March 2, 2010

Senator Christopher J. Dodd, Chairman
Committee on Banking, Housing and Urban Affairs
534 Dirksen Senate Office Building
Washington, DC 20510-4605

Dear Sen. Dodd:

Re: Protecting entrepreneurs and angel investors in draft "Restoring American Financial Sustainability Act of 2009"

The draft "Restoring American Financial Stability Act of 2009" is important for addressing many critical issues and we applaud Sen. Christopher Dodd and the Senate Banking Committee on the bill. We do, however, want to point out two issues in the current draft that would be harmful to entrepreneurs and individual investors, which in turn would hurt the nation's economy.

The National Venture Capital Association and Angel Capital Association respectfully recommend that the following two sections are deleted from the bill:

- Section 928 of the legislation would repeal the existing federal preemption of state regulation over "accredited investor" securities offerings. This would end the uniform, national set of rules for financing start-ups. By eliminating regulation that is working well, the draft bill would expose technology startups to a potentially complicated system of patchwork, state-by-state regulation, resulting in higher costs, more legal risks, and the potential of not being able to raise capital because of different rules in different states. Nothing would be gained from this change: no additional protections would be provided to the accredited angel investors and there would be no benefits to the national financial system or to the economy.

- Section 412 of the draft bill recommends adjusting the accredited investor standard for inflation. As we understand it, this section would change the current requirement for an individual of $1 million in net worth or $200,000 in annual income to about $2.3 million in net worth or $450,000 plus in annual income. At a time when many accredited investors have lost more than 20 percent of their net worth in 2008 and innovative start-ups are having an increasingly difficult raising equity capital, decreasing the potential pool of angel investors is counter-productive to supporting the very companies that will create new high-paying jobs.

As a group of investors and entrepreneurs in Washington state recently put it, "the startup ecosystem …, comprised of entrepreneurs and the angel investors and professionals who support them, is one of the spawning pools from which tomorrow's great American companies are born. … Technology startups are funded by (a) the entrepreneurs who start them, (b) the friends, networks, and families of those entrepreneurs, and (c) experienced angel investors who have a taste for startups and a passion about supporting entrepreneurs. This community depends on the uniformity, clarity and certainty of federal exemptions, which substantially ease the costs and legal risks of raising critically needed seed capital."

Venture capitalists often invest in companies that were supported by angels, so ensuring that regulations for accredited investors do not harm this capital source is important. In addition, as more and more venture capital firms co-invest with angel investors and angel organizations, the state preemption of securities regulations could extend to a large number of businesses, from start-ups to others that need capital for growth.

The Angel Capital Association, which has 160 member angel groups and affiliates in nearly every state and 7,000 accredited investors connected to those organizations, and the National Venture Capital Association urge you to help eliminate these two sections from the draft legislation. It is important to ensure that innovative entrepreneurs have access to start-up capital, particularly during this economic recession.

Sincerely,

Mark Heesen
President
National Venture Capital Association

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Executive Director
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