Dear Securities and Exchange Commission,

I write to you as president and co-founder of a high tech startup with deep concerns about the proposed Rule 506 changes.

That was my introductory sentence, but it's missing a few important details. What is my startup? Is it trying to raise money? Is it considering raising money? Ordinarily, the answers to those questions would be critical to helping you assess the significance of my concerns, but I can't answer them because of the proposed changes to Rule 506.

The proposed Rule 506 changes introduce severe, financially crippling penalties on any business that accidentally treads into 506(c) territory, and they do so without offering any detailed guidance on what actions by whom place a business under 506(c) requirements.

Above and beyond the strawman of discussing a company's fund raising status in a letter of public commentary to the SEC, I ask you to consider the proposed Rule 506 changes in light of the following scenarios:

1) A business approaches a qualified investor in a manner entirely within the intended scope of 506(b), that investor decides not to invest in the business, and the "investor" (who didn't actually invest) then chooses to tweet or Facebook post about the meeting with the business after deciding not to invest.

Is the business described above now in a 506(c) situation and potentially subject to severe penalties, even though they didn't want, didn't ask for, or even know about the tweets that just went out describing their meeting with the potential investor?

2) If the business described in the previous hypothetical does suddenly find itself in a 506(c) situation, is the individual who described the meeting on their Facebook page or blog financially liable for the impact of their post on that business, even though they signed no documents and have no formal training in securities law other than their status as a qualified investor?

There is no good answer to this second question. If potential investors take on huge potential liability simply by hearing an investor's pitch (something every serious investor does many times a day), those investors will have to stop listening to pitches because they can't afford to take on that type of liability for a company and investment they know nothing about. Placing the liability for Rule 506(c)-related publicity costs on potential investors would destroy the economic engine that is small business investment. Unfortunately, the reverse case where potential investors are shielded from liability when publicizing investments is just as bad. If potential investors are not liable for the impact of forcing businesses into unplanned 506(c) situations, then these rules give qualified investors a nuclear bargaining option – let me invest on whatever terms I want or I force you into an unplanned 506(c) scenario, potentially jeopardizing your ability to raise funds for a full year.

3) If a business participates in a "Pitch competition" such as Demo Days or the events hosted by the MIT Enterprise Forum (activities which were very common in the pre-506(c) era), is that business now considered to be in a 506(c) situation even though those activities and that type of contest were commonly held under the old 506(b) rules?

This “Pitch competition” question becomes even more troubling when we consider the case where the startup presents using a PowerPoint deck that doesn’t actually contain an “Ask” slide (the slide that says how much money the startup is trying to raise, at what valuation). If the business still finds itself in a 506(c) situation even when they didn’t present an Ask slide, perhaps because a qualified investor in the audience approached them about a possible investment after the presentation, then every startup is potentially at risk of finding itself in a 506(c) situation regardless of whether they compete in a Pitch competition or not. Every reporter who covers startups, whether for the business press or lifestyle or general news or any other section asks precisely the questions found in the slides that businesses present in those pitch competition: What does your business do? How big is the market? Who is the competition? What are your plans for the future? And can you tell us about your team? Small companies need to promote themselves in addition to promoting their products, in order to build their corporate brands, encourage potential customers to feel an affinity for the company, and to drive press coverage that includes discussion of their products. The proposed Rule 506 changes make these activities potentially extremely dangerous for any small company that is engaged in or considering engaging in fund raising activity (a class that unfortunately includes most startups).

The proposed Rule 506 changes, in the absence of extremely detailed guidance, have the potential to place businesses and investors alike under extreme financial risk should they attempt to engage in 506(b) fund raising activities.

If Rule 506(c) were crafted in a form that allowed it to function as an effective safe harbor for 506(b) activities, these changes would not be so damaging. 506(c) unfortunately introduces very significant added administrative burden and legal costs, costs which we are hearing early estimates from securities lawyers can easily run to an additional $10,000 and up on top of the cost of a traditional 506(b) raise, money that would need to be spent in advance of any actual intended raise, in order to be covered in the event that some action by the company is deemed to be unintended publicizing of fund raising activities. These regulatory and financial costs effectively prevent small businesses from treating 506(c) filing as a safe haven for intended 506(b) activities (or even from engaging in a 506(c) filing under any circumstances in most cases).

The proposed Rule 506 changes are profoundly damaging to the small business ecosystem and have the potential to halt all early stage investment activity for a year or more while investors and businesses scramble to reassess economic liability, regulatory and legal costs, and wait for the unfortunate first few businesses to be punished by the court system in order to establish a few years of case law examples of what is and is not allowed. The investment climate is just starting to help us rev the engine of growth that is small business. Please don’t place all those investments on hold with these proposed Rule 506 changes.