



## ANGEL CAPITAL ASSOCIATION

April 14, 2017

The Honorable Mike Crapo  
Chairman, Senate Committee on Banking  
Washington, DC 20515

The Honorable Sherrod Brown  
Ranking Member  
Washington, DC 20515

Dear Senators Crapo and Brown:

Thank you for giving us this opportunity to share with you the ideas of the Angel Capital Association on how the Senate Committee on Banking can advance an agenda to promote prosperity and economic growth. On behalf of the 13,000 members of the Angel Capital Association we applaud your bi-partisan approach on one of the most pressing issues impacting our nation - sustained economic growth and job creation.

The Angel Capital Association is the voice of accredited individual angel investors, angel groups, accredited on-line platforms and family offices. Angels are accredited individual investors who deploy their own individual money investing in early-stage companies, helping them grow into successful companies. On average in 10 angel investments, 3 to 4 break even, 5 may fail and only 1 delivers high yield results. This is a risky business but one that our members embrace, eyes open. Further, there is a patriotic call in what angel investors do: we recognize that investing in innovative, young companies is the critical ingredient in a healthy and vibrant national economy.

In addition to providing investment capital, angels will always be found volunteering their own time as mentors, and providing other support and expertise to the entrepreneurs they invested in. Angel-funded startups include Amazon, Home Depot, Uber and so many other iconic American brands. Angel investors are found throughout the United States in all states, working to support local startup companies.

The Senate Banking Committee plays an important role in both supporting new legislation as well as providing much needed oversight over the United States Securities and Exchange Commission. Your work and involvement is critical to helping angels be successful.

As you look to the agenda of the Senate Banking Committee in the 115<sup>th</sup> Congress we recommend the following areas of focus:

## **S. 588, Helping Our Angels Lead Our Startups (HALOS Act).**

S. 588 is bi-partisan legislation sponsored by Senators Christopher Murphy, Pat Toomey, Heidi Heitkamp, John Thune, Brian Schatz and Thom Tillis. The HALOS Act seeks to clarify a misunderstanding of the definition of general solicitation, which the SEC has not modernized even after Congress acted in 2012 to expand private company access to angel capital.

As you know, the bipartisan JOBS Act of 2012 allowed for general solicitation in private offerings exempt from registration under Rule 506 of Regulation D, allowing entrepreneurs to approach angels directly to raise private capital, all the while preserving safeguards to protect the public. However, in the follow up rulemaking to implement the Congressional reform, the SEC did not change or modernize the definition of general solicitation, effectively allowing that the definition could entangle traditional “demo days,” in which entrepreneurs pitch their companies to potential investors, local economic development officials, academics and others. Because demo days might be interpreted as general solicitation under ambiguous rules that were written for another era, participating entrepreneurs may now feel responsible for verifying the accreditation status of every potential investor. Many angels are not willing to invest in generally solicited offerings because of these additional verifications.

Demo days have been a firmament of the startup culture in the United States for over thirty years and have always focused on including all members of the innovation ecosystem, from business students to seasoned angel investors and venture capitalists. Entrepreneurs pitch their ideas and privately they engage in capital raising with individual accredited investors. The demo day itself and the event of having entrepreneurs pitch their ideas traditionally provides practical entrepreneurship education to students and new startups. The SEC has not pointed to any fraud in the traditional demo day or pitch competition model.

The unintended consequence of uncertainty around the general solicitation rules has created confusion among investors and potential legal liability for entrepreneurs, reducing the effectiveness of demo days and reducing capital availability for some startups.

We urge the Committee to quickly pass the HALOS Act and schedule it for floor consideration to redefine the definition of a demo-day. The HALOS Act was passed by the house as HR 79 with overwhelming bipartisan support in January.

### **Changes in the Definition of an Accredited Investor:**

The Dodd-Frank Act updated the definition of an accredited investor to exempt the primary residence from net worth calculations. Dodd-Frank also required the SEC to examine the definition every four years and report on any potential changes. In 2015, SEC staff released a report outlining several steps it could take to modify the definition. The SEC has yet to act on the recommendations of the staff report.

The Angel Capital Association urges the Committee to support bi-partisan legislation which would keep the current income thresholds the same (\$200,000 for an individual/\$300,000 for a couple) or \$1,000,000 in net worth (excluding the primary residence). In addition, bi-partisan legislation could allow certain people with financial credentials, like passing a Series 7 test, be considered accredited as well as provide an on-ramp opportunity for people who have investment sophistication and experience but who do not meet the income or net worth thresholds to become accredited. ACA urges the Committee to retain the current definition of accredited investor which has been tested and used for years. ACA also urges the Committee to ensure that any changes in the definition, if contemplated, continue to allow current accredited investors to remain accredited through a hold harmless or “grandfathering” provision, if any inflationary increases are added to the financial thresholds going forward.

Senator Thom Tillis has shown interest with a bi-partisan group of Senators to expand the definition of an accredited investor to include those that can demonstrate they are sophisticated through their financial credentials.

#### **Advanced Form D:**

The SEC proposed rules to Regulation D, Form D, and Rule 256 in 2013. The changes proposed were purportedly to increase protection for investors, to increase transparency for companies who are doing non-public offerings, and to gather data to inform future rulemaking. Unfortunately, the SEC’s proposed rules misunderstand the fluid nature of the private Reg D marketplace and only add uncertainty and potential liability to early stage entrepreneurs.

The proposed rules would require a filing of Form D 15 days *prior* to any general solicitation activity. Moreover, the proposed rules would require companies to provide all fundraising materials and their modifications electronically no later than the first date of use. Failure to follow these rules would result in an issuer being barred from using Rule 506 for an offering for one year, which would put most startups out of business. The proposed regulation also requires disclosure at an earlier stage in the capital raising process, opening companies up to potential competition and sharing of non-public information. A 15-day disclosure requirement could give potential competitors an unfair advantage. Moreover, the rules do not take into account the active, real time dialogue that early stage companies have with angel investors. Often, term sheets and supporting materials are negotiated, revised and settled in real time. Pre-filing requirements have never been a feature of Reg D offerings, and it is a terrible idea to start now and effectively decrease the effective oversight the angel marketplace exercises over the early stage financing ecosystem.

This proposal, while not implemented by the SEC, has had a chilling effect in the innovation ecosystem with fear that a future Commission could take up this initiative and disrupt the capital formation ecosystem.

ACA urges the Committee to use your oversight authority over the SEC to ask for a withdrawal of this proposed rule to send a clear message to the innovation ecosystem. If the SEC does not do so unilaterally, the Committee should consider bi-partisan legislation to accomplish this goal.

**S. 444 The Supporting America's Innovators Act of 2017:**

The Committee passed a bi-partisan basis S. 444 sponsored by Senator Heidi Heitkamp, the Supporting America's Innovators Act of 2017. This bill which would allow angel/venture funds and syndicates to raise money from up to 250 individual investors with a fund size limit of \$10 million. The bill will be tremendously beneficial to large regional angel funds as well as the burgeoning on-line accredited platforms such as AngelList. These funds which tend to raise capital from a wider geographic swath of accredited investors have been limited under current laws which caps individual investors to less than 100 individuals. S. 444 raises that cap, allowing more individuals to invest. Allowing more people to invest in a reasonably sized fund will increase investment opportunities for individuals and most importantly capital opportunities for entrepreneurs. This act already passed the House as HR 1219 with bipartisan support (417-3).

ACA recommends consideration by the full Senate of S. 444.

**Conclusion:**

Thank you so much for giving us the opportunity to highlight ways that we believe the agenda of the Angel Capital Association and our 13,000 members align with the work of the Committee. We applaud your bi-partisan approach to passing smart legislation to help early-stage startup companies and to create American jobs. The Angel Capital Association stands with you and all the Members of the Senate Banking Committee as a partner in economic opportunity and job creation. We look forward to the opportunity to work with you and your Committee members as a resource and offer our leadership team as expert witnesses as you delve deeper into the innovation agenda.

Sincerely

A handwritten signature in black ink, appearing to read "Marianne Hudson". The signature is fluid and cursive, with a large initial "M".

Marianne Hudson  
Executive Director