



ANGEL CAPITAL ASSOCIATION

September 27, 2012

Ms. Elizabeth M. Murphy, Secretary
US Securities and Exchange Commission
100 F St NE
Washington, DC 20549-1090

Subject: SEC Proposed Rule Eliminating the Prohibition against General Solicitation and General Advertising in Rule 506

Dear Ms. Murphy:

The Angel Capital Association (ACA) appreciates the work of the Commission in developing the proposed rule connected to the Jumpstart of Business Startups Act (JOBS Act). We are pleased that the rules allow for the continuation of a consistent approach for Rule 506 offerings that do not use general solicitation, referred to as Rule 506(b). This supports the continued flow of capital for many job-creating startups, as was the intent of the JOBS Act. In addition, the Commission recognizes that there are a wide variety of circumstances for offerings that use general solicitation and advertising under Rule 506(c), and provides flexibility in determining “reasonable steps to verify” by issuers. Leaving what constitutes “reasonable steps” open allows for advancements in verification methods over time.

However, ACA believes the rule should provide more clarity on what constitutes “reasonable steps” in 506(c) offerings in which natural persons are involved (“angel” investments), and should establish safe harbor standards on which issuers could rely when using Rule 506(c). If not clearly articulated, this has the potential to chill investment by angels – the exact opposite of Congressional intent. This is particularly concerning given our current economic reality, where many jobs are needed and early-stage companies are the source of the majority of net new jobs.

First and foremost, there is not a current problem with angel compliance to accredited investor standards. The SEC’s report, “Capital Raising in the US: The Significance of Unregistered Offerings Using the Regulation D Exemption” (Ivanov and Bauguess, February 2012) underscores the lack of fraud. The report found that “the average number of non-accredited investors in Reg D offerings over the entire period [2009-2011] was 0.1%, while the median is zero. In fact, in approximately 90% of the offerings there were no non-accredited investors.” The majority of these filings were for small business issuer raising \$1 million or less, and the majority of investors were accredited angel investors.

ACA, as the leading proponent of angel investing, supports best practices that have contributed to this admirable record, and continues to support innovations that ensure essentially zero fraud in Reg D filings while increasing the amount of angel capital available to startups. We therefore want to make certain that the Commission understands the consequences of its current proposed rules. If these rules cause an undue burden on angel investors, many angels will choose not to invest. Angels invest their own money, unlike other private equity such as venture capital, so have no pressure to deploy to this asset class.

The Commission’s rules do not go far enough to achieve the requisite clarity. Based on input from our members, we assert that the current proposed rules will lead to confusion and cause legal advisors to

issuers to insist on complex and burdensome forms and submissions that will cause many angels to back away from this essential asset class.

We believe the lack of a set of safe harbors would reduce 506 funding of new companies because:

- Safe harbors are needed for companies and investors to act with confidence. Without safe harbors for 506(c) offerings, issuers won't know when they've done enough to satisfy the "reasonable steps" test. Issuers and investors will not be clear on liabilities or how rules will be enforced. This uncertainty will lead to conservative behavior. Many of our members tell us that, faced with concerns about liability, cost, or complexity in implementing the rules, they will limit their pace of investment in these offerings until the market sorts out the rules.
- Given concerns about lack of safe harbors for issuers under 506(c), it may actually become more difficult for many deserving entrepreneurs to raise the capital they need to start and grow.

Recommendations for safe harbors were previously suggested in comment letters by ACA and others. We recommend the Commission consider including multiple examples in a final rule in order to ensure a robust capital pool for startups. We endorse those that take advantage of existing resources, such as public data and minimum investment size as a presumption of accreditation. We also believe that membership in an angel group, particularly those that are part of ACA and have access to our best practices materials and other extensive resources, could meet this safe harbor standard.

ACA would be happy to work with Commission staff in developing "reasonable steps" that balance the need for a healthy pool of capital with protection from fraud. ACA is uniquely positioned to appreciate this important balance. Angel investors are a major source of equity capital for startups that create jobs and innovation. While angel financing is growing, it remains virtually free of fraud or abuse. The secret of this success is the right balance has been struck, especially in organized angel groups. Members of angel groups must be accredited investors. Incentives are in place for groups to be essentially self-policing, and to take advantage of professional development and best practices training. Issuers, promoters and investors who act badly are not welcome.

ACA would be an asset in further discussion with the Commission on this issue given our focus on best practices in angel investment. We are not just a network of groups that asks members to "self-certify" (although we require that for every angel and angel group), but we also promote active participation in all parts of the investment process. With the Angel Resource Institute, we offer a comprehensive combination of seminars, conferences, webinars, and other training on everything from investment screening and due diligence to how to help companies we invest in through board participation, mentoring and preparation for exit. We have good processes and are continually refining best practices and educating angel investors.

If we can provide any additional information or clarification, please do not hesitate to contact the Angel Capital Association.

Regards,

A handwritten signature in cursive script, reading "Marianne Hudson", is displayed on a light pink rectangular background.

Marianne Hudson
Executive Director