



## ANGEL CAPITAL ASSOCIATION

July 14, 2011

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

Re: File Number S7-21-11  
Disqualification of "Bad Actors" from Rule 506 Offerings

Dear Ms. Murphy:

We write to offer comment on the Commission's proposed "bad actor" rules, to be part of Rule 506 of Regulation D. We strongly support "bad actor" disqualifications in order to protect the integrity of private offerings under Rule 506, but urge the Commission to implement this reform so that issuers may comply in the same way they currently observe the "accredited investor" standard. This will make compliance practical for the new firms that receive angel investment.

The Commission is required to implement a "bad actor" disqualification because of Section 926 of the Dodd-Frank Wall Street Reform and Consumer Protection Act. The Angel Capital Association actively supported Section 926. In fact, together with Section 412 of Dodd-Frank, which amended the "accredited investor" definition, Section 926 was a key accomplishment of the Angel Investor Amendment, which was designed to make sure that startups and young companies were not caught in the crossfire over Wall Street reform. The bi-partisan amendment was supported by ACA and a number of pro-growth organizations.

We believed at the time of Dodd-Frank, and continue to believe, that offerings under Rule 506 are almost always preferable to offerings that go "underground" and rely instead on Section 4(2) or other exemptions which are less transparent, require no filings, and offer far less guidance to entrepreneurs and angel investors. We think angel investing is healthier and more likely to thrive with a workable Rule 506 in place.

We are concerned that the Commission's rules, if implemented as now proposed, will backfire and will harm the viability of Rule 506 for startups and angel investors.

Consider the issuer's standard today for determining whether or not a prospective investor is accredited. Here is how current Rule 501(a) reads:

*"Accredited investor shall mean any person who comes within any of [certain specified] categories, or who the issuer reasonably believes comes within any of the [the specified] categories, at the time of the sale of the securities to that person."*

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Contrast that with the standard the Commission proposes for identifying bad actors. An offering won't be disqualified for involving a bad actor, the proposed rule states:

"If the issuer establishes that it did not know, and in the exercise of reasonable care could not have known, that a disqualification existed."

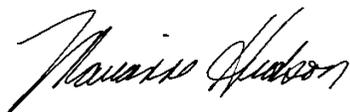
Such a rule would arguably require issuers to independently investigate the backgrounds of its officers, directors and investors. This is not practical, particularly not for entrepreneurs who should be using precious seed capital to get businesses off the ground. For companies that raise financings in increments over a period of high growth, the Commission's proposed rule could arguably require continuous (and expensive) monitoring of all stakeholders. The last thing the Commission should want should be to require startups to now hire private investigators to establish compliance with bad actor rules.

With respect to an issuer's obligations under Rule 506, we think the Commission's rules should state that the issuer's burden will be the same it undertakes today under Rule 501(a): does the issuer reasonably believe that no persons involved in the offering are "bad actors?"

In honoring the accredited investor standard, issuers typically seek representations and warranties from potential investors, and many require investors to complete questionnaires to verify their accredited status. We suggest the Commission offer guidance to issuers, to the effect that they will be presumed to have demonstrated reasonable belief if they require questionnaires from appropriate persons and otherwise have no actual knowledge of problems. Though we don't propose any particular form of questionnaire be mandated by rule, for the sake of illustration we enclose with this letter a proposed form of "bad actor" questionnaire that we think should satisfy a "reasonable belief" standard. Moreover, to discharge its duty with respect to prospective investors who may potentially own 10% or more of any class of the issuer's equity securities, we think an issuer should be able to take the substance of a "bad actor" questionnaire and include it within the existing questionnaire the issuer uses for establishing accredited investor status.

The purpose of the Angel Investing Amendment was to ensure that Regulation D would continue to facilitate the flow of angel capital into the startup and emerging companies that drive almost all of America's job growth. We urge the Commission to remember the progeny of Dodd-Frank's reforms to Regulation D, to reject rules that skirt Congressional intent, and to make sure that Rule 506 remains safe, workable, and reliable for startups and angel investors.

Sincerely,



Marianne Hudson  
Executive Director

Enclosure: Example form of "bad actor" questionnaire

NEWCO

**QUESTIONNAIRE**

The purpose of this Questionnaire is to determine whether any officer or of Newco, Inc., is "disqualified" under Rule 506(c) Regulation D promulgated under the Securities Act of 1933, as amended (the "Act"), an exemption from the registration requirements of the Act and exemptions from applicable state securities laws. The information furnished herein will be relied upon in connection with the offering and sale of securities in compliance with the aforesaid exemption. This Questionnaire will be used by the Company to prepare a disclosure statement and related materials (the "Disclosure Statement") furnished to investors and in filing Form D with the Securities and Exchange Commission ("SEC"), registering the securities being offered for resale. The information contained in this Questionnaire about you may be included in the Disclosure Statement and will be relied upon by the Company in preparing the Disclosure Statement and filing the Disclosure Statement with the SEC.

Except as noted above, all information supplied will be treated in confidence, except that this Questionnaire may be provided to such parties as deemed appropriate or necessary to establish the availability of an exemption from registration under the Act and under state securities laws. If you have any questions about any item in this Questionnaire feel free to address the same to [\_\_\_\_\_].

**Please complete, sign and date this Questionnaire and return it to the attention of:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

A prepaid envelope has been enclosed for your convenience.

**Instructions**

PLEASE ANSWER *EACH* QUESTION. (Please print or type.) If the answer to any question is "None" or "Not Applicable," please so state.

Your Name: \_\_\_\_\_

Residence or Business Address: \_\_\_\_\_

Your Position with Newco: \_\_\_\_\_

Telephone Number: \_\_\_\_\_

Fax Number: \_\_\_\_\_

Email Address: \_\_\_\_\_

Please respond to the following questions by placing an "X" next to the appropriate answer, all such answers to speak as of the date of any conviction or entry of an order or sanction within the preceding 10 year period ending on the date hereof (the "Period").

At any time during the Period, have any of the following events been entered in an official record of any government or self regulatory organization body (court, agency), including the SEC, FINRA, a bar association or like entity in which you are named either individually or as a member of a group?

- (a) Criminal convictions;  
Yes \_\_\_\_\_ No \_\_\_\_\_
- (b) Court injunctions and restraining orders;  
Yes \_\_\_\_\_ No \_\_\_\_\_
- (c) Final orders of state securities, banking, insurance, saving associations and credit unions;  
Yes \_\_\_\_\_ No \_\_\_\_\_
- (d) SEC disciplinary orders relating to brokers, dealers, municipal securities dealers, investment advisers and investment companies and their associated persons;  
Yes \_\_\_\_\_ No \_\_\_\_\_
- (e) Suspension or expulsion from membership in, or suspension or bar from associating with a member of, a securities self-regulatory organization;  
Yes \_\_\_\_\_ No \_\_\_\_\_
- (f) SEC stop orders and orders suspending a Regulation A exemption;  
Yes \_\_\_\_\_ No \_\_\_\_\_
- (g) Administrative sanctions ( suspensions , fines , reprimands and/or like orders) from any of the following agencies;
  - (i) U.S. Postal Service Yes \_\_\_\_\_ No \_\_\_\_\_
  - (ii) CFTC Yes \_\_\_\_\_ No \_\_\_\_\_
  - (iii) FDIC Yes \_\_\_\_\_ No \_\_\_\_\_
  - (iv) Federal Reserve Bank Yes \_\_\_\_\_ No \_\_\_\_\_
  - (v) [TBA] Yes \_\_\_\_\_ No \_\_\_\_\_
- (h) Are you a broker or dealer, registered pursuant to Section 15 of the Securities Exchange Act of 1934?  
Yes \_\_\_\_\_ No \_\_\_\_\_
- (i) Set forth in the space provided below the State(s), if any, in the United States in which you maintained your residence during the past ten years and the dates during which you resided in each state:  
  
\_\_\_\_\_  
  
\_\_\_\_\_
- (j) Are you a director or executive officer of the Company?  
Yes \_\_\_\_\_ No \_\_\_\_\_

- (k) Set forth in the space provided below the (i) State(s), if any, in the United States in which you maintained your principal office during the past ten years and the dates during which you maintained your office in each state, (ii) the State(s), if any, in which you are incorporated or otherwise organized, and (iii) the State(s), if any, in which you pay income taxes:

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- (l) Are you the beneficial owner of any other securities of the Company?

Yes \_\_\_\_\_ No \_\_\_\_\_

If Yes, please describe the nature and amount of such ownership:

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- (m) Have you held any position or office, or had any other material relationship within the past three years with the Company or any of its predecessors or affiliates (including any person or entity listed in the Offering Memorandum under the caption "Principal Stockholders")?

Yes \_\_\_\_\_ No \_\_\_\_\_

If Yes, please describe the nature and amount of such relationship:

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The undersigned hereby represents that all the information supplied herein is true, correct and complete as of the date hereof. The undersigned agrees to notify Newco, Inc. immediately of any material change in the foregoing answers.

The undersigned hereby agrees to indemnify, defend and hold harmless Newco, all of its owners, officers, directors, members, affiliates and advisers from any and all damages, losses, liabilities, costs and expenses (including reasonable attorneys' fees) that they may incur by reason of the untruth or inaccuracy of any of the representations contained herein.

IN WITNESS WHEREOF, the undersigned has executed this Investor Questionnaire as of this \_\_\_\_\_ day of \_\_\_\_\_, 2011 and declares that it is truthful and correct.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name