ANGEL CAPITAL ASSOCIATION

FOR IMMEDIATE RELEASE

New SEC Rules Could Kill Angel Investing, Hurt Startups, and Hinder Job Growth

"Safe Harbors" to Verify Accredited Investor Status Require Divulging Personal Financial Info

Kansas City, MO – July 15, 2013 – Final rules ending the ban on general solicitation for companies seeking investment from accredited investors eliminates the ability of angels to self-certify their status, and will result in many angels refusing to participate in this type of investing, according to the Angel Capital Association (ACA).

"With thousands fewer angels participating in this market, startups will have far less access to capital, the millions of jobs they create each year will disappear, and the economy will suffer," said Marianne Hudson, executive director of ACA. "This is the exact opposite of Congress' intent in its near-unanimous passage of the JOBS Act."

Under the JOBS Act, the Securities and Exchange Commission was tasked with lifting the ban on general solicitation for issuers privately raising capital under Regulation D Rule 506(c), provided that issuers take "reasonable steps to verify" that all investors are accredited.

In final rules published last week, the SEC provided a convoluted, "principles-based approach," along with several "safe harbors" that issuers may use. Safe harbors include: "reviewing pay stubs for the two most recent years and current year;" or "reviewing copies of any IRS form that reports income," (including Form W-2, Form 1099 or a copy of filed Form 1040). For married accredited investors, the rule specifies that both spouses would have to divulge such information to an issuer. Alternatively, a safe harbor would occur if the investor submits a certified statement from a third party such as an "attorney, accountant or registered investment advisor," provided that the third party could establish that it had also undertaken "reasonable steps to verify" that an investor was accredited. Third party verification would need to be updated every three months.

The current SEC definition of accredited investor for a natural person is an individual with annual income exceeding $200,000 and/or net worth greater than $1 million excluding the value of a primary residence. For a married couple, the income test increases to $350,000. Under Dodd-Frank legislation, this definition will be revisited in the coming year, and a General Accounting Office study is expected to be released within a week with recommendations that could substantially raise qualifying amounts.

"Angel investors provide the fundamental source of start-up capital in our economy," Hudson said. "Not a single angel I have spoken with is willing to provide personal financial information to an issuer who is asking them for investment. This violation of privacy is untenable, especially for the angels who do multiple deals a year. If an issuer has information on total net worth or income of an investor, that provides vast information asymmetry. This would be like having your bank demand to know your net worth before you could open a bank account to *put money in*, or the stock market demanding to know your net income before you can trade securities."

"These SEC rules provide no safe harbor for our angel members, which effectively could kill most angel investment in this country," said David Verrill, board chairman of ACA. "Our member angel groups have decades of history investing in startups while self-certifying their accredited status without one single iota of fraud. Our process works because angel groups know their members well, and focus on the education and skill needed to do this type of investing well. Angels do not have to invest in start-ups, but we are almost entirely the only ones who do so – some 90% of outside equity raised by start-ups comes from angel ranks."

"It would be devastating for the economy if innovative startups that create all net new jobs in the US lose access to this critical capital," Verrill said. "Congress passed the JOBS Acts as a way for small businesses to access more capital and therefore create more jobs. Unfortunately, these rules appear to do the opposite."

Statistics on the impact angel investors have on small business growth and the economy include:

- Between 200,000 and 400,000 accredited investors participate in angel investing each year. In 2012, there were 234,000 accredited investors in Reg D offerings alone, of which 91,000 participated in non-financial offerings.
- Angels invested nearly $23 Billion in more than 67,000 companies in 2012.
- Almost 400 angel groups have invested in companies in every state.
- Angels invest up to 90% of the outside equity that startups raise.
- Angel investment is focused on innovative, high growth firms that create the most new jobs and are credited with creating all net new jobs in the US in any given year.

"It is critical for angel investors to have a reliable safe harbor without having to divulge personal financial information or having to pay a third party to comb through their financial statements every three months," Hudson said. "We believe there must be a clear safe harbor for ACA members to self certify within their groups, which only accept accredited investors and which provide ongoing education and support to ensure this investing is done to the highest professional standards."

Further information on ACA recommendations are available in: ACA December, 2012 letter to the SEC and ACA testimony to a Congressional committee in April, 2013).

About Angel Capital Association

The Angel Capital Association is the leading professional and trade association supporting the success of angel investors in high-growth, early-stage ventures. ACA provides professional development, industry voice, public policy advocacy and an array of benefits and resources to its membership of 200 angel groups and more than 10,000 individual accredited investors. www.angelcapitalassociation.org ; Twitter: @ACAAngelCapital.

Media Contact:
Marianne Hudson
913-894-4700
mhudson@angelcapitalassociation.org