

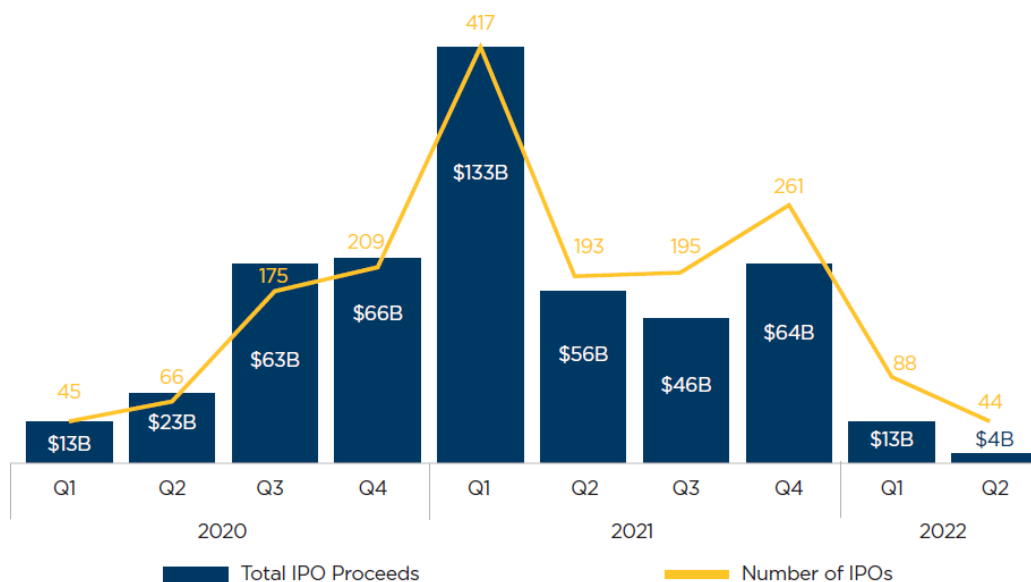
SEC's Capital Formation Agenda 2023

The SEC has three primary tasks: protect investors, maintain fair and orderly markets, and facilitate capital formation. The SEC's regulatory focus in the last several years has concentrated mostly on investor protection and market structure. The SEC's Office of the Advocate for Small Business Capital Formation recently issued its [2022 annual report](#) and this paper highlights recent trends and the group's policy recommendations for Congress and the SEC to consider in 2023.

2022 Capital Formation Trends

Initial Public Offerings (IPOs)

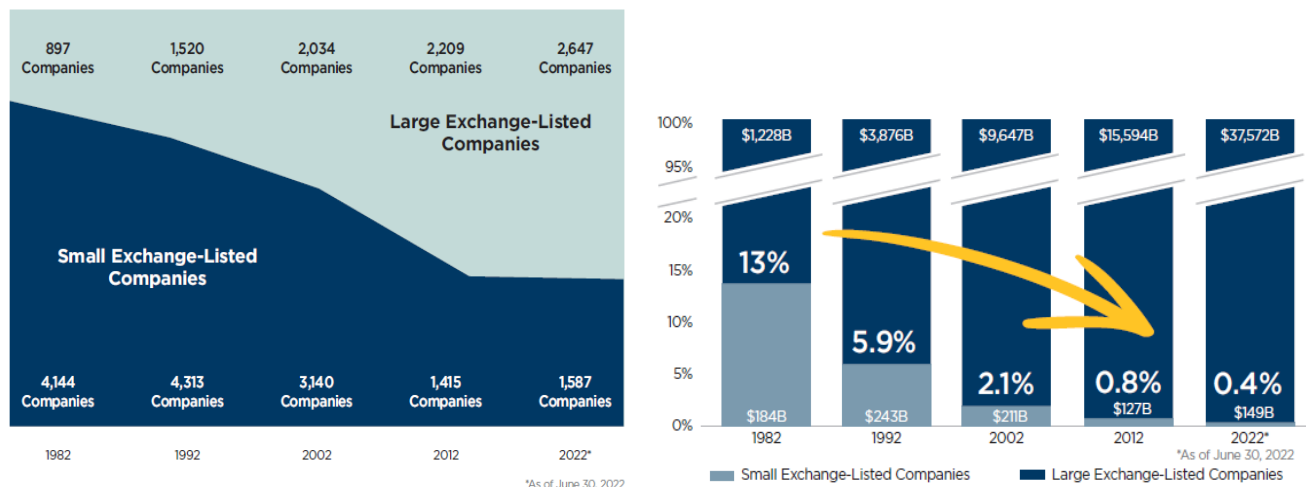
While 2020 and 2021 were busy years for the IPO market, there was a steep falloff in the first half of 2022 in terms of both volume and amount of IPOs and other public offerings. A combination of factors, including macroeconomic conditions, tighter monetary policy surrounding inflationary pressures, geopolitical challenges, supply chain disruptions, a tight labor market, and recent SEC rulemakings, has contributed to the significant decline in the number of IPOs.



Source: Office of the Advocate for Small Business Capital Formation, Annual Report Fiscal Year 2022

Small Public Companies

The number of small exchange-listed companies (less than \$250 million market capitalization) has drastically declined over the last several decades and the number of large exchange-listed companies continues to increase. The aggregate market capitalization of small exchange-listed companies also has declined.



Source: Office of the Advocate for Small Business Capital Formation, Annual Report Fiscal Year 2022

Despite the SEC's expanded definition of smaller reporting companies (SRCs), the number of SRCs has declined, although that number as a percentage of all reporting companies has risen slightly.

Resource from FORVIS: [SEC Relief for Smaller Reporting Companies](#)



Source: Office of the Advocate for Small Business Capital Formation, Annual Report Fiscal Year 2022

Compliance with regulatory requirements includes fixed costs that are not scalable for small public companies. (The figures exclude external audit fees.)

Average Internal Annual Sarbanes-Oxley Act Compliance Costs¹²⁸

	2021	2022	Year-over-year trend	Percent change
Large accelerated filer	\$1,328,300	\$1,450,800	↑	9%
Accelerated filer (excluding SRCs)	\$1,221,900	\$1,232,400	↑	1%
Emerging growth company	\$1,408,300	\$1,370,200	↓	-3%
Smaller reporting company	\$1,126,000	\$1,433,600	↑	27%

Source: Office of the Advocate for Small Business Capital Formation, Annual Report Fiscal Year 2022

Exempt Offerings

Companies are electing to stay private longer for several reasons, notably cost, increasing regulation and disclosure requirements, market volatility, and pressures for stable quarterly results. As this trend is likely to continue, access to capital for business growth is critical. Private placements are unregistered, nonpublic securities offerings that rely on an available exemption from SEC registration. In recent years, on an annual basis the amount of capital raised in exempt offerings is twice the size of registered offerings. See [Appendix](#) for market size and a summary of exempt offerings.

Small Business Capital Formation Committee Recommendations

Accredited Investor Definition

- Expand the definition to include additional qualitative professional criteria and offer more opportunities to demonstrate financial sophistication as an alternative to the income and net worth thresholds.
- Consider the impact any change to the income and net worth thresholds would have on minorities and populations located in rural areas.
- Create a new exemption for local and/or micro-investments that would not be limited to accredited investors.

Resource from FORVIS: [SEC Updates Accredited Investor Definition](#) (August 2020)

Regulation Crowdfunding

- Increase the offering size threshold under which an issuer may meet its financial statement requirements by providing financial statements and income tax return information certified by the principal executive officer.
- Amend Section 4A(f)(3) of the Securities Act to modify the provision that prohibits investment companies (or excluded companies under §3(b) or 3(c) of the Investment Company Act) from using the Regulation Crowdfunding exemption.

Regulation D & Form D

- Do not make the Form D notice and associated requirements more burdensome, which will deter small businesses from relying on this safe harbor.

Support for Emerging Fund Managers

- Amend the “venture capital fund” definition under Rule 203(l)-1 of the *Investment Advisers Act of 1940* to treat venture capital (VC) funds’ investments in other VC funds to be “qualifying investments.” This would allow these investments to be excluded from the 20% nonqualifying basket.
- Increase the current 100 beneficial owners limit for funds that rely on the exemption in §3(c)(1) of the *Investment Company Act of 1940*.
- Increase the limit on investors in, and expand the \$10 million maximum size of, the “qualifying venture capital fund” exemption in §3(c)(1) of the *Investment Company Act of 1940*.

SEC’s Climate-Related Disclosure Proposal

- Provide a more detailed cost-benefit analysis, including the impact that the proposal would have on smaller public and private companies.
- Scale and delay the compliance requirement for emerging growth companies and SRCs.
- Expand the safe harbor for liability for Scope 3 emissions disclosures to include all climate-related disclosures.
- Eliminate the attestation requirement, as it would be costly and burdensome, and it will delay reporting. Instead, require the information to be furnished, rather than filed.
- Tailor the requirements for certain industries.
- Re-evaluate the timing for filing climate-related disclosures since the information may not be available in time for a company’s annual report on Form 10-K.
- Provide a longer implementation time frame for the new rules so that smaller companies would have more time to transition, work through implementation, and comply with the new requirements.
- Consider incentives for companies that are providing climate-related disclosures, rather than penalties for noncompliance.
- Consider how the climate-related disclosure requirements may deter private companies from going public. There should be a pathway for very small companies to become public reporting companies without hiring expensive climate-related consultants.
- Consider the rule’s impact on small companies that are suppliers or vendors for public companies. To the extent public companies are required to track and provide downstream greenhouse gas emissions, smaller suppliers and vendors that are unable or delayed in providing their greenhouse gas emissions may lose business to larger companies that can provide such metrics. Due to disadvantages arising from lack of resources and smaller operations scale, both small public and private companies may face greater challenges in accessing capital and generating revenue they need to sustain their businesses.

Resource from FORVIS: [SEC's ESG Climate Proposal – What You Need to Know](#)

SEC's SPACs Proposal

- Special purpose acquisition companies (SPACs) should remain a viable path for companies to pursue as a means of getting access to public market capital. The proposed rules, as written, might render SPACs unusable as an alternative to IPOs.
- Clearly identify which participants would have underwriter liability.
- Projections in de-SPAC transactions should be covered by the liability safe harbor provisions of the *Private Securities Litigation Reform Act* when disclosed in the de-SPAC transaction.
- Expand or eliminate the 18-month and 24-month timelines provided in the Investment Company Act safe harbor for SPACs. The requirement to engage in a de-SPAC transaction within 18 months after its IPO and complete its de-SPAC transaction within 24 months could incentivize SPAC sponsors to engage in riskier acquisitions to complete the merger process within the artificially short periods.

Resource from FORVIS: [SEC's SPAC Crackdown Begins](#)

Conclusion

Whether you're an accelerated filer or a fast-growing company thinking about going public, **FORVIS** can help you navigate the ever-changing accounting and reporting landscape. The assurance team at FORVIS delivers extensive experience and skilled professionals to help align with your objectives. Our proactive approach includes candid and open communication to help address your financial reporting needs. At the end of the day, we know how important it is for you to be able to trust the numbers; our commitment to independence and objectivity helps provide the security and confidence you desire. FORVIS works with hundreds of publicly traded companies in the delivery of assurance, tax, or advisory services, within the U.S. and globally. For more information, visit forvis.com.

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Appendix – Summary of Exempt Offerings

Source: Office of the Advocate for Small Business Capital Formation, Annual Report Fiscal Year 2022

Summary of Exempt Offerings		
Exemption	Description	Capital Raised 7/1/2021 – 6/30/2022
Rule 506(b) Private Placements	Allow companies to raise unlimited capital from investors with whom the company has a relationship and who meet certain wealth thresholds or have certain professional credentials. A company cannot use general solicitation in a 506(b) private placement.	\$2.3 Trillion (\$1.3 million median)
Rule 506(c) General Solicitation Offerings	Allow companies to raise unlimited capital by broadly soliciting investors who meet certain wealth thresholds or have certain professional credentials.	\$148 Billion (\$800,000 median)
Rule 504 Limited Offerings	Allow companies to raise up to \$10 million in a 12-month period, in many cases from investors with whom the company has a relationship.	\$624 Million (\$250,000 median)
Regulation Crowdfunding	Allow eligible companies to raise up to \$5 million in investment capital in a 12-month period from investors online via a registered funding portal.	\$368 Million (\$100,000 median)
Intrastate Offerings	Allow companies to raise capital within a single state according to state law. Many states limit the offering to between \$1 million and \$5 million in a 12-month period.	Not Available
Regulation A Offerings	Allow eligible companies to raise up to \$20 million in a 12-month period in a Tier 1 offering and up to \$75 million in a 12-month period in a Tier 2 offering through a process similar to, but less extensive than, a registered offering.	\$1.8 Billion (\$2.2 million median)
Rule 701 Employee Benefit Plans	A company can sell at least \$1 million of securities under this exemption, regardless of its size, to compensate employees, consultants, and advisors. These are restricted securities and may not be freely traded unless the securities are registered or the holders can rely on an exemption.	Not Available
Regulation S Rule 144a	Regulation S provides that offers and sales of securities that occur outside of the U.S. are exempt from the registration requirements of Section 5 of the <i>Securities Act of 1933</i> .	\$2 Trillion (breakout not available)
Rule 144a	Rule 144A provides a safe harbor exemption to the sellers. This exemption can be used for reselling securities to the qualified buyers and allows institutions to trade these securities among themselves, avoiding a registration process under Section 5 of the <i>Securities Act of 1933</i> .	