



ANGEL CAPITAL ASSOCIATION

December 11, 2012

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

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

Dear Ms. Murphy:

As the Commission continues to work on rules related to general solicitation, the Angel Capital Association (ACA) appreciates the opportunity to provide further comment on your proposed Rule 506(c) for offerings that use general solicitation and to offer suggestions for what should constitute “reasonable steps to verify” accredited investor status, so that issuers and investors can act with confidence within specific non-exclusive “safe harbors” when seeking to complete a financing for these high-risk, high-growth startups.

Per our earlier letters, ACA believes:

- The final 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 may rely when using Rule 506(c). If not clearly articulated, the uncertainties that are inherent in the proposed rule have the potential to chill investment by angels – the exact opposite of Congressional intent.
- There is not a current issue regarding angels’ compliance with 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.
- If the verification process is too costly, complex, time-consuming, and/or violates investor privacy, issuers and investors face an intractable dilemma in determining whether to take advantage of this innovative change to the Act. Both sides could be frozen into inaction by a lack of clarity or safe harbor provision in 506(c) rules. This would clearly be a missed opportunity that the JOBS Act recognized.
- Rules for safe harbors should be simple and compliance should not require additional costs for investors, and should minimize costs and burdensome administrative difficulties for issuers.

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 and that none of the safe harbors are exclusive. We endorse those safe harbors that take advantage of existing resources, such as public data and minimum investment size as a presumption of accreditation.

In this letter, we want to explore further two ideas that would provide safe harbor, while ensuring simplicity, continued angel investment, and the requisite protection of investors and issuers:

Use of an expanded investor suitability questionnaire – The existing form has worked well for a generation of startups funded by accredited investors using Rule 506(b), so should be the basis of a going-forward solution for Rule 506(c). There should be a simple solution that involves adding a few questions to the existing accredited investor questionnaire to clearly meet the “reasonable assurance” intent of the JOBS Act. If the investor completes an answer to any one of the following questions, the issuer should have reasonable belief the investor is accredited (noting that the Commission may want to formalize the language of the concepts presented below):

- Have you made at least one equity investment of \$25,000 or more in a given Rule 506 offering in the past three years? If yes, please state the year and name of the issuer for one investment.
- Have you invested in three or more private investments of any size? If yes, please include the year and issuer name for any three such investments.
- Are you a member of the Angel Capital Association, either as an individual or through a membership in your angel group? ACA could provide a “proof of membership” letter or card to individuals who belong to ACA directly or to one of its member angel groups that could be submitted with the form.
- If you do not meet the criteria of any of the preceding questions, please provide an independent reference to support that you meet the wealth or income definitions of an accredited investor. Provide name, contact information and type of entity (with check boxes for type – broker-dealer, attorney, insurance broker, certified financial planner, bank, etc.)

Membership in ACA – During the SEC’s November 15th Government-Business Forum on Small Business Capital Formation, participants in the “Exempt Securities Offerings” breakout session recommended that “membership in reputable angel groups” should be established as a reliable safe harbor. We endorse this proposal and believe that membership in groups that are part of ACA and have access to our best practices materials and other extensive resources should be presumed to meet this safe harbor standard. Membership in ACA would be a straightforward and simple means for categorizing a reputable angel group. In addition individual angels who belong to ACA but are not associated with an angel group are also required to meet accreditation standards and should be included in this safe harbor provision.

ACA is uniquely positioned to appreciate the important balance of a healthy capital pool and protection from fraud. Members of ACA member angel groups must be accredited investors. This requirement is a core part of the ACA membership application and agreement for all group and individual members. More importantly, member groups are essentially self-policing – angel groups are comprised of local associates who are familiar with their members’ financial acumen and capacity. Our members take advantage of professional development and best practices training. They know each other and strengthen relationships among individual investors and also across angel organizations for syndication purposes. Issuers, promoters and investors who act badly are not welcome.

ACA promotes active member participation in all parts of the investment process. With ACA’s educational partner, the Angel Resource Institute, we offer a comprehensive combination of seminars, conferences, webinars, and other training on everything from investment screening, due diligence, participation in portfolio company boards, mentoring and preparation for exit. We have established a code of conduct for individual investors and angel groups. We promote good processes and guidelines for groups to select and document new members and are continually refining best practices and educating angel investors.

Thanks for your consideration of these non-exclusive safe harbors, which we believe will help ensure a vital and robust early-stage investing environment as contemplated by the JOBS Act. If we can provide any additional information or clarification, please do not hesitate to contact the Angel Capital Association.

Regards,

A handwritten signature in black ink on a light pink rectangular background. The signature is written in a cursive style and reads "Marianne Hudson".

Marianne Hudson
Executive Director