future rulemakings, and ensure that the potential for capital raising for small business investors would not be lost. BDCs should also have a role on the Small Business Capital Formation Advisory Committee, given the role Congress gave them in promoting investment in America’s small businesses. The lack of a clear role on the Advisory Committee for BDCs should be remedied in H.R. 3784.

**III. SBIA Supports the HALOS Act, Which Will Facilitate the Connection of Small Business Investors with Funds Deploying Capital Into Small Business**

SBIA also supports the Helping Angels Lead our Startups Act (“HALOS Act”). This legislation helps address a problematic issue in the raising of private capital surrounding the definition of general solicitation, and the matching of investors with startup investment opportunities. A number of trade organizations in the private equity and small business investor space face similar issues to the venture and angel community, in facilitating the meeting of potential limited partner investors (institutional and accredited investors), and general partner investment managers. Unfortunately, under the Rule 506(b) private placement exemption in Regulation D, one may run afoul of the exemption if a manager of a small business fund does not have a substantive, preexisting relationship with the potential investor. There is significant lack of clarity about what constitutes a substantive preexisting relationship. The HALOS Act provides essential protection for trade associations that facilitate such meetings between investors and fund managers, and would be greatly helpful in cultivating small business capital formation. More importantly, it provides protection for fund managers engaged in meeting potential investors at these events. SBIA encourages the Committee to pass this legislation to provide associations like SBIA and our fund manager members the protection they need.

**IV. SBIA Supports The Small Business Capital Formation Enhancement Act**

This legislation, put forward by Representative Poliquin, would provide a needed update to the annual Government-Business Forum on Small Business Capital Formation at the SEC. As highlighted previously in our testimony, this Forum results in many helpful suggestions on changes that can be made in the securities rules. However, the suggestions are often left for dead and not acted upon at the SEC. Congressman Poliquin’s legislation would require the SEC to respond in a public statement to each of these suggestions, ensuring that the SEC acknowledges the receipt of these suggestions, and explains why they will adopt or not adopt these suggestions. SBIA strongly supports the passage of this legislation.