

StartupEquality.org

September 4, 2013

Mary Jo White, Chairman
United States Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

Dear Chairman White:

We, the undersigned, are: business persons; members of angel groups, trade associations and advocacy groups; partners and associates of venture capital funds; startup founders; individual angel investors; and other persons interested in the health and vibrancy of America's startup ecosystem.

We are writing to ask the Commission to revise Rule 501 of Regulation D to afford to persons in civil unions, domestic partnerships, and similar relationships, the same right and opportunity to qualify for accredited investor status as married persons have.

As a consequence of the decision of the US Supreme Court on June 26, 2013, in *United States v. Windsor*, we understand that the meaning of the term "spouse" under Rule 501 of Regulation D now means any person with whom the potential accredited investor is married, regardless of gender or sexual orientation. Unlike other federal statutes or rules on the books that may require amendment to come into conformity with the Supreme Court's decision, Rule 501 is drafted in such a way as to make this particular change in the law self-executing.

However, persons in same-sex relationships who are not permitted to marry, including those in civil unions and domestic partnerships legally recognized by various states, are held to a more restrictive standard.

The accredited investor rule is of existential importance to the startup community. If you are not an "accredited investor," you are effectively shut out of early stage investing.

The rule affords accredited investor status to a person who has individual net worth, or joint net worth with such person's spouse, that exceeds \$1 million, excluding the value of the primary residence of such person. Similarly, the rule allows a person who is married to combine her or his income with that of a spouse, as an alternative way to meet accredited investor status. But many angel investors in same-sex relationships reside in states that don't recognize same-sex marriage.

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Accordingly, we propose that the Commission add the following defined term to Rule 501 of Regulation D:

A spouse of a natural person shall mean another person, regardless of gender or sexual orientation, whose relationship with the person specified: (1) may be characterized as such person's (i) husband, (ii) wife, (iii) spouse, (iv) domestic partner, or (v) designated beneficiary under any applicable state law for the purpose of ensuring that each person in a two-person relationship has certain rights or financial protections based upon such designation; or (2) is that of the other party to a civil union with such person.

This problem is urgent. If you are a startup founder seeking backing from angel investors, the current, discriminatory accredited investor standard potentially forces you into the position of saying to an unmarried individual angel in a same-sex relationship, "I'm sorry, but unless you meet a more restrictive standard, your money is not as good as that of an angel who is married."

For the sake of justice, and to protect the integrity of capital formation for America's innovation economy, we respectfully urge you to adopt the clarifying rule set out above.

Sincerely,

William Carleton, blogger, lawyer, investor in Bad Pug Games

Dan Shapiro, founder and investor

Marcelo Calbucci, founder

Robi Ganguly, startup founder

Galen Ward, founder & investor

Sarah Novotny, founder and staffer

Stefan Weitz

Rand Fishkin, CEO/founder of Moz

Michelle Broderick

John Clyman, founder, angel investor

Nick Ballenger

Joe Wallin, lawyer

Scott Ruthfield, startup CEO, service provider, & investor

Samantha Siow, work at a startup

Nathan DaPore, CEO of a startup

Scott Allison, startup founder

Mark Galbraith

Robert Aman, engineer @ Dashboard.io

Sean Anderson, startup founder

Matt Lubetich, investor, co-founder, supporter

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Gary Moses, I support small business
Cynthia Schames, founder & angel investor
Diana Cooper
Jack Timmons
Daniel Carleton , software engineering for startups for 10+ years
Gary Brooks, own a hosting company and help start-ups all day everyday
Tom Riley, Fractional CFO, entrepreneur
Paul Spinrad, entrepreneur
Becky Bond
Allison Davis, attorney
Sachin Chheda. LGBT Chamber of Wisconsin
Jeff Carroll, entrepreneur
Mukund Narasimhan, working on a startup idea
Patrik Ward, passionate advocate
Alfredo Gil, starting one
Alessandro Marchesini, doing it
Cory Murphy, want to create my own startup
Jake Price
Sandi Lin, entrepreneur
K. Fujita, founder
Virendra Mishra, founder
Justin Feldstein
Henry Curtis, might create one someday
Ryan Boswell, founder and startup employee
Naveen Jain, Immunity Project
Ben Frank, investor
Jonathan Healy, worked for startups in the past, interested in working for/starting them in the future
Alex Katz, CFO at an early-stage VC firm
Derrick Lewis
Daniel Weathers, work for a startup
Daniel Heller, founder of The Welcoming Committee
Ebba Lucander, entrepreneur
Meng-huan Brandon Wu, founder
Marc Sorli, entrepreneur, founder at fancybox.com
Mark Galbraith, serial entrepreneur
Colin Mutchler, founder of Louder.is
Munly Leong, have two startups