

HELP ACA PRESERVE ACCREDITED ANGEL INVESTING AND MAKE SURE STARTUPS HAVE ACCESS TO CAPITAL

Dear ACA Member:

As you know, the Securities and Exchange Commission issued final Rule 506 permitting startups to use general solicitation when raising funds from accredited investors. As required under the JOBS Act, issuers under 506(c) must “take reasonable steps to verify” that all purchasers are accredited investors. The rule is effective as of 09/23/2013.

www.sec.gov/rules/final/2013/33-9415.pdf

The SEC did not define “reasonable steps to verify,” stating instead that whether the verification requirement is met would be a case-by-case, objective determination of “facts and circumstances.” However, the SEC did provide four alternative, non-exclusive “safe harbors” issuers may rely on. Under these, an angel investor would have to provide an entrepreneur (or permitted third party) detailed personal financial data on income or net worth -- including paystubs; IRS forms 1040, 1099 or W-2; bank and brokerage statements; appraisals, and/or credit reports. These materials must be current within 90 days prior to an investment.

Turning over private financial documents is a non-starter for ACA and its members. Experienced angels who are active in the startup ecosystem will not willingly turn over confidential financials just so they can invest their own money. In fact, these “safe harbors” are highly unsafe: they invade investors’ privacy, raise concerns about confidentiality, and impose costly and unworkable burdens on startups for retention of sensitive investor data.

In addition to the final rule, the Commission also proposed new rules for Regulation D and Form D, which impose tremendous burdens on startups. Under the proposed rules, issuers using 506(c) would be required to: file a Form D at least 15 days in advance of any general solicitation; electronically furnish to the SEC all general solicitation communications no later than the date of first use; and require lengthy legends on all solicitation materials. If they don’t meet these filing requirements and deadlines, they are barred from any Rule 506 offering for a year. Understandably, the entrepreneurship community widely objects to these proposals.

ACA needs your help in getting the proposed rules withdrawn, and establishing that active, accredited investor angels can continue to support startups and other small businesses, as we have done for decades. ACA is asking the SEC for guidance on this issue and offering a remedy we believe serves the SEC’s verification objectives, and will keep angel capital flowing to deserving startups.

Please see the following pages for templates and tools you can use to let the SEC, members of Congress and others know that these rules would harm small business capital formation rather than enhance it. Feel free to adapt these templates as appropriate.

Your actions are extremely important! Thank you for your support.

[Hudson, Verrill, Eckert]

HERE'S HOW YOU CAN HELP: CONTACT THE SEC:

To comment on Proposed Rules Reg D, Form D and Rule 156: http://www.sec.gov/cgi-bin/ruling-comments?ruling=s70613&rule_path=/comments/s7-06-13&file_num=S7-06-13&action=Show_Form&title=Amendments%20to%20Regulation%20D,%20Form%20D%20and%20Rule%20156%20under%20the%20Securities%20Act

To comment on Final Rule 506: https://tts.sec.gov/cgi-bin/corp_fin_interpretive

Sample Text (feel free to modify)

Dear SEC:

I am a member (or leader) of _____, an angel group based in _____. I am writing in regard to two issues: the final Rule 506 regarding general solicitation, and proposed rules to expand the scope of Regulation D and Form D. Specifically, I am seeking clarification of the “facts and circumstances” that would reasonably establish that an investor is accredited. I also respectfully request the Commission withdraw its proposed amendments to Regulation D and Form D, as these requirements would paralyze angel investing and virtually shut small issuers out of the capital markets.

Our angel group has more than ____ members, all of whom are accredited investors. Angel investors such as ourselves form the backbone of the startup economy. Collectively, our members have funded more than ____ deals in start-ups and early-stage companies. Many of these companies have gone on to raise additional capital and continue to positively impact the economy.

I recognize that the JOBS Act required issuers to take “reasonable steps to verify” that investors are accredited when relying on Rule 506(c). However, “reasonable steps” should not include disclosure of personal financial information by angel investors already well-versed in the startup economy. Active angel investors are both accredited investors and knowledgeable about the risks of angel investing. This combination of fact and circumstances provides richer validation than the “check-the-box” method prohibited by Congress.

Our angel group members work closely with entrepreneurs over long periods (often years) to provide essential “mentorship capital” and support in addition to financial backing. If angels are required to navigate cumbersome and costly requirements to provide private financial data to every startup in which we invest, we will go elsewhere. Angels invest our own funds – we are not hedge funds or private equity managers – which have extensive infrastructure already in place to help determine whether a limited partnership investment is suitable for a potential accredited investor.

I respectfully request the Commission take two actions: Withdraw the proposed rules; and, provide guidance in regard to Rule 506(c), to the following effect:

If an issuer verifies that a purchaser is a member of an established angel group or is otherwise actively engaged in the startup community and also provides written representation that he or she is an accredited investor, the issuer will have met the verification requirement of Rule 506(c).

Sincerely,

HERE'S HOW YOU CAN HELP WITH CONGRESS:

Contact Your Congressional Representatives:

For Members of the House: www.house.gov/representatives/find/#listrep

For Members of the Senate: www.senate.gov/general/contact_information/senators_cfm.cfm

Once you have identified your representatives, follow the online procedures to send your letter.

Sample Text (feel free to modify):

Dear (Representative) (/Senator) _____:

I am a member (or leader) of _____, an angel group based in _____, and I am writing to ask you to let the SEC know that its new and proposed rules permitting startups to use general solicitation when raising capital, will cause drastic harm to both angel investors and the companies they support. Please ask the SEC to clarify its new Rule 506 and to withdraw its proposed changes to Regulation D and Form D. Without these actions, the impact of these rules will paralyze angel investing and effectively shut many startups and other small businesses out of the Regulation D sector of the capital markets.

Our angel group has more than ____ members, all of whom are accredited investors. Angel investors such as ourselves form the backbone of the startup economy. Collectively, our members have funded more than ____ deals in start-ups and early-stage companies. Many of these companies have gone on to raise additional capital and continue to positively impact the economy.

I recognize that the JOBS Act required issuers to take “reasonable steps to verify” that investors are accredited when relying on Rule 506(c). However, “reasonable steps” should not include disclosure of personal financial information by angel investors already well known within the startup community. Active angel investors are both accredited investors and knowledgeable about angel investing. This combined fact set is richer than the “check-the-box” method prohibited by Congress.

Our angel group members work closely with entrepreneurs over long periods (often years) to provide essential “mentorship capital” and support in addition to financial backing. If angels are required to

Our angel group members work closely with entrepreneurs over long periods (often years) to provide essential “mentorship capital” and support in addition to financial backing. If angels are required to navigate cumbersome and costly requirements to provide private financial data to every startup in which we invest, we will go elsewhere. Angels invest our own funds – we are not hedge funds or private equity managers – which have extensive infrastructure already in place to help determine whether a limited partnership investment is suitable for a potential accredited investor.

I respectfully request the Commission take two actions: Withdraw the proposed rules, and additionally provide guidance in regard to Rule 506(c), to the following effect:

If an issuer verifies that a purchaser is a member of an established angel group or is otherwise actively engaged in the startup community and also provides written representation that he or she is an accredited investor, the issuer will have met the verification requirement of Rule 506(c).

Thank you for your help.

Sincerely,

HELP GET THE WORD OUT ON TWITTER, LINKEDIN, FACEBOOK, ETC.:

Spread the word to angels, entrepreneurs and anyone you know in the startup community!

Here are suggested soundbites for use on Twitter, Facebook, LinkedIn, etc.:

Feel free to customize or write your own.

Hashtags:

#ACAangelcapital
#angelinvesting
#saverule506
#JOBSAct
#startup
#smallbiz
#saveregD.org
#SEC

“Tweets”

Dear #SEC Congress had one concern with general solicitation, not 169 pages of concerns.
#saverule506

Dear #SEC #Congress passed the #JOBSAct to get more capital to #startups, not to kill #angelinvesting
#smallbiz #saverule506

Dear #SEC: #JOBS Act was not meant to be Sarbanes-Oxley for #startups. #smallbiz #. #saveregD

Dear #SEC: Don't impose new filings and horrific penalties on #startups. #JOBSAct #smallbiz
#saveregD.org

Don't let #SEC kill the intent of the #JOBS Act. Let's help #startups create #jobs, not prevent them.

ADDITIONAL RESOURCES:

See www.saveregD.org for additional templates, suggestions and ways you can help spread the word about the proposed rules.

See <http://www.sec.gov/comments/s7-06-13/s70613.shtml> for comments already submitted to SEC on proposed rules

See http://mchenry.house.gov/uploadedfiles/mchenry_garrett_to_sec_chair_white_07.22.2013.pdf for letter from U.S. Representatives Patrick McHenry and Scott Garrett asking the SEC to withdraw its proposed rules.