



ANGEL CAPITAL ASSOCIATION

May 26, 2020

Vanessa A. Countryman
Secretary
Securities and Exchange Commission
100 F Street, NE Washington, DC 20549-1090

Re: File Number S7-05-20, Comments on proposed rules from the Securities and Exchange Commission on 17 CFR PARTS 227, 229, 230, 239, 249, 270, and 274, Release Nos. 33-10763; 34-88321; RIN 3235-AM27, Facilitating Capital Formation and Expanding Investment Opportunities by Improving Access to Capital in Private Markets (the “Release”)

Dear Ms. Countryman:

Thank you for the opportunity to provide comments to the Commission on the above-referenced proposed rules. We very much applaud the Commission’s efforts to improve the exempt offering framework to help expand startup access to angel capital while continuing to preserve investor protections.

One of the proposed rules is of particular interest to us, because it is quite evidently modeled on versions of a bill that had been introduced in successive Congresses over the last few years, known as the HALOS Act. The HALOS Act was strongly championed by the Angel Capital Association as the intention of the bill was to resolve regulatory ambiguities around the conduct of what are commonly known as “demo days,” or “pitch events,” at which startup companies seeking investment capital presented their business plans to public audiences that include accredited investors.

The HALOS Act, in its various iterations, received wide bi-partisan support in each Congress in which it was introduced, but it was never passed into law. We are gratified, then, to see that the Commission’s proposed rules include a regulatory version of the HALOS Act which addresses the demo days situation. Our comment letter is largely focused on the Commission’s proposed demo day rule, because we support it, and we think it can yet be improved.

Our Comments

Proposed “Demo Days” Rule 148

We applaud the SEC for its efforts to clarify that the concept of “general solicitation” should not apply with respect to the common use case of demo days events, where startup companies pitch to

accredited investors. As noted above, the HALOS Act bill was designed to address the same problem. We think it was wise of the Commission to model proposed Rule 148 on the language of the HALOS Act.

However, in certain respects, the language of the proposed Rule 148 varies from the text of the HALOS Act in ways that we think creates unnecessary complexity, or otherwise does not optimize the utility of the “safe harbor” spirit of the proposed rule.

Requirement that an angel investor group’s processes and procedures for making investment decisions be “written” is unduly restrictive.

As with the original design of the HALOS Act, proposed Rule 148 defines what it means to be an “angel investor group,” for purposes of determining whether or not a given demo days event is legitimate, and accordingly should be exempt.

We think the HALOS Act text was appropriately precise for this purpose, in defining an “angel investor group” as a group of accredited investors that holds regular meetings and has defined processes and procedures for making investment decisions, either individually or among the membership of the group as a whole.

Proposed Rule 148, as set forth in the Release, mirrors that definition almost verbatim, with one critical difference: instead of “defined” process and procedures, the text of the proposed rule calls for “written” processes and procedures. This change, which was perhaps unintentional, seems to us to misunderstand how angel groups work and actually determine their processes and procedures over the course of time.

We strongly suggest that the requirement for “written” processes and procedures be stricken, and that the prior language from the HALOS Act be restored. Otherwise, Rule 148 may not have the intended utility for well-established angel groups with substantial pedigree and history, whose procedures are very well settled and defined, by pattern and practice, and not as an abstract exercise in writing policy manuals. We think the point of the angel investor group definition in the rule should be to appropriately identify legitimate demo days events, and not to upend actual, in the field, long-settled angel investor group practices, by implicitly requiring them to change behavior and express processes and procedures in writing.

Angel Group Means a Group... Not Associated or Affiliated with Investment Advisers

Similarly, we believe the language in the proposed rule defining angel group is too narrow in the sense that it excludes groups “associated or affiliated with investment advisers.” Frankly, we are not sure what that language means exactly. Does it mean an investor adviser cannot be a member of a group qualifying as an “angel group?” Many angel groups have either registered investment advisors as members, or exempt reporting advisers as members, or even exempt non-reporting investment advisers as members. We suggest that this requirement of the definition be stricken from the text of the rule before it becomes final.

Should we permit organizations other than those listed in proposed Rule 148 to act as sponsors of such events?

You have asked in your proposal if you should permit organizations other than those listed in Proposed Rule 148 to sponsor such an event. We believe the answer should be yes, as long as the rules for the seminar or meeting are followed. We are aware of many industry events being sponsored by a wide variety of different types of groups to include accelerators, not-for-profit educational institutions or organizations, co-working spaces, for-profit organizations such as law firms and accounting firms (and even ad hoc groups that have come together to sponsor a single event).

We are not sure why you would need to fall in a particular legal cubbyhole (or have to form a nonprofit corporation under state law) in order to qualify for this exception from general solicitation. We are not sure why for-profit companies, professional groups, alumni associations, etc. could not be sponsors of these events, as long as the rules were followed.

If nothing else, we feel strongly that the language in the HALOS Act, recognizing venture forums, venture capital associations, trade associations, and professional organizations (such as the ACA) as legitimate sponsors of demo days events, be reflected in proposed Rule 148.

Striking the HALOS Act language permitting the pitching company to divulge how much of an offering remains open.

Our last comment on the text of proposed Rule 148 has to do with the lack of a key allowance found in the text of the HALOS Act, which would permit a presenting company to divulge, at the demo days event, the amount remaining as yet unsubscribed in their offering. On a practical basis, this is exactly the kind of information an angel investor would need to know at the event. Moreover, how would an early stage founder know such a technical rule ahead of time? We think the very spirit of the general solicitation exemption intended by the rule is to allow basic information about the offering to be made at the event. Put another way, allowing an entrepreneur to divulge the fact of an offering, the type and amount of securities being offered, and the use of proceeds, but not the practical information of how much of the offering has been spoken for and how much remains available, is precisely the sort of awkward bind that a demo days exception should be eliminating.

About the Angel Capital Association

The Angel Capital Association (ACA) is the leading professional association supporting the success of accredited angel investors in high-growth and early-stage ventures. Our 14,000 members are among the angel investors that invest an estimated \$25 billion in 70,000¹ early-stage investments every year, with companies located in every state in the country.

¹ Center for Venture Research, University of New Hampshire, <https://paulcollege.unh.edu/center-venture-research/research>

Our comments today are in support of both angel investors and the nation's startup entrepreneurs, those who create nearly all net new jobs in the country and many of the innovations that improve the quality of life throughout the world. It is vital that promising startups continue to attract angel capital, for their own growth and for the American economy. We appreciate the opportunity to provide these comments and are available to clarify any of the points listed above. You may reach us at pgouhin@angelcapitalassociation.org or 913-894-4700 Ext 1.

Respectfully,



Patrick Gouhin, CEO



Linda Smith, Chair Emeritus and Public Policy Chair